

**CITY OF PHOENIX, ARIZONA
WATER SERVICES DEPARTMENT**

October 4, 2002

**LAKE PLEASANT WATER TREATMENT PLANT
DESIGN-BUILD-OPERATE PROJECT – WS85350004
REQUEST FOR PROPOSALS**

ADDENDUM NO. 9

ATTENTION PROPOSERS

The following revisions to the above-referenced Request for Proposals (RFP), dated September 5, 2001, shall become a part of the RFP. This Addendum contains a cover page and 9 pages of written text and 2 attachments. Proposers shall acknowledge receipt of this Addendum No. 9 in the Transmittal Letter to their Proposal.

Assistant Water Services Director

Date

Notice is hereby given that the RFP is revised as follows:

1. Amend RFP Table 1-2, “Background Documents List” on page 1-13, by deleting “USACOE” and substituting “City of Phoenix” in the “Organization” column for Background Document No. 40.
2. Amend RFP Table 1-2, “Background Documents List”, as modified by Addenda Nos. 1-4 and 8, on page 1-14, by adding the following new background documents:

70	September 11, 2002 Correspondence from the City of Peoria to Greeley and Hansen regarding the Zoning Verification for the Lake Pleasant DBO Water Treatment Plant Project.	City of Peoria	Sept 2002	Letter
71	Updated Schedules to Benchmark Facility Cost Report	Raftelis Financial Consulting	Sept 2002	Report

3. Replace RFP Section 2.1.3, “Facilities Ownership and Financing”, on page 2-4, with the following:

The City will, at all times, own the Facilities, except for the Intake and the portions of the Sites owned by BOR or Arizona State Land Department, and intends to fund all or a portion of the Fixed Design/Build Price with tax-exempt debt. To maintain the tax-exempt status of the City’s debt to fund the Fixed Design/Build Price and any future capital needs of the Facilities, the Service Fee under the Service Agreement has been structured to comply with United States Internal Revenue Service (IRS) Revenue Procedure 97-13 and any subsequent related rulings or procedures at all times during the Term of the Service Agreement. Proposers are advised that the City is seeking a private letter ruling from the IRS to confirm the compliance of the Service Fee structure under the Service Agreement with Revenue Procedure 97-13. The City reserves the right to modify the Service Fee structure under the Service Agreement and the related terms and conditions of the RFP and Proposal Forms as and to the extent necessary to permit the City to issue tax-exempt debt for the Project, including any modifications thereto subsequent to Proposal submittal and prior to Price Proposal opening as provided in Section 3.1.5 of this RFP.

4. **Amend RFP Section 2.1.5, “Project Benchmark”, on page 2-5, as amended by Addendum No. 1, by replacing “\$353,305,232” with “\$364,217,876”.**
5. **Replace RFP Section 2.2.5.1, “Company Assumption of Permitting Risk for Design/Build Work”, on page 2-9, with the following:**

2.2.5.1 Company Assumption of Permitting Risk for Design/Build Work

Subject to the City’s review rights under the Service Agreement, the Company is responsible for making all applications and taking all other actions to obtain and maintain all Required Construction Date Governmental Approvals and all other Governmental Approvals necessary to continue and complete the Design/Build Work. Proposers are advised that the Company is required to assume the risk of obtaining and maintaining all such Governmental Approvals including, without limitation, the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body, as and to the extent provided in Section 4.5 of the Service Agreement.

As provided in Section 4.11 of the Service Agreement, the City has reserved the right to terminate the Service Agreement for its convenience if any one or more of the Required Construction Date Governmental Approvals have not been issued and the Construction Date has not occurred on or before 548 days following the Contract Date.

6. **Amend RFP Section 2.3.1, “Performance Guarantees”, on page 2-12, by replacing the last sentence of the first paragraph with the following:**

Except to the extent excused due to Uncontrollable Circumstances, if, at any time, the Performance Guarantees are not met, the Company will be subject to liquidated damages or termination in accordance with the Service Agreement.

7. **Amend RFP Section 2.3.1, “Performance Guarantees”, on page 2-12, by deleting the last paragraph thereof.**

8. **Replace RFP Section 2.3.4, “Security for Performance”, on page 2-13, with the following:**

2.3.4 Security for Performance

In addition to the Guaranty Agreement, the Company will be required to provide additional security for the performance of its obligations under the Service Agreement. The Company will be required to cause the Guarantor to provide the Letter of Credit in accordance with the terms

and conditions of Section 14.3 of the Service Agreement. The Company will also be required to provide, as additional security for its Design/Build Period obligations under the Service Agreement, a performance bond and a payment bond. Pursuant to the Enabling Law, the performance bond and the payment bond are each required to be in an amount equal to the construction portion of the Fixed Design/Build Price.

Proposers are advised that if, on the Contract Date or at any time thereafter, a Material Decline in Guarantor's Credit Standing (as defined in Section 14.1 of the Service Agreement) exists or occurs, the Company will be required to increase the applicable Stated Amount of the Letter of Credit by or to an amount specified in Section 14.1 of the Service Agreement.

As required by Section 6.4 hereof, each of the foregoing instruments shall be furnished to the City on or before, and as a condition precedent to, the Contract Date. These instruments shall be in substantially the forms set forth in the Transaction Forms.

9. **Amend RFP Section 2.3.5.3, "Convenience Termination Payments", on page 2-15, by replacing the first sentence thereof with the following:**

In accordance with Article XII of the Service Agreement, the City shall have the right to terminate the Service Agreement at any time for its convenience and without cause upon the payment of a convenience termination fee.

10. **Amend RFP Section 2.3.5.3, "Convenience Termination Payments", on page 2-15, by replacing the first bullet with the following:**

- During the Development Period, the convenience termination fee shall be the reimbursement of 100% of the Cost Substantiated costs and expenses of the Company for its Development Period activities up to 10% of the Fixed Design/Build Price.

11. **Replace RFP Section 3.1.5, "Evaluation Scoring and Selection", on page 3-5, with the following:**

Final Technical Proposals and Price Proposals received in response to this RFP will be evaluated and scored using the evaluation criteria and scoring method noted in Section 6. In applying the scoring method, the Selection Committee will first evaluate and score the Final Technical Proposals. Following the scoring of the Final Technical Proposals and the City's determination through the private letter ruling process as to compliance of the Service Fee structure in the Service Agreement with Revenue Procedure 97-13, the City will open, evaluate and, if found to be responsive, score the Price Proposals. The Selected Proposer will be the Proposer whose

Proposal receives the highest combined score based on the evaluation criteria and scoring method.

In the event the City determines that the Service Fee structure in the Service Agreement and the related terms and conditions of the RFP and Proposal Forms require modification pursuant to the private letter ruling process prior to Price Proposal opening, the City reserves the right to return the Price Proposals to each Proposer, amend this RFP, the Proposal Forms and the Service Agreement to make the appropriate modifications to the Service Fee structure and related terms and conditions thereto, and permit the Proposers to resubmit their Price Proposals in accordance with the amended RFP, Proposal Forms and Service Agreement (no changes to the Final Technical Proposals will be allowed). Following receipt of the resubmitted Price Proposals, the City will open, evaluate and, if found to be responsive, score such proposals in the manner provided in the preceding paragraph.

The Selection Committee may, in its sole discretion, prepare a written request for clarification to some or all Proposers for the purpose of clarifying any information submitted in a Proposal. The request may seek written clarification from the Proposer of any ambiguities in its Proposal and additional information the Selection Committee believes is necessary to complete the evaluation process, including clarification of language in light of the fact that portions of the Final Technical Proposal will be incorporated in and become part of the definitive Service Agreement as Technical Appendices. In addition, the Selection Committee may, in its sole discretion, perform other due diligence investigations with respect to any information submitted in a Proposal.

Following the evaluation and scoring of the Proposals, the Selection Committee will forward its recommendation of the Selected Proposer to the City for its approval or rejection. If the Service Agreement is to be awarded, the City will provide the Selected Proposer a Notice of Award within 60 days following the date of the City's determination to award the Service Agreement. Upon receipt of such Notice of Award, the Selected Proposer will be required to return to the City an executed Service Agreement and Guaranty Agreement, together with the other documents required as a condition precedent to the City's execution of the Service Agreement, as and to the extent provided in Section 6.4 of this RFP. In the event the Selected Proposer is unable to comply with all of the requirements for the City's execution of the Service Agreement, the City may exercise any of the rights it has reserved in Section 6.4 hereof.

In addition to any of its rights expressly provided in this section and Section 3.5 hereof, the City reserves the right, in its sole discretion, to reject the recommendation of the Selection Committee and the Proposal of the Selected Proposer if it would not be in the best interests of the City and the Project to make an award to the Selected Proposer. In such event, the City reserves the right to cancel the RFP process in its entirety.

12. **Amend RFP Section 3.5, “City Rights and Options”, on page 3-7, by replacing item #1 thereof with the following:**

1. To supplement, amend, or otherwise modify this RFP, including the Proposal Forms and the Service Agreement, at any time prior to the date of opening of the Price Proposals.

13. **Amend RFP Section 3.6, “Expenses of the Proposers and Payment of an Honorarium”, on page 3-8, by replacing honorarium amount of “\$476,700” in the second sentence of the second paragraph with “\$492,016”.**

14. **Replace RFP Section 5.5.1.3.2, “Additional Contract Security Requirements”, on page 5-10, with the following:**

5.5.1.3.2 Additional Contract Security Requirements

The Proposer shall provide a letter of intent from a Qualified Commercial Bank that is acceptable to the City indicating that the bank is highly confident that when full application is made by the Guarantor, it will furnish the required Letter of Credit as security for the Company's performance of its obligations under the Service Agreement (Proposal Form 8). The Letter of Credit shall comply with the requirements of Section 14.3 of the Service Agreement and be substantially in the form set forth in the Service Agreement (Transaction Form D).

15. **Amend RFP Section 5.5.1.5, “Team Proposal Forms”, on page 5-11, by replacing the references to “Proposal Form 8” and “Proposal Form 9” with the following:**

Proposal Form 8 - Bank Letter of Intent to Issue the Letter of Credit
Proposal Form 9 - [Intentionally Omitted]

16. **Amend RFP Section 5.5.1.6, “Proposal Security”, on page 5-12, by replacing the fifth sentence thereof with the following:**

The Proposal security of the Selected Proposer and the other Proposers will be retained by the City until the end of the period specified in Section 6.3 hereof, during which the Proposals will remain open, or seven days after the City executes the Service Agreement, whichever occurs last.

17. **Amend RFP Section 5.5.3.14, “Security Features and Preliminary Security Plan”, on page 5-27, as added by Addendum No. 4, by adding the following new paragraph to the end thereof:**

Each Proposer shall clearly mark all portions of Volume III of its Revised Preliminary Technical

Proposal and Final Technical Proposal responding to the requirements of this section, including Proposal Form 36, as “PROPRIETARY AND CONFIDENTIAL.” Alternatively, each Proposer is permitted to submit such portions of its Revised Preliminary Technical Proposal and the Final Technical Proposal as a separate volume thereof, which volume shall be noted as such and clearly marked as provided above.

18. **Amend RFP Section 5.5.4.1, “General”, on page 5-28, as modified by Addenda No. 6, by replacing the bullet beginning with “Piping Plan...” with the following new bullet:**

- Piping Plan, which shall include, at a minimum, all yard piping and valves 48” and larger and the Low Pressure Line Point of Interconnection.

19. Amend RFP Section 5.5.5, “Volume V: Price Proposal”, on page 5-30, by replacing the first two sentences thereof with the following:

A Proposal submitted in response to this RFP must contain a Price Proposal that fully conforms with and satisfies the format and content requirements described herein, and sets forth the Proposer's proposed Fixed Design/Build Price (Proposal Form 34), [**Guaranteed Earliest Construction Start Date (Proposal Form 34),**] Fixed Component of the Base Operating Charge of the Service Fee (Proposal Form 35), fixed per unit fee for the Excess Chlorine Element of the Variable Component of the Service Fee (the “High Chlorine Residual Unit Charge”) (Proposal Form 35A), and the Adjustment Factor Modifier (Proposal Form 35). For purposes of the Price Proposal evaluation, the City will also use the Proposers’ electrical usage guarantees that were provided in the Final Technical Proposals (Proposal Forms 33A through 33D).

20. **Amend RFP Section 6.2, “Evaluation of Final Technical and Price Proposals”, on page 6-1, by deleting the second sentence of the first paragraph.**
21. **Amend RFP Section 6.2.3, “Final Scoring of Proposals”, as amended by Addendum No. 7, on page 6-16, by changing the benchmark dollar amount from “\$353,305,232” in the table to “\$364,217,876”.**
22. Amend RFP Section 6.2.3, “Final Scoring of Proposals”, as amended by Addendum No. 7, on page 6-16, by changing the Price Proposal NPV of Proposal 3 in the table from “353,408,900” to “364,320,900”.
23. Add the following new RFP Section 6.3, “Proposals to Remain Subject to Acceptance” after Section 6.2.3:

All Proposals will remain subject to acceptance for 270 calendar days following the Proposal Date, but the City may, in its sole discretion, release any Proposal and return the Proposal security prior to that date. Extensions of the period during which the Proposals shall remain open may only be made by agreement between the City, the Selected Proposer and any other Proposer wishing to remain in contention for the award. Any such agreement shall be based on no increase in the Fixed Design/Build Price, the Fixed Component of the Base Operating Charge of the Service Fee and the other pricing information contained in the Price Proposal and no extension of the Scheduled Acceptance Date. If the Selected Proposer or any other Proposer wishing to remain in contention for the award fails to agree to any such extension, as conditioned in this paragraph, that Proposer shall be disqualified from further consideration for the award. However, that Proposer’s failure to agree to any such extension will not constitute grounds for forfeiting that Proposer’s Proposal security.

24. Add the following new RFP Section 6.4, “Conditions Precedent to City Execution of Service Agreement” after new Section 6.3”

When the City gives a Notice of Award to the Selected Proposer, it will be accompanied by the required number of unsigned counterparts of the Service Agreement and the Guaranty Agreement. Within 15 days thereafter the Selected Proposer and its Guarantor shall sign and deliver the required counterparts of the Service Agreement and the Guaranty Agreement to the City, together with the following documents:

1. Letter of Credit
2. Performance Bond
3. Payment Bond

4. Required Design/Build Period Insurance Certificates
5. Company's "Bring-Down" Certificate, dated as of the Contract Date, as to:
 - i. The occurrence of any Changes in Law between the Proposal Date and the Contract Date; and
 - ii. Confirmation that all registrations and licenses required under Section 2.3.6 of this RFP are valid and in full effect.
6. Certificate of Incorporation (or Certified Articles of Organization), Certified Authorizing Resolutions, and Incumbency Certificates Supporting the Company's Representations in Section 2.2 of the Service Agreement.

Within a reasonable period of time thereafter, including such time as necessary for the City to confirm compliance of each of the foregoing documents with the terms and conditions of the Service Agreement, the City will deliver one fully-signed counterpart of the Service Agreement and Guaranty Agreement to the Company. The Selected Proposer will be required to correct any deficiencies or other non-complying items identified by the City in any of the foregoing documents within the period of time specified in the City's notice as to such deficiencies or non-complying items.

The failure of the Selected Proposer to comply with any of the requirements of this section shall constitute grounds for the City to declare the Selected Proposer to not be responsive and responsible, and shall further constitute grounds for forfeiture of the Selected Proposer's Proposal security. In such event and if it is determined to be in the City's best interests, the City reserves the right (1) to rescind its Notice of Award to the Selected Proposer and to issue a Notice of Award to the second highest scored Proposal, subject to the terms and conditions in the preceding paragraph, or (2) to rescind its Notice of Award to the Selected Proposer, cancel the RFP and re-procure the Project pursuant to any legally authorized procurement process. Nothing in the preceding sentence shall preclude the City from exercising any of the other rights reserved to it under this RFP, including those rights set forth in Section 3.5.

25. **Replace Proposal Forms 1C through 38 with the substitute Proposal Forms provided in Attachment A hereto. Proposal Forms 1C including Attachment 3, 8, 9, 18, 32, 33, 24, 35 and 37 have been revised. (The reissuance of all Proposal Forms is intended to provide Proposers with a readily available set of the conformed Proposal Forms for preparing their Proposals. Optional Proposal Forms 1 and 2 and Proposal Forms 1A and 1B are no longer relevant. The function of Optional Proposal Form 2 can now be achieved, if so elected by a Proposer, through a listing of other Company commitments on Proposal Form 5F.)**

26. **Replace the Service Agreement and Appendices with the revised Service Agreement and Appendices included in Attachment B hereto. Proposers should contact the Project Manager if they would like to receive a blacklined copy of the revised Service Agreement and Appendices showing changes made from the prior versions thereof.**

Attachment A - Proposal Forms 1C thorough 38

PROPOSAL FORM 1C

PROPOSAL TRANSMITTAL LETTER

(To be typed on Proposer's Letterhead)

[Date]

Madeline Goddard, Project Manager
Water Services Department
Phoenix City Hall
200 West Washington Street, 8th Floor
Phoenix, Arizona 85003

Re: Proposal for Lake Pleasant Water Treatment Plant DBO Project
Project No. WS85350004

_____ (the Proposer) hereby submits its Proposal in response to the Request for Proposals for the Lake Pleasant Water Treatment Plant DBO Project (RFP) issued by the City of Phoenix (the City) on September 5, 2001, as amended.

As a duly authorized representative of the Proposer, I hereby certify, represent, and warrant, on behalf of the Proposer team, as follows in connection with the Proposal:

1. The Proposer acknowledges receipt of the RFP and the following addenda:

<u>No.</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____

2. The submittal of the Proposal has been duly authorized by, and in all respects is binding upon, the Proposer. Attachment 1 to this Proposal Form is a Certificate of Authorization which evidences my authority to submit the Proposal and bind the Proposer.
3. All Project Team Members identified to date are identified in Attachment 2 to this Proposal Form.
4. A list of required contractor's and specialty licenses held by Project Team members is included as Attachment 3 to this Proposal Form.
5. The Proposer's Affirmative Action Compliance number is _____.
6. The M/WBE information contained in Proposal Form 11 is a true reflection of the proposed subcontracts, expressed as a percentage of the Fixed Design/Build Price relating to the construction of the Facilities.
7. The Proposal contains the requisite Proposal security for assuring that the Proposer will enter into the Service Agreement if determined to be the Selected Proposer. The Proposer has reviewed and understands the requirements of the RFP and all addenda thereto and, if determined to be the Selected Proposer, agrees to execute the Service Agreement.
8. The Proposer's obligations under the Service Agreement will be guaranteed absolutely and unconditionally by _____, as evidenced by the Guarantor Acknowledgment certificate submitted as Proposal Form 7. Attachment 1 to Proposal Form 7 is a Certificate of Authorization, which

evidences the signer's authority to submit the Guarantor Acknowledgment certificate and enter into a Guaranty Agreement with the City.

9. The Performance Bond issued on behalf of _____ as the Construction Subcontractor of the Proposer assuring that the Construction Subcontractor will perform its duties in accordance with the terms of the Service Agreement, will be provided by _____.
10. The Payment Bond issued on behalf of _____ as the Construction Subcontractor of the Proposer assuring that the Construction Subcontractor will perform its duties in accordance with the terms of the Service Agreement, will be provided by _____.
11. The Letter of Credit, as required by the City as security for its obligations under the Service Agreement, will be provided by _____ (or another banking institution approved by the City), as evidenced by such banking institution's letter of intent submitted as Proposal Form 8.
12. The Required Design/Build Period Insurance required by the Service Agreement will be provided or brokered by _____.
13. The Required Operation Period Insurance required by the Service Agreement will be provided or brokered by _____.
14. All information and statements contained in the Proposal are current, correct and complete, and are made with full knowledge that the City will rely on such information and statements in selecting the Selected Proposer and executing the Service Agreement.
15. The Proposal has been prepared and is submitted without collusion, fraud or any other action taken in restraint of free and open competition for the services contemplated by the RFP.
16. Neither the Proposer, the Guarantor nor any Project Team Member is currently suspended or debarred from doing business with any governmental entity.
17. The Proposer has reviewed all of the engagements and pending engagements of the Proposer and the Guarantor, and no potential exists for any conflict of interest or unfair advantage.
18. No person or selling agency has been employed or retained to solicit the award of the Service Agreement under an arrangement for a commission, percentage, brokerage or contingency fee or on any other success fee basis, except bona fide employees of the Proposer or the Guarantor.
19. The principal contact person who will serve as the interface between the City and the Proposer for all communications is:

NAME: _____
TITLE: _____
ADDRESS: _____
PHONE: _____
FAX: _____
E-MAIL: _____

20. The key technical and legal representatives available to provide timely response to written inquiries submitted, and to attend meetings requested by the City are:

Technical Representative:
NAME: _____
TITLE: _____

ADDRESS: _____

PHONE _____

FAX: _____

E-MAIL: _____

Legal Representative:

NAME: _____

TITLE: _____

ADDRESS: _____

PHONE _____

FAX: _____

E-MAIL: _____

21. The Proposer has carefully examined all documents constituting the RFP and the addenda thereto and, being familiar with the work and the conditions affecting the work contemplated by the RFP and such addenda, offers to furnish all plant, labor, materials, supplies, equipment, facilities and services which are necessary, proper or incidental to carry out such work as required by and in strict accordance with the RFP and the Proposal, all for the prices set forth in the Proposal Forms.

Name of Proposer

Name of Designated Signatory

Signature

Title

(Notary Public)

State of _____
County of _____

On this _____ day of _____, 2002, before me appeared _____
_____, personally known to me to be the person described in and who executed this _____
_____ and acknowledged that (she/he) signed the same freely and voluntarily for the uses and purposes therein
described.

In witness thereof, I have hereunto set my hand and affixed by official seal the day and year last written above.

(seal)

Notary Public in and for the State of _____

(Name printed)

Residing at _____

My commission expires _____

Attachment 1

CERTIFICATE OF AUTHORIZATION*

I, _____, a resident of _____ in the State of _____, DO HEREBY CERTIFY that I am the Clerk/Secretary of _____, a corporation duly organized and existing under and by virtue of the laws of _____; that I have custody of the records of the corporation; and that as of the date of this certification, _____ holds the title of _____ of the corporation, and is authorized to execute and deliver in the name and on behalf of the corporation the Proposal submitted by the corporation in response to the Request for Proposals for the Lake Pleasant Water Treatment Plant DBO Project, Project No. WS8535004, issued by the City of Phoenix, Arizona on September 5, 2001, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the corporation this _____ day of _____ 2002.

(Affix Seal Here)

Clerk/Secretary

** Note: Separate certifications shall be submitted if more than one corporate officer has executed documents as part of the Proposal. Proposers shall make appropriate conforming modifications to this Certificate in the event that the signatory's address is outside of the United States.*

Attachment 2

PROJECT TEAM MEMBER LIST

Name of Project team (if any): _____

Names and roles of Proposer, Guarantor, Significant Subcontractors and all other Project team members identified to date:

<u>NAME</u>	<u>ROLE</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PROPOSAL FORM 2

ADDITIONAL KEY PROJECT STAFF

*(Provide the information requested on this form for each **new** key project staff member who was not listed in the SOQ Submittal Form #1. Provide any **changes** to information on key project staff members listed in the SOQ Submittal Form #1. Attach additional pages if necessary)*

General Information

Name: _____

Firm: _____

Title: _____

Years employed by firm: _____ years

Total Professional Experience _____ years

Professional Registration and Licenses (type/state/year/license number): _____

Lake Pleasant Water Treatment Plant DBO Project-specific information

Title/Assignment _____

Description of Role/Responsibilities:

Commitment: ⁽¹⁾	Permitting	_____ %	Design	_____ %
	Construction:	_____ %	Startup and Testing:	_____ %
	Operation	_____ %		

Relevant Project Experience: ⁽²⁾

Project: _____

Location: _____

Current Status: _____

Date of Involvement: from _____ through _____

Description of Specific Roles and Responsibilities:

Respondent's Client Contact Person

Name _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Notes:

1. Commitment indicates the amount of time (in percent) that the staff person would be available to work on the Project during the permitting, design, construction, startup and testing, and operations phases of the Project. Indicate by "N/A" where the individual is not proposed to be involved in a particular phase of the Project. For example, if a person would be available 20 hours a week out of a 40-hour work week, reply 50%.
2. Provide this information for as many projects as are applicable.

PROPOSAL FORM 3

ADDITIONAL RELEVANT PROJECT EXPERIENCE

Provide any **new** information as requested in Sections 4 and 5 in a format similar to that shown below. Refer to the Proposer's SOQ if such information has not materially changed since SOQ submittal. This form may be duplicated for additional reference projects. Supplemental sheets may be attached with reference project number and category identified.

Project Name:			Reference Project No.:
Type of Project:	Design	Construction	Operation
	Design/Build	Design/Build/Operate	Other _____
Proposer Role on Project*:	Design _____	Construction _____	Operation _____
	Construction Management	Owner _____	Other _____
Description of Proposer Role:			
A. Applicability and relevance of referenced project to the Facilities:			
B. Proposal submittal team participants (personnel and/or firms):			
C. Other key participants (firms):			
D. Customer and owner:			
E. Location of project:			
F. Current status of project (design, construction, or operations phase) and number of years of operation:			
G. Description of systems and processes, including size and capacity:			
H. Number of people employed and job categories for operating the facilities:			
I. Original construction contract amount:			
J. Percent change orders through construction and cause:			
K. Capital and operating costs:			
L. Sources of funding:			
M. History of operations, including start-up date and years of service:			
N. Operations contract renewal history:			
N. Key project contact of Proposer (Name, address, telephone, fax, e-mail):			
O. Key project contact of Customer (Name, address, telephone, fax, e-mail):			
P. Proposer's key personnel:			
Q. History of compliance with permit conditions and performance guarantees (if any):			

* Indicate in the space provided the percentage of work performed by Proposer.

PROPOSAL FORM 4

STATEMENT OF OWNERSHIP

The Proposer shall set forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock of any class, or all partners in the partnership who own 10 percent or greater interest therein; if none, the Proposer must state "none". If one or more such stockholder or partner is itself a corporation or partnership, the stockholders owning 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership shall also be listed; if none, the Proposer must state "none". This disclosure shall be continued until names and addresses of every individual stockholder, and individual partner exceeding the 10 percent ownership criteria of each corporation or partnership listed has been identified.

NAME

ADDRESS

Signature of Proposer

Date

Name of Proposer (Print or Type)

Title

**PROPOSAL FORM 5
 FINANCIAL RESOURCES DATA**

Provide information requested for the Proposer, Guarantor and each Significant Subcontractor.
 This form may be duplicated if necessary.

Name of Company _____

Please indicate if Company is the Proposer,
 Guarantor or Significant Subcontractor _____

----- Financial Data Summary -----

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	Average
A. Operating Revenues						
B. Operating Expense (not incl. Depr. & Amort.)						
C. Depreciation and Amortization						
D. Operating Income (A-B-C)						
E. Net Income						
F. Total Assets						
G. Current Assets						
H. Total Liabilities						
I. Current Liabilities						
J. Net Worth (Equity) (F-H)						
K. Market Price per Share (as of Dec. 31)						
L. Number of Outstanding Shares (as of Dec. 31)						

Financial Ratios	FY 1998	FY 1999	FY 2000	FY 2001	Average
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Profitability and Growth	FY 1998	FY 1999	FY 2000	FY 2001	Average
Return on Revenue (E/A)					
Return on Assets (E/F)					
Return on Net Worth (E/J)					
Revenue Growth Percentage					

Solvency	FY 1998	FY 1999	FY 2000	FY 2001	Average
Liquidity Ratio (G/I)					
Current Liabilities to Net Worth (I/J)					
Leverage (H/J)					
Total Net Worth (J)					
Current Liability Coverage ((D+C)/I)					

Efficiency	FY 1998	FY 1999	FY 2000	FY 2001	Average
Total Assets to Revenue (F/A)					
Revenue to Net Working Capital (A/(G-I))					

Market Strength	FY 1998	FY 1999	FY 2000	FY 2001	Average
Price to Earnings Ratio (K/(E/L))					
Market-to-Book Ratio (K/(J/L))					

----- Bond and Credit Rating Summary -----

Bond Ratings (please list all bond issues within the last five years with issue date and ratings)	Issue/ Rating Date	Moody's	Standard & Poor's	Dun & Bradstreet	Value Line
1					
2					
3					
4					
5					
6					
7					
8					

Credit and Other Ratings (please list all credit and/or other ratings within the last two years along with date of rating)					
1					
2					
3					
4					
5					
6					
7					
8					

PROPOSAL FORM 6

BANK CREDIT REFERENCE

Please provide the following information for the Proposer and Guarantor. Also, sign and date the form. Supplemental sheets may be attached as necessary.

Bank Reference for _____ (the Firm)

Name of banking organization _____

Address _____

Contact Individual _____

Phone _____ Fax _____

Please answer the following questions:

1. Has your organization extended credit to the Firm in the past five years?
2. Has the Firm ever defaulted on a loan with your institution?
3. Has the Firm's credit history included any instances of delinquent payments?
4. To your knowledge, has the Firm ever filed for bankruptcy or been involved in any bankruptcy proceedings?
5. To your knowledge, have any of the corporate officers of the Firm ever been in default on a loan?
6. To your knowledge, has any creditor ever filed any criminal charges against the Firm?
7. Please discuss any other questions or issues that may have come out in any financial due diligence evaluation or credit check performed by your institution.
8. Overall, how would you rank the financial stability or credit worthiness of the Firm (e.g. excellent, good, satisfactory, poor)?

(Please attach additional sheets as necessary.)

Signature

Date

PROPOSAL FORM 7

GUARANTOR ACKNOWLEDGMENT *

(to be typed on Guarantor's Letterhead)

_____ (the Proposer) has submitted herewith a Proposal in response to the City of Phoenix, Arizona's September 5, 2001 Request for Proposals for the Lake Pleasant Water Treatment Plant DBO Project, Project No. WS8535004, as amended (the RFP). The RFP requires the Selected Proposer to enter into a Service Agreement to design, construct, acceptance test, operate and maintain (including all repair and replacement), obtain Governmental Approvals for an Intake on the Waddell Canal, a Raw Water Pumping Station, its Raw Water Transmission Line and the Plant located in Maricopa County, and to perform the other related and ancillary services described in the RFP if the Selected Proposer is approved by the City for execution of the Service Agreement.

The Guarantor has reviewed the Proposer's Proposal which will form the basis of the Service Agreement. The Project Guarantor hereby certifies that it will irrevocably, absolutely and unconditionally guarantee the performance of all of the obligations of the Proposer set forth in the Proposal in the event the Proposer is selected by the City for execution of the Service Agreement, and that it will execute a separate Guaranty Agreement in the form presented as Transaction Form A to the Service Agreement.

The Project Guarantor further acknowledges that there will be no stated maximum dollar limitation or cap on the liability of the Project Guarantor under the Guaranty Agreement to pay any damages or other amounts that may be due the City on account of any nonperformance by the Company under the Service Agreement, and that any Proposal which attempts to limit the liability of the Guarantor will be rejected by the City as being nonresponsive.

Name of Guarantor

Name of Authorized Signatory

Signature

Title

** If more than one Guarantor is proposed, each firm shall be jointly and severally obligated and shall independently provide an executed copy of this Guarantor Acknowledgment. If a Guarantor is a joint venture, each firm in the joint venture shall be jointly and severally obligated and shall independently provide an executed copy of this Guarantor Acknowledgment.*

Attachment 1

GUARANTOR CERTIFICATE OF AUTHORIZATION*

I, _____, a resident of _____ in the State of _____, DO HEREBY CERTIFY that I am the Clerk/Secretary of _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____; that I have custody of the records of the corporation; and that as of the date of this certification, _____ holds the title of _____ of the corporation, and is authorized to execute and deliver in the name and on behalf of the corporation the Guarantor Acknowledgment submitted by the corporation as part of _____ (the Proposer's) response to the Request for Proposal for the Lake Pleasant Water Treatment Plant DBO Project, Project No. WS8535004, issued by the City of Phoenix, Arizona on September 5, 2001, as amended; and all documents, letters, certificates and other instruments which have been executed by such officer on behalf of the corporation in connection therewith.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the corporation this _____ day of _____, 2002.

(Affix Seal Here)

(Clerk/Secretary)

**Note: Separate certifications shall be submitted if more than one corporate officer has executed the Guarantor Acknowledgment as part of the Proposal. Proposers shall make appropriate conforming modifications to this Certificate in the event the signatory's address is outside of the United States.*

PROPOSAL FORM 8

**BANK LETTER OF INTENT TO
ISSUE THE LETTER OF CREDIT**

(to be typed on Bank's Letterhead)

City of Phoenix
Water Services Department, 8th floor
200 West Washington Street
Phoenix, Arizona 85003

Attention: Madeline Goddard, Project Manager

Re: Proposal for Lake Pleasant Water Treatment Plant DBO Project
Project No. WS85350004

_____ (the Proposer) has submitted herewith a Proposal in response to the City of Phoenix, Arizona's September 5, 2001 Request for Proposals for the Lake Pleasant Water Treatment Plant DBO Project, as amended (the "RFP"). The RFP requires the Selected Proposer to enter into a Service Agreement to design, construct, acceptance test, operate and maintain (including all repair and replacement) and obtain Governmental Approvals for an Intake on the Waddell Canal, a Raw Water Pumping Station, its Raw Water Transmission Line and the Plant located in Maricopa County, and to perform the other related and ancillary services described in the Service Agreement, if the Proposer is determined to be the Selected Proposer and is approved by the City for execution of the Service Agreement.

The Bank has reviewed the Proposer's Proposal which will form the basis of the Service Agreement. The Bank hereby certifies that it intends to issue on behalf of the Proposer, as additional security for its obligations under the Service Agreement, the requisite Letter of Credit under Section 14.3 of the Service Agreement in the form presented therein for the benefit of the City in the event the Proposer is determined to be the Selected Proposer and is approved by the City for execution of the Service Agreement.

Name of Bank

Name of Authorized Signatory

Signature

Title

Acknowledged:

[Company]

By _____

Printed Name:

Title:

Acknowledged:

[Guarantor]

By _____

Printed Name:

Title:

PROPOSAL FORM 9

[INTENTIONALLY OMITTED]

PROPOSAL FORM 10

CERTIFICATE OF ACCEPTANCE/WAIVER OF HONORARIUM

I, _____, hereby certify that I am the (title) _____ and duly authorized representative of the Proposer, and that with respect to the Proposal submitted by the Proposer in response to the Request for Proposals for the Lake Pleasant Water Treatment Plant DBO Project, Project No. WS85350004, issued by the City of Phoenix, Arizona on September 5, 2001, as amended (the RFP), I hereby further certify that the Proposer:

[insert "X" next to the applicable certification]

_____ if determined by the City to be a responsive, but unsuccessful Proposer to the RFP, accepts the honorarium to be provided by the City pursuant to Section 3.6 of the RFP, and that in accepting such honorarium, the Proposer has read and agrees, without exception, to the terms and conditions of such acceptance as set forth in such Section 3.6.

_____ if determined by the City to be a responsive, but unsuccessful Proposer to the RFP, waives its right to receive the honorarium to be provided by the City pursuant to Section 3.6 of the RFP, and that in waiving its rights to such honorarium, the Proposer has read and agrees, without exception, to the terms and conditions of such waiver as set forth in such Section 3.6.

Name of Proposer

Name of Designated Signatory

Signature

Title

Date

PROPOSAL FORM 11

MBE/WBE UTILIZATION¹

M B E	PARTICIPATING ENTERPRISE (Optional)	PHASE OF THE CONSTRUCTION	SUPPLIER <small>(May not satisfy more than 25% of the goal)</small>		PERCENT PARTICIPATION ²	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	

The Proposer's total proposed MBE percentage should equal or exceed the total required MBE percentage.

7%	Total Proposed MBE Percentage
Required MBE %	

W B E	PARTICIPATING ENTERPRISE (Optional)	PHASE OF THE CONSTRUCTION	SUPPLIER <small>(May not satisfy more than 25% of the goal)</small>		PERCENT PARTICIPATION ²	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	
				<input type="checkbox"/> Yes	<input type="checkbox"/> No	

The Proposer's total proposed WBE percentage should equal or exceed the total required WBE percentage.

3%	Total Proposed WBE Percentage
Required WBE %	

1. This Proposal Form may be duplicated as necessary. The City encourages the use of MBE and WBE firms in the Design work although it is not an evaluative factor.
2. Percent of the Fixed Design/Build Price relating to the construction of the Facilities (i.e., for purposes of this Proposal Form, "construction of the Facilities" includes all elements of the Design/Build Work other than design work and other related non-construction Development Period work).
3. **In no event shall any Fixed Design/Build Price information be submitted herewith.**
4. Proposers shall identify the trade area per the CSI format.

PROPOSAL FORM 12

INTAKE, RAW WATER PUMPING STATION AND RAW WATER TRANSMISSION LINE

Provide a description of the Intake, Raw Water Pumping Station and Raw Water Transmission Line. Include a system description, an operations description, and specific information for the equipment proposed as part of the Intake, Raw Water Pumping Station and Raw Water Transmission Line.

A sample listing of specific information typical to raw water pumping system equipment is provided below. The system components listed are not intended to represent the City's preferred design. The Proposer should provide information specific to its proposed design in a level of detail similar to that requested below. Unless otherwise specified, values should be provided for the design Plant Finished Water production rate of 80 mgd.

System Description

Operations Description

Intake (Based on ultimate Plant Finished Water production capacity of 320 mgd)

Hydraulic capacity (mgd):

Maximum distance between top of Intake and ground level (ft):

Screen size/spacing:

Description of cleaning/maintenance procedures:

Raw Water Flow Meter (CAP)

Location:

Type:

Size:

Manufacturer:

Accuracy at 20 mgd:

Accuracy at 80 mgd:

Range:

Raw Water Flow Meter (City)

Location:

Type:

Size:

Manufacturer:

Accuracy at 20 mgd:

Accuracy at 80 mgd:

Range:

Raw Water Pumps

No. of units:

Type:

Manufacturer:

Hydraulic capacity (each, mgd):

Minimum pumping rate with smallest pump off line (mgd):

Maximum pumping rate with largest pump off line (mgd):

Description of incremental hydraulic capacity operation (mgd, No. of pumps, etc.):

Horsepower:

Type of drive (variable or constant speed):

Maximum elevation at top of Raw Water Pumping Station (ft):

Description of noise attenuation system:

RPM:

Efficiency (wire to water) at the design point:

Pump Control/Discharge Check Valves on Raw Water Pump Discharge

Type:

Size:

Manufacturer:

Valves on Raw Water Transmission Line

Purpose:

Type:

Size:

Location:

Manufacturer:

Raw Water Pump Station Structure *(Based on future Plant Finished Water production capacity of 160 mgd)*

General Description:

Dimensions, length x width x height (ft):

Materials of construction:

Transmission Line

Inside Diameter (in):

Materials of construction:

Description of surge control system (locations, tanks sizes, valves, etc.):

Description of maintenance access/procedures:

Other

PROPOSAL FORM 13

CHEMICAL SYSTEMS

Provide the following information for each chemical to be used in the treatment process, including disinfection chemicals. Unless otherwise specified, values should be provided for the Plant Finished Water production rate of 80 mgd.

Chemical _____
(Copy this section for each chemical)

Feed location(s):

Purpose of chemical:

Maximum dose (each location, mg/L):

Average dose (each location, mg/L):

For each feed location, describe how the chemical feed rate will be adjusted and controlled during variations in Plant flow rate and Raw Water quality:

Form of chemical delivered to Plant:

Form of chemical at application point:

No. of days of storage at average dose:

No. of storage units:

Type of storage units:

Description of storage unit (materials and features):

Makeup/mixing system description:

Day tank (describe):

Pipe and valve materials:

Chemical safety equipment/features description:

Type of secondary containment (bulk storage and day tanks), as applicable:

Metering Pumps

Type of metering pumps:

Manufacturer/model:

Quantity (total):

No. of installed spare pumps:

PROPOSAL FORM 14

PRIMARY AND SECONDARY DISINFECTION

Provide a description of the disinfection process including method of primary disinfection, how CT will be achieved, and form of residual disinfectant. Include a system description, an operations description, and specific information for the equipment proposed as part of the Proposer's design.

A sample listing of specific information typical to disinfection system equipment is provided below. The system components listed are not intended to represent the City's preferred design. The Proposer should provide information specific to its proposed design in a level of detail similar to that requested below. Unless otherwise specified, values should be provided for the design Plant Finished Water production rate of 80 mgd.

System Description

Operations Description

For chemical primary disinfection:

Contact Chamber

No. of units:

Materials of construction:

Description of baffling:

Dimension, length x width x height (ft):

Water Depth (ft):

Volume (gal):

Detention time (min):

Detention time with one unit out of service (min):

Mixing speed:

Leak monitoring and containment/scrubbing system:

For UV primary disinfection:

No. of parallel reactors:

Materials of construction:

Capacity per reactor (mgd):

Total capacity (firm, mgd):

Reactor diameter (in):

Type of UV lamp:

No. of lamps per reactor:

UV dosage (mJ/cm²):

Power required per lamp (kW):

Description of power source and ballasts:

Type of cleaning mechanism:

No. of Redundant Units:

Secondary Disinfection Description:

PROPOSAL FORM 15

CLARIFICATION AND FILTRATION SYSTEM

Provide a description of the clarification and filtration system. Include a system description, an operations description, and specific information for the equipment proposed as part of the Proposer's design.

A sample listing of specific information typical to conventional rapid mix, flocculation, sedimentation and filtration equipment is provided below. The system components listed are not intended to represent the City's preferred design. The Proposer should provide information specific to its proposed design in a level of detail similar to that requested below. Unless otherwise specified, values should be provided for the design Plant Finished Water production rate of 80 mgd.

System Description

Operations Description

Rapid Mix

Type:

No. of units (parallel):

No. of Rapid Mix Stages (in series) and speed:

Hydraulic capacity (each, mgd):

Range of Velocity gradient (L/sec):

Dimension, length x width x height (ft) for mechanical mixer and diameter (ft) for static mixer:

Manufacturer:

Volume per unit (MG):

Detention time (sec):

Flocculation Basins

No. of units (parallel):

No. of stages per unit:

Hydraulic capacity (each, mgd):

Type:

Dimensions (each), length x width or diameter x height (ft):

Side water depth (ft):

Volume (each, MG):

Total volume (MG):

Flocculation detention time (min):

Flocculators

Number/basin:

Total number:

Type:

Average velocity gradient (Stage I, 1/sec):

Average velocity gradient (Stage II, 1/sec):

Average velocity gradient (Stage III, 1/sec):

Manufacturer:

Sedimentation Basins

No. of units (parallel):
Hydraulic capacity (each, mgd):
Type:
Dimensions (each), length x width or diameter x height (ft):
Side water depth (ft):
Volume (each, MG):
Total volume (MG):
Detention time (min):
Horizontal flow velocity (ft/min):
Overflow rate (gpd/sf):
Weir length (each, ft):
Total weir length (ft):
Weir loading rate (gpm/ft):
Sludge removal mechanisms:

Filters

No. of filters (parallel):
Hydraulic capacity (each, mgd):
Type:
Filtration mode:
Cells/filter:
Filter area (each):
Design filtration rate (gpm/sf):
Filtration rate with one filter off-line for backwashing (gpm/sf):
Filtration rate with one filter off-line for backwashing and one filter off-line for maintenance (gpm/sf):
Media description (type, depth, and media size):
Backwash rate (gpm/sf):
Percent expansion of media during backwash:
Backwash water supply system description:
Air scour rate:
Filter underdrain design description:
Filter to waste volume (gal/sf):
Backwash and filter-to-waste storage and treatment description:

PROPOSAL FORM 16

TASTE AND ODOR AND ORGANICS REMOVAL

Provide a description of the taste and odor removal and organics removal system. Include a system description, an operations description, and specific information for the equipment proposed as part of the Proposer's design.

A sample listing of specific information typical to a granular activated carbon taste and odor removal and organics removal system equipment is provided below. The system components listed are not intended to represent the City's preferred design. The Proposer should provide information specific to its proposed design in a level of detail similar to that requested below. Unless otherwise specified, values should be provided for the design Plant Finished Water production rate of 80 mgd.

System Description

Operations Description

GAC Contactor

No. of units:

Type:

Materials of construction:

Capacity (each, mgd):

Total capacity (firm, mgd):

GAC media mesh size:

EBCT (min) at design flow:

EBCT (min) at average flow:

GAC bed depth (ft):

Surface loading rate (firm, gpm/sf):

Surface area per unit (sf):

Dimension, length x width x height (ft):

Mass GAC per unit (lb):

Total mass GAC (lb):

Ave. design influent TOC concentration (mg/L):

Max. design influent TOC concentration (mg/L):

Ave. design total daily TOC load (lb/day):

Target contactor effluent TOC concentration (mg/L):

Reactivation interval (days):

Average carbon usage rate (lb/MG):

Maximum carbon usage rate (lb/MG):

Underdrain description:

GAC Transfer System

Minimum pipe diameter (in):

Piping materials:

Pump type:

Maximum rotative speed of pumps (rpm):

GAC Storage System

No. of units:

Type:

Capacity (each, lb):

Volume (each, ft³):

No. of feed points (each):

Cone bottom angle (degrees):

Tank material:

Form of carbon in storage:

GAC Multiple Hearth Furnace

No. of units:

Diameter (each, ft):

Capacity (each, lb/day):

Hearths per unit:

GAC loading rate (lb/sf/day):

Quench tank material:

Scrubber system blowdown (gpm):

Power source/fuel supply:

PROPOSAL FORM 17

BACKWASH AND FILTER-TO-WASTE RECOVERY SYSTEM

Provide a description of the backwash and filter-to-waste recovery system, including a description of the flow equalization, thickening, decanting and effluent recovery processes. Include a system description, an operations description, and specific information for the equipment proposed as part of the Proposer's design.

A sample listing of specific information typical to backwash and filter-to-waste system equipment is provided below. The system components listed are not intended to represent the City's preferred design. The Proposer should provide information specific to its proposed design in a level of detail similar to that requested below. Unless otherwise specified, values should be provided for the design Plant Finished Water production rate of 80 mgd.

System Description

Operations Description

Holding/Equalization Tanks *(copy this section for each type of tank provided)*

No. of units:

No. of spare tanks:

Tank description (materials, features, etc.):

Dimensions (each), length x width or diameter x height (ft):

Maximum water depth (ft):

Volume (each, gal):

Total volume (gal):

Number of consecutive filters that can be backwashed:

Volume of water used per filter backwashed:

Decanting System

Type:

Number of pumps (per tank):

No. of spare pumps installed (per tank):

Type of pump:

Manufacture:

Capacity (each, gpm):

Decanted water recycle location:

Sludge Removal System

Number of pumps (per tank):

No. of spare pumps installed (per tank):

Type:

Manufacture:

Capacity (each, gpm):

PROPOSAL FORM 18

FINISHED WATER RESERVOIRS AND PUMPING STATION(S)

Provide a description of the Finished Water Reservoirs and Finished Water Pumping Station(s) including the pumps, storage structure, pump station structure, flow meters, transmission lines and valves. Include a system description, an operations description, and specific information for the equipment proposed as part of the Proposer's design.

A sample listing of specific information typical to finished water storage and pumping station equipment is provided below. The system components listed are not intended to represent the City's preferred design. The Proposer should provide information specific to its proposed design in a level of detail similar to that requested below. Unless otherwise specified, values should be provided for the design Plant Finished Water production rate of 80 mgd, or, as applicable, the maximum Flow Rate specified in Appendix 5.

System Description

Operations Description

Finished Water Reservoirs

No. of units:

Type:

Dimensions, length x width or diameter x height (ft):

Operated in parallel, series or flexibility to do either:

Max. depth of water (ft):

Min. depth of water (ft):

Usable volume (each, gal):

Reserve emergency Finished Water storage (each, gal):

High Pressure Finished Water Pumps

No. of units:

Type:

Manufacturer:

Hydraulic capacity (each, mgd):

Minimum pumping rate with smallest pump off line (mgd):

Maximum pumping rate with largest pump off line (mgd):

Description of incremental hydraulic capacity operation (mgd, No. of pumps, etc.):

Horsepower:

Type of drive (variable or constant speed):

Description of noise attenuation system:

RPM:

Efficiency (wire to water) at the design point:

Check Valves on High Pressure Finished Water Pump Discharge

Type:

Size:

Manufacturer:

Finished Water Flow Meter on HPFWTL

Location:

Type:

Size:

Manufacturer:

Accuracy at 10 mgd:

Accuracy at 80 mgd:

Range:

High Pressure Pump Station Structure

General description:

Dimensions, length x width x height (ft):

Materials of construction:

Company High Pressure Finished Water Transmission Line

Inside diameter:

Materials of construction:

Description of surge control system (locations, tank sizes, valves, etc.):

Description of maintenance and access procedures:

Low Pressure Finished Water Pumps

No. of units:

Type:

Manufacturer:

Hydraulic capacity (each, mgd):

Minimum pumping rate with smallest pump off line (mgd):

Maximum pumping rate with largest pump off line (mgd):

Description of incremental hydraulic capacity operation (mgd, No. of pumps, etc.):

Horsepower:

Type of drive (variable or constant speed):

Description of noise attenuation system:

RPM:

Efficiency (wire to water) at the design point:

Check Valves on Low Pressure Finished Water Pump Discharge

Type:

Size:

Manufacturer:

Finished Water Flow Meter on LPFWTL

Location:

Type:

Size:

Manufacturer:

Accuracy at 10 mgd:

Accuracy at 30 mgd:

Range:

Low Pressure Pump Station Structure

General description:

Dimensions, length x width x height (ft):

Materials of construction:

Company Low Pressure Finished Water Transmission Line

Inside diameter:

Materials of construction:

Description of surge control system (locations, tank sizes, valves, etc.):

Description of maintenance and access procedures:

PROPOSAL FORM 19

TREATMENT PROCESS MONITORING SYSTEM

Provide a description of the treatment process monitoring system. Include specific information for the equipment proposed as part of the Proposer's design for monitoring water quality, flow (flow meters on pipes larger than 6" in diameter), level, pressure, and other related parameters. If one type and manufacturer of instrument is being used throughout the Facilities for a type of measurement (e.g., pressure display), list the various locations or insert "All locations" for the process being monitored and location of monitoring instrument, and redundant instrumentation.

Location Being Monitored Automatically: _____
(Copy this section for each process)

Location of monitoring instrument:

Type of monitoring instrument:

Manufacturer:

Parameter(s) monitored:

Redundancy:

PROPOSAL FORM 20

SOLIDS HANDLING SYSTEM

Provide a description of the solids handling system, including sludge equalization, pumping, dewatering, solids disposal and effluent recovery processes. Include a system description, an operations description, and specific information for the equipment proposed as part of the Proposer's design.

A sample listing of specific information typical to solids handling equipment is provided below. The system components listed are not intended to represent the City's preferred design. The Proposer should provide information specific to its proposed design in a level of detail similar to that requested below. Unless otherwise specified, values should be provided for the design Plant Finished Water production rate of 80 mgd.

System Description

Operations Description

Sludge Equalization/Thickening System *(Copy for each type of tank)*

No. of tanks

No. of spare tanks provided:

Materials of construction:

Volume (each, gal):

Hydraulic loading rate (gpm/sf):

Solids loading (lb/d/sf):

No. sludge pumps (per tank):

No. spare pumps installed (per tank):

Type of pump:

Manufacturer:

Pump capacity:

Decanting System

Type:

No. of pumps (per tank):

No. spare pumps installed (per tank):

Type of pump:

Manufacturer:

Capacity (each):

Decanted water recycle location:

Sludge Dewatering System

Type:

Manufacturer:

No. of units:

No. of spare units installed:

Dimensions of each unit:

Mechanical equipment description (type, quantity, capacity and manufacturer of all equipment):

Building/enclosure description:

Describe dewatered sludge storage and disposal:

Describe recycled/waste water disposal/recycle:

Lbs/day of solids rating for each unit:

% solids of dewatered sludge:

lbs/day of dewatered sludge:

Odor Control System:

Units/system covered:

Units/system scrubbed:

Type of scrubbing system:

PROPOSAL FORM 21

OTHER MAJOR SYSTEMS AND AUXILIARY FACILITIES

Provide detailed technical information for major systems and auxiliary facilities which are part of the Facilities, but not included on other Technical Proposal forms.

System/Auxiliary Facility: _____
(Copy this section for each system or auxiliary facility)

Purpose:

Description:

Operations Description:

Proposers shall modify this form to provide information at a similar level of detail as provided on the other Technical Proposal Forms.

PROPOSAL FORM 22

FACILITIES MAJOR EQUIPMENT LIST ⁽¹⁾

Name/Description	Cross Reference ⁽²⁾	Quantity	Manufacturer	Model No.	Useful Life ⁽³⁾

Notes:

1. Proposer shall duplicate this form as necessary for all Major Equipment. Organize the Major Equipment by unit process moving from the Intake to the Finished Water Pumping Station(s).
2. If equipment is described on another Proposal Form, indicate Proposal Form number.
3. Indicate if useful life is based on hours of operation or years since originally placed into service.

PROPOSAL FORM 24

BUILDING SERVICES

Provide a full description of all building services including, but not limited to, the items listed below.

Heating, ventilation, and air conditioning

Interior Lighting

Water supply (potable, fire, other)

Sanitary facilities

Fire protection

Site and Building Security Systems

Other building services and systems

PROPOSAL FORM 25

ELECTRICAL EQUIPMENT

Provide a full description of electrical equipment provided including, but not limited to, the items listed below.

Lightning protection system

Emergency backup power generation

Uninterruptible power supply systems

Site lighting

Security and Surveillance systems

Variable Speed Drivers

Standby Generation

Other major electrical equipment

PROPOSAL FORM 26

INSTRUMENTATION AND CONTROL SYSTEM

Describe the instrumentation and control system in detail, including system architecture, redundancy features, ultimate expansion capacity, operating controls and operator interfaces, report generation capabilities, historic data storage and analysis capabilities, self-diagnostic capabilities, alarm management features, maintenance support capabilities, power supplies, and alternate power sources (if applicable). The control system hardware and software shall be fully described, including control panels, remote terminal units, redundancy features, process failure alarms, alarm features, and provisions for automatic shutdown. Include a description of the distributed control system (DCS) and identify all locations containing remote monitoring equipment. Identify the DCS system software, type of network topology, and the type and manufacturer of all programmable logic controllers, workstations, hub/switch/routers, and other major DCS components. Include a description of the software and hardware equipment to interface with the City's wide area network.

System Description:

PROPOSAL FORM 27

CORROSION CONTROL PHILOSOPHY

Describe the Proposer's Corrosion Control Philosophy for the Facilities, including the approach to corrosion control and materials selection in buried, submerged, corrosive, exterior, and other locations susceptible to corrosion. Describe the types of locations where cathodic protection will be provided. Describe in detail the materials to be used for anchor bolts, categories of pipe and tanks, mixers, flocculators, launders, and other items that are submerged, in corrosive areas, or otherwise susceptible to corrosion. Provide sufficient detail to form the basis of the Corrosion Control Plan required in Appendix 5.

PROPOSAL FORM 28

ADDITIONAL ARCHITECTURAL FEATURES

The Proposer shall include on this form descriptions of any architectural features of its Proposal not included on other Proposal Forms, drawings or diagrams.

PROPOSAL FORM 29

INTERIOR ARCHITECTURAL MATERIALS

Provide the following architectural information for each structure.

Structure: _____
 (Copy this table for each structure on the Sites)

Room or Area	Interior Material and Finishes											
	Doors		Door Frames		Floor		Walls			Ceiling	Additional Information*	
	Material	Finish	Material	Finish	Material	Finish	Substrate Material	Material	Finish			
Wet Process Areas: Process rooms exposed to frequent moisture and or wash down												
Dry Process Areas: Process rooms not exposed to frequent moisture and or wash down												
High Noise Areas												
Control Rooms												
Process Area Corridors												
Conference and Multi-purpose Rooms												
Office Area Corridors and Lobbies												
Other (specify)												

* - Additional information shall include applicable sound transmission coefficients, fire ratings, and design intent of wainscot or multiple material surfaces.

PROPOSAL FORM 30

EXTERIOR ARCHITECTURAL MATERIALS

Provide the following descriptions of the exterior architectural materials for each structure on the Sites.

Structure	Exterior Architectural Materials and Finishes										
	Doors		Door Frames		Walls		Roof		Window		Additional Information*
	Material	Finish	Material	Finish	Material	Finish	Material	Finish	Glass	Frame	

* - Additional information shall include applicable descriptions of color, texture, R Values, shading devices and multiple material surfaces.

PROPOSAL FORM 31B

ARCHITECTURAL EXPANSION CONSIDERATIONS

Provide the following information on structure expandability for each structure on the Sites. Designate which structures include planning for future additional functions within the proposed design, whether an addition to the building is required or whether a separate new building is required to house the anticipated expansion functions.

Structure	Architectural Expansion Considerations- 240 mgd Plant										
	Original Size (160 mgd Plant)		Expansion Requires (check one)			Construction Classification	Sprinklered	Maximum Code Limitations		Final Size of Structure	
	Area	Height	Space Already Included	Addition	New Bldg		(Y/N)	Area	Height	Area	Height

PROPOSAL FORM 32

REPAIR AND REPLACEMENT SCHEDULE ⁽¹⁾

Major Equipment To Be Rebuilt or Replaced ⁽²⁾	Operating Year																			
	Yr. 1	Yr. 2	Yr. 3	Yr. 4	Yr. 5	Yr. 6	Yr. 7	Yr. 8	Yr. 9	Yr. 10	Yr. 11	Yr. 12	Yr. 13	Yr. 14	Yr. 15	Yr. 16	Yr. 17	Yr. 18	Yr. 19	Yr. 20
1. Influent Pump Station																				
2. Sedimentation																				
3. Flocculation																				
4. Filtration																				
5. Disinfection																				
7. Backwash and Washwater Recovery																				

Major Equipment To Be Rebuilt or Replaced ⁽²⁾	Operating Year																			
	Yr. 1	Yr. 2	Yr. 3	Yr. 4	Yr. 5	Yr. 6	Yr. 7	Yr. 8	Yr. 9	Yr. 10	Yr. 11	Yr. 12	Yr. 13	Yr. 14	Yr. 15	Yr. 16	Yr. 17	Yr. 18	Yr. 19	Yr. 20
8. Solids Handling																				
9. Finished Water Storage and Pumping																				
10. Other																				

Notes:

- (1). Proposers shall place a “B” in each year where a rebuild of equipment is proposed and an “R” in each year where a replacement is proposed. The above equipment categories are examples only. Proposers shall provide an itemized list for all rebuild and replacement activities during the Term and the Renewal Term for Major Equipment at the Facilities for each major category or system proposed. This list, in combination with the CMMS, Maintenance, Repair and Replacement Plan and related repair and replacement tracking and control functions, shall represent the Company’s repair and replacement plans.
- (2). Major Equipment is Equipment with a purchase price (excluding labor, installation, overhead and profit) of equal to or greater than \$25,000 in 2004 dollars, as defined in Section 1 of the RFP.

PROPOSAL FORMS 33A, 33B, 33C, AND 33D

GUARANTEED MAXIMUM ELECTRICITY UTILIZATION AND DEMAND

On Proposal Forms 33A, 33B, 33C, and 33D, the Company shall provide its Guaranteed Maximum Electricity Utilization (GMEU) and Guaranteed Maximum Electricity Demand (GMED) for four separate components of the Facilities: (1) Raw Water Pumping Station (RWPS), (2) Plant (without Finished Water pumping), (3) Finished Water pumping to the Low Pressure Finished Water Transmission Line (LPFWTL), and (4) Finished Water pumping to the High Pressure Finished Water Transmission Line (HPFWTL).

The GMEU represents the maximum amount of electricity in kilowatt-hours (kWh) that will be used by the particular component of the Facilities per million gallons (MG) of Finished Water delivered to the Water System at specified annual average (a) Flow Rates (for the RWPS and the Plant), or (b) Low Pressure Flow Rates (for the FWPS Pumping to the LPFWTL), or (c) High Pressure Flow Rates (for the FWPS Pumping to the HPFWTL).

The GMED represents the maximum rate of electricity usage in kilowatts (kW) that will be used by the particular component of the Facilities at specified peak City-requested (a) Flow Rates (for the RWPS and the Plant), (b) Low Pressure Flow Rates (for the FWPS Pumping to the LPFWTL), or (c) High Pressure Flow Rates (for the FWPS Pumping to the HPFWTL), measured in millions of gallons per day (MGD).

Although electric guarantees are provided separately for four components of the Facilities, there will be only two electric meters at the Sites: one at the Raw Water Pumping Station Site and one at the Plant Site (which will include the electrical service to the Plant and Finished Water Pumping Station(s)).

PROPOSAL FORM 33A

**GUARANTEED MAXIMUM ELECTRICITY
 UTILIZATION AND DEMAND**

RAW WATER PUMPING STATION (RWPS) GUARANTEED MAXIMUM ELECTRICITY UTILIZATION	
Annual Average Total Finished Water Delivered to Water System	Guaranteed Maximum Electricity Utilization (GMEU)
ALL FLOW RATES:	_____ kWh/MG
GUARANTEED MAXIMUM ELECTRICITY DEMAND	
Peak City-Requested Total Finished Water Flow Rate	Guaranteed Maximum Electricity Demand (GMED)⁽¹⁾
• 60 MGD	_____ kW
• 70 MGD	_____ kW
• 80 MGD	_____ kW

(1) GMEDs for peak City-requested total Finished Water Flow Rates between 60 MGD and 80 MGD will be calculated by linear interpolation between the two nearest Flow Rates listed. GMEDs for peak City-requested total Finished Water Flow Rates less than 60 MGD will be equal to the GMED for 60 mgd.

PROPOSAL FORM 33B

**GUARANTEED MAXIMUM ELECTRICITY
 UTILIZATION AND DEMAND**

PLANT⁽¹⁾ GUARANTEED MAXIMUM ELECTRICITY UTILIZATION	
Annual Average Total Finished Water Delivered to Water System	Guaranteed Maximum Electricity Utilization (GMEU) ⁽²⁾
• 40 MGD	_____ kWh/MG
• 50 MGD	_____ kWh/MG
• 60 MGD	_____ kWh/MG
• 70 MGD	_____ kWh/MG
GUARANTEED MAXIMUM ELECTRICITY DEMAND	
Peak City-Requested Total Finished Water Flow Rate	Guaranteed Maximum Electricity Demand (GMED)⁽³⁾
• 80 MGD	_____ kW

- (1) Excluding Finished Water Pumping Station(s).
- (2) GMEUs for annual average total Finished Water Flow Rates between 40 MGD and 70 MGD will be calculated by linear interpolation between the two nearest Flow Rates listed. GMEUs for annual average total Finished Water Flow Rates less than 40 MGD or greater than 70 MGD will be calculated by linear extrapolation from the two nearest Flow Rates listed.
- (3) GMEDs for peak City-requested total Finished Water Flow Rates less than 80 MGD will be equal to the GMED for 80 mgd.

PROPOSAL FORM 33C

**GUARANTEED MAXIMUM ELECTRICITY
 UTILIZATION AND DEMAND**

FINISHED WATER PUMPING STATION – PUMPING TO LOW PRESSURE FINISHED WATER TRANSMISSION LINE (LPFWTL) GUARANTEED MAXIMUM ELECTRICITY UTILIZATION	
Annual Average Finished Water Delivered to the LPFWTL	Guaranteed Maximum Electricity Utilization (GMEU) ⁽¹⁾
10 MGD	_____ kWh/MG
20 MGD	_____ kWh/MG
30 MGD	_____ kWh/MG
GUARANTEED MAXIMUM ELECTRICITY DEMAND	
Peak City-Requested Finished Water Flow Rate to the LPFWTL	Guaranteed Maximum Electricity Demand (GMED) ⁽²⁾
• 30 MGD	_____ kW

- (1) GMEUs for annual average total Finished Water Flow Rates between 10 MGD and 30 MGD will be calculated by linear interpolation between the two nearest Flow Rates listed. GMEUs for annual average total Finished Water Flow Rates less than 10 MGD or greater than 30 MGD will be calculated by linear extrapolation from the two nearest Flow Rates listed.
- (2) GMEDs for peak City-requested Finished Water Flow Rates to the LPFWTL less than between 30 MGD will be equal to the GMED for 30 mgd.

PROPOSAL FORM 33D

**GUARANTEED MAXIMUM ELECTRICITY
 UTILIZATION AND DEMAND**

FINISHED WATER PUMPING STATION – PUMPING TO HIGH PRESSURE FINISHED WATER TRANSMISSION LINE (HPFWTL) GUARANTEED MAXIMUM ELECTRICITY UTILIZATION	
Annual Average Finished Water Delivered to the HPFWTL	Guaranteed Maximum Electricity Utilization (GMEU)
<ul style="list-style-type: none"> • ALL FLOW RATES: 	_____ kWh/MG
GUARANTEED MAXIMUM ELECTRICITY DEMAND	
Peak City-Requested Finished Water Flow Rate to the HPFWTL	Guaranteed Maximum Electricity Demand (GMED)⁽¹⁾
<ul style="list-style-type: none"> • 30 MGD • 40 MGD • 50 MGD • 60 MGD • 70 MGD • 80 MGD 	_____ kW _____ kW _____ kW _____ kW _____ kW _____ kW

(1) GMEDs for peak City-requested Finished Water Flow Rates to the HPFWTL between 30 MGD and 80 MGD will be calculated by linear interpolation between the two nearest Flow Rates listed. GMEDs for peak City-requested Finished Water Flow Rates to the HPFWTL less than 30 MGD will be equal to the GMED for 30 mgd.

PROPOSAL FORM 34

EARLIEST CONSTRUCTION START DATE AND FIXED DESIGN/BUILD PRICE

GUARANTEED EARLIEST CONSTRUCTION START DATE: _____
(The Earliest Construction Start Date shall be no earlier than July 1, 2004 and no later than December 1, 2004)

SUMMARY OF FIXED DESIGN/BUILD PRICE

COST

Development Period

Payment during Development Period (4% of Fixed D/B Price) \$ _____

Payment for Closing Development Period/Achieving Construction

Date (4% of the Fixed D/B Price) \$ _____

Development Period Subtotal \$ _____

Construction Period

Site Work:

Roads, Parking, Lighting, Utilities, Site Drainage,

Fencing, Gates, Mass Grading and Excavation, etc. \$ _____

Landscaping and Irrigation \$ _____

Raw Water Transmission Line \$ _____

Low Pressure Finished Water Transmission Line \$ _____

High Pressure Finished Water Transmission Line \$ _____

Yard Piping (excluding Raw Water and Finished
Water Transmission Lines) \$ _____

Other (Specify) _____ \$ _____

Intake and Raw Water Pumping Station:

Construction \$ _____

Plant and Process:

Water Treatment System ⁽¹⁾	\$ _____
Chemical Storage and Feed Systems	\$ _____
Residuals Handling System	\$ _____
Finished Water Reservoirs	\$ _____
Finished Water Pumping Station(s)	\$ _____
Instrumentation, Control Communication, Security Systems, and Information Access System	\$ _____
Electrical / Emergency Power Systems / Substation	\$ _____
Operations Building	
Administration Offices	\$ _____
Control Room	\$ _____
Laboratory	\$ _____
Other	\$ _____
Maintenance Shop	\$ _____
Material Storage Building	\$ _____
Other (Specify) _____	\$ _____

Start-up and Acceptance Testing:

Start-up Activities	\$ _____
Acceptance Testing Activities	\$ _____

Other Direct and Indirect Costs:

Mobilization (not to exceed 2% of the Fixed D/B Price)	\$ _____
Demobilization (25% of the Mobilization Price)	\$ _____
Material Testing	\$ _____
Administrative	
Shop Drawings	\$ _____
Record Documents	\$ _____
Other	\$ _____
Required Design/Build Period Insurance	\$ _____
Payment and Performance Bonds	\$ _____
Letter of Credit	\$ _____
Other (Specify) _____	\$ _____

Construction Period Subtotal \$ _____

FIXED DESIGN/BUILD PRICE⁽²⁾ \$ _____
=====

Notes:

⁽¹⁾ Proposers shall break this down by major unit process.

⁽²⁾ The Fixed Design/Build Price is binding and will be incorporated directly into the final Service Agreement. The subtotals that comprise the Fixed Design/Build Price are for information purposes only, except the Construction Period Subtotal shall be used for determining the amount of the Payment and Performance Bonds under the Service Agreement.

PROPOSAL FORM 35

FIXED COMPONENT OF THE BASE OPERATING CHARGE OF THE SERVICE FEE

SERVICE FEE FIXED COMPONENT ITEMS ⁽¹⁾	FIXED COMPONENT OF THE BASE OPERATING CHARGE OF THE SERVICE FEE FOR THE FOLLOWING ANNUAL DEMAND RESETS (Determined on an annual average basis over the Contract Year)		
	40 MGD	55 MGD	70 MGD
Operations and Maintenance			
Repair and Replacement			
Residuals Management			
Chemicals			
Utilities (excluding electricity)			
Other (specify)			
FIXED COMPONENT OF THE BASE OPERATING CHARGE TOTAL			
CPI ADJUSTMENT FACTOR MODIFIER⁽²⁾	_____ %		

Notes:

1. The breakdown (subtotals) that comprise the Fixed Component of the Base Operating Charge of the Service Fee are for the City's informational use only and will not be binding on the Proposers. The City expects to use such information for purposes of comparison of Proposals with the Benchmark.
2. The Fixed Component of the Base Operating Charge of the Service Fee and certain other dollar amounts identified in the Service Agreement will be adjusted each Contract Year based on the Adjustment Factor calculated using an Adjustment Factor Modifier, are as defined in Section 11.2(D) of the Service Agreement. The Adjustment Factor Modifier proposed in this Proposal Form is the fraction of the annual percentage change in the CPI based on the calculation method defined in Section 11.2(D) of the Service Agreement that the Proposer wishes to propose for purposes of calculating the Adjustment Factor and shall not be greater than 100%. For example, if the Proposer wishes to propose the full percentage change in the CPI (i.e. 100%) to be used in the Adjustment Factor, it should propose an Adjustment Factor Modifier of 100%. If the Proposer wishes to propose 75% of the percentage change in the CPI for the Adjustment Factor Modifier, it should propose an Adjustment Factor Modifier of 75%. When applied, an Adjustment Factor Modifier of 100% shall equal 1.0.

PROPOSAL FORM 35A

HIGH CHLORINE RESIDUAL UNIT CHARGE

At any time during the Operation Period the City may require the Company to provide a High Chlorine Residual in the Finished Water (average chlorine residual > 1.3 mg/L). During such occasions, the Company will be entitled to additional compensation for Finished Water delivered with a High Chlorine Residual as further described in Article 11 of the Service Agreement. The Proposer shall provide below its proposed High Chlorine Residual Unit Charge, which represents the additional fee that will be paid to the Company for delivering Finished Water with a High Chlorine Residual on a per million gallons of Finished Water delivered basis.

HIGH CHLORINE RESIDUAL UNIT CHARGE: \$ _____ / MG

PROPOSAL FORM 36

SECURITY FEATURES

Provide a full description of security features, equipment and systems to be provided including, but not limited to, the items listed below.

Methods to Secure Critical Areas:

Surveillance and Intrusion Detection and Alarm Systems:

Access Control System (e.g., card readers or key pads):

Monitoring of Security Information:

Measures to Prevent and Detect Chemical or Biological Contamination:

Other:

PROPOSAL FORM 37

TURBIDITY CURVE

Proposer shall provide on this Proposal Form a proposed 10-day average Turbidity Curve that will be incorporated into Appendix 9. The Turbidity Curve shall, at a minimum, fully encompass the turbidity curve provided in Appendix 9 of the Service Agreement as presented in the RFP.

PROPOSAL FORM 38

SPECIFIED RAW WATER QUALITY PARAMETERS

Table 9-3 of Appendix 9 to the Service Agreement lists the Specified Raw Water Quality Parameters under the Service Agreement. Proposers may elect to propose more stringent (1) Raw Water conditions of relief, (2) definition and quantity of relief or (3) both by modifying the applicable portions of Table 9-3 below. If a Proposer does not elect to modify Table 9-3, it shall submit Proposal Form 38 with the words "NO CHANGES" inserted above the table. To the extent a Proposer elects to assume the full risk of any Raw Water condition of relief or definition and quantity of relief, it shall denote such by inserting "No relief" in the appropriate column and row. Table 9-3, as modified by this Proposal Form, will be incorporated into Appendix 9 to the Service Agreement.

In no event shall a Proposer add or delete a Raw Water parameter or lessen the stringency of a specified Raw Water condition of relief or its related definition and quantity of relief. Any such modification will be rejected by the City and the City's minimum condition of relief and definition and quantity of relief shall apply.

Table 9-3 Specified Raw Water Quality Parameters⁽¹⁾		
Parameter	Raw Water Condition of Relief	Definition and Quantity of Relief
Turbidity	10-day average > 28.8 NTU [to be revised based on Proposal Form 37]	Production quantity relief in accordance with Figure 9-1.
<i>Cryptosporidium, Giardia, Total Coliforms, Temperature, BDOC, Calcium Carbonate Saturation Index, True Color (except as indicated under Bromide)</i>	No Relief.	No Relief.
Alkalinity	Monthly average < 70 or > 200 mg/L as CaCO ₃	Reimbursement for cost of additional acid and/or base chemicals (See Note 2).
pH	Monthly average < 6 or > 9	Reimbursement for cost of additional acid and/or base chemicals (See Note 2).
Iron	Monthly average > 1.0 mg/L	Reimbursement for cost of additional preoxidation chemicals (see Note 2) and additional GAC regeneration if applicable (see Note 3). Suspension of Enhanced Standards for 48 hour SDS TTHM and HAA5 parameters.
	Any sample > 2.0 mg/L	(See Note 4)

**Table 9-3
 Specified Raw Water Quality Parameters⁽¹⁾**

Parameter	Raw Water Condition of Relief	Definition and Quantity of Relief
Aluminum	Monthly average > 0.2 mg/L	Reimbursement for cost of additional chemicals for optimizing pH during coagulation (see Note 2).
	Any sample > 1.0 mg/L	(See Note 4)
Arsenic	Monthly average As (V) >25 ug/L	Suspend Arsenic Enhanced Standard.
	Monthly average As (III) >25 ug/L.	Suspend Arsenic Enhanced Standard. Reimbursement for cost of additional preoxidation chemicals (see Note 2) and additional GAC regeneration if applicable (see Note 3). Suspension of Enhanced Standards for 48 hour SDS TTHM and HAA5 parameters.
	Any sample > 50 ug/L (as total arsenic)	(See Note 4)
Manganese	Monthly average > 0.2 mg/L	Reimbursement for cost of additional preoxidation chemicals (see Note 2) and additional GAC regeneration if applicable (see Note 3). Suspension of Enhanced Standards for 48 hour SDS TTHM and HAA5 parameters.
	Any sample > 0.5 mg/L	(See Note 4)
Natural Organic Matter	Annual Average TOC > 5 mg/l or annual average SUVA < 1.1 L/mg-m	Reimbursement for cost of additional GAC regeneration necessary to comply with the Enhanced Standards for TTHM and HAA5 (see Note 3).
	Monthly Average TOC > 7 mg/L	Reimbursement for cost of additional GAC regeneration to comply with the 72 hour SDS TTHM and HAA5 Enhanced Standards (see Note 3). Suspension of Enhanced Standards for 48 hour SDS TTHM and HAA5 parameters.
Bromide	Annual average > 0.2 mg/L	Reimbursement for cost of additional GAC regeneration (see Note 3).
	Any sample >0.3 mg/L.	Suspend Enhanced Standard for True Color.
Ammonia	Monthly average > 0.2 mg/L as N	Reimbursement for cost of additional preoxidation chemicals (see Note 2) and additional GAC regeneration (see Note 3).
	Any sample > 0.75 mg/L as N	(See Note 4)

Notes to Table 9-3:

- The results of all Raw Water analyses shall be reported to the City and included in the calculation of reported averages. The following minimum number of samples shall be taken by the Company, analyzed in accordance with the Process Monitoring and Regulatory Reporting Plan, and reported to the City in order to substantiate a request for relief: (a) when the condition of relief is an annual average value, at least one sample per month for the previous 12-month period, (b) when the condition of relief is a monthly average value, at least one sample per week for the previous month, and (c) when the condition of relief is “any sample”, at least one sample for each day that the Company requests relief.
- The additional costs for which the Company is entitled compensation shall be an amount equal to the actual and direct expenses (without markup for profit, administration or otherwise) paid by the Company to unrelated third

parties for any bills paid by the Company for extra chemicals used at the Facilities, consistent with Section 11.6 of the Service Agreement.

3. The cost of greater GAC regeneration shall be subject to Cost Substantiation in accordance with Section 15.7 of the Service Agreement.
4. If the concentration level or characteristic of the Raw Water quality parameter exceeds the Specified Raw Water Quality Parameter at any time during the Term of the Service Agreement so as to materially and adversely affect the ability of the Company to meet the Performance Guarantees or otherwise provide the Operation Services, or materially increases the cost thereof to the Company, an Uncontrollable Circumstance shall be deemed to have occurred and the Company shall be entitled to relief as provided in Section 13.2 of the Service Agreement.

Attachment B – Service Agreement and Appendices

SERVICE AGREEMENT
FOR THE
DESIGN, CONSTRUCTION AND OPERATION
OF THE
LAKE PLEASANT WATER TREATMENT PLANT PROJECT
(PROJECT NO. WS85350004)

between

THE CITY OF PHOENIX, ARIZONA

and

[PROJECT COMPANY]

Dated

_____, 2003

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17. MBE/WBE Commitments [**To be Finalized Based on Final Technical Proposals**]
18. Example Service Fee Calculation

TRANSACTION FORMS

- A. Form of Guaranty Agreement
- B. Form of Performance Bond
- C. Form of Payment Bond
- D. Form of Letter of Credit

SERVICE AGREEMENT
FOR THE
DESIGN, CONSTRUCTION AND OPERATION
OF THE
LAKE PLEASANT WATER TREATMENT PLANT PROJECT
(PROJECT NO. WS85350004)

THIS SERVICE AGREEMENT FOR THE DESIGN, CONSTRUCTION AND OPERATION OF THE LAKE PLEASANT WATER TREATMENT PLANT PROJECT is made and entered into as of this ____ day of _____, 2003 between the City of Phoenix, Arizona (the "City") and [PROJECT COMPANY], a [corporation] organized and existing under the laws of the State of _____ and authorized to do business in the State of Arizona (the "Company").

RECITALS

(A) The City has determined that it is in its best interests to contract with a private entity to design, construct, start up, acceptance test and obtain governmental approvals for a water treatment plant, a raw water intake and pumping station and a raw water transmission line on a long-term basis to serve the growing area north of Phoenix.

(B) The City has also determined that it is in its best interests to contract with the private entity on a long-term basis to operate, maintain, repair, replace, manage and obtain governmental approvals for the water treatment plant, the raw water intake and pumping station and the raw water transmission line.

(C) The City is authorized under its Charter to establish, maintain, equip, own and operate waterworks within and without the City of Phoenix, to contract and be contracted with, and to issue bonds or otherwise borrow money to finance the capital costs of the water treatment plant, the raw water intake and pumping station and the raw water transmission line.

(D) The City is further authorized under Chapter 6 of Title 34 of the Arizona Revised Statutes, as amended, to undertake alternative public works contracting procedures, including the procurement of design-build-operate contracts on a competitive proposal basis.

(E) Pursuant to Chapter 6 of Title 34 of the Arizona Revised Statutes, the City issued a request for qualifications on November 16, 2000, and published notice thereof on November 17, 2000 and November 24, 2000, in The Record Reporter, to private entities which could qualify as full-service contractors to enter into a long-term contract to design, construct, start up, acceptance test, operate, maintain, repair, replace, manage and obtain governmental approvals for the water treatment plant, the raw water intake and pumping station and the raw water transmission line.

(F) Based on the evaluation of the statements of qualifications submitted in response to the request for qualifications and using the criteria set forth in the request for qualifications, the City's selection committee on July 20, 2001 short-listed three firms deemed to be the most qualified to submit preliminary technical proposals, revised preliminary technical proposals and final technical proposals and price proposals from among six teams submitting statements of qualifications. One team withdrew its statement of qualifications prior to short-listing by the selection committee.

(G) On September 5, 2001 the City undertook the second phase of the competitive process by issuing to the proposers a request for proposals for the water treatment plant, the raw water intake and pumping station and the raw water transmission line. RFP Addenda were issued on October 3, 2001, October 31, 2001, November 13, 2001, January 28, 2002, February 4, 2002, July 3, 2002, July 26, 2002, August 29, 2002 and October 4, 2002. The City provided the three pre-qualified proposers with reasonable access to the water treatment plant site, the raw water intake and pumping station site, and raw water transmission line site to allow them the opportunity to conduct such inspections and perform such tests as they deemed necessary to become familiar with such sites and to review related documentation prior to submittal of their proposals.

(H) Preliminary technical proposals submitted in response to the request for proposals were received on December 5, 2001 from each of the proposers.

(I) Individual meetings with each proposer were held in January 2002 for purposes of clarifying the preliminary technical proposals.

(J) Following the initial clarification process, service agreement comments and revised preliminary technical proposals were submitted and received on March 5, 2002 and May 7, 2002, respectively, from each of the proposers.

(K) A comprehensive clarification process of the service agreement comments and revised preliminary technical proposals was conducted from March through August 2002 and final technical proposals and price proposals were received from each of the proposers on _____, 2002. Proposers were provided an opportunity to present their final technical proposals to the selection committee during the week of December 9, 2002.

(L) The final technical proposals were reviewed by the selection committee and assigned a score based on the evaluation criteria and scoring method set forth in the request for proposals.

(M) Upon completion of the evaluation and scoring of the final technical proposals, the selection committee reviewed, evaluated and scored the price proposals using the price proposal evaluation criteria and scoring method set forth in the request for proposals.

(N) Based on the evaluations and scoring of the final technical proposals and price proposals, the selection committee determined that the proposal submitted by _____ was the highest scored proposal received in response to the City's request for proposals.

(O) On _____, 2003, the City Council approved this Service Agreement and authorized its execution and delivery on behalf of the City.

(P) _____, an affiliate of the Company, will guarantee the performance of the obligations of the Company under this Service Agreement pursuant to a guaranty agreement executed concurrently herewith.

(Q) Concurrently with the execution of this Service Agreement the Company delivered to the City the performance and payment bonds, the letter of credit and the design/build period insurance required hereunder.

(R) The water treatment plant, the raw water pumping station and the raw water transmission line will be owned and financed by the City. The raw water intake will be financed by the City and owned by the Central Arizona Project.

(S) The water treatment plant, the raw water intake and pumping station and the raw water transmission line will be designed, constructed, started up and acceptance tested, and operated, maintained, repaired, replaced and managed, and all governmental approvals obtained therefor, by the Company pursuant to the terms of this Service Agreement and the appendices attached thereto.

(T) Payment of the fixed design/build price, the service fee and all other amounts payable hereunder by the City to the Company will be made solely from revenues of the City's water system, and shall not be an obligation of the City's general fund.

(U) The City desires to receive, and the Company desires to provide design, construction and operation services under the terms of this Service Agreement.

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

ARTICLE I

DEFINITIONS AND INTERPRETATION

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

“Acceptable Disposal Site” has the meaning specified in subsection 8.12(B).

“Acceptance” means demonstration by the Company in accordance with Article V and Appendix 8 that the Acceptance Tests have been conducted, the Acceptance Test Procedures and Standards have been achieved and the other Acceptance Date Conditions have been achieved.

“Acceptance Date” means the date on which Acceptance of the Facilities occurs or is deemed to have occurred under Article V.

“Acceptance Date Conditions” has the meaning specified in Section 5.6.

“Acceptance Test Procedures and Standards” means the test procedures and standards for Acceptance set forth in Appendix 8.

“Acceptance Tests” means the tests for Acceptance set forth in Appendix 8.

“Actual Annual Electricity Costs” means the sum of all actual annual electricity costs resulting from the Company’s performance of this Service Agreement as reflected in the electricity bills paid by the City, except for any fines and penalties imposed by the electricity provider which are required to be reimbursed by the Company to the City on a monthly basis as provided in Section 7.6.

“ADEQ” means the Arizona Department of Environmental Quality or any predecessor or successor agency.

“Adjustment Factor” has the meaning specified in subsection 11.3(D).

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

“Annual Delivered Water Volume” means, for purposes of determining the Service Fee in any Contract Year, the volume of Finished Water delivered to the City on a daily average basis, expressed in MGD. The Annual Delivered Water Volume shall not exceed an amount equal to 103% of the Firm Annual Water Demand Volume, notwithstanding any actual deliveries of Finished Water in excess thereof.

“Annual Demand Reset” has the meaning specified in Section 11.4.

“Annual Settlement Statement” has the meaning specified in subsection 11.10(A).

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

“Applicable Law” means (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate regulatory Governmental Body if such interpretation is documented by such regulatory body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or similar agreement between the City and the EPA or ADEQ, in each case having the force of law and applicable from time to time: (a) to the siting, permitting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation, maintenance, repair, replacement or management of water treatment systems, including the Facilities; (b) to the conveyance, treatment, storage or supply of water; (c) to the air emissions therefrom; (d) to the transfer, handling, transportation or disposal of Plant By-Products; and (e) to any other transaction or matter contemplated hereby (including, without limitation, any of the foregoing which pertain to water treatment, waste disposal, health, safety, fire, environmental protection, labor relations, building codes, the payment of prevailing or minimum wages and non-discrimination). Applicable Law includes the EPA’s UV Disinfection Guidance Manual, Preliminary Draft for Technical Review, dated October 2001.

“Application for Payment” means the form accepted by the City Engineer which is to be used by the Company in requesting progress or final payments for the construction portion of the Design/Build Work, and which is to be accompanied by such supporting documentation as required by subsection 6.5(D).

“Approval of Construction” means the Approval of Construction issued by MCESD upon completion of construction of the Facilities authorizing the operation thereof by the Company.

“ARS” means the Arizona Revised Statutes, as amended from time to time.

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended from time to time and any successor statute thereto. “Bankruptcy Code” shall also include (1) any similar state law relating to bankruptcy, insolvency, the rights and

remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due, and (2) in the event the Guarantor is incorporated or otherwise organized under the laws of a jurisdiction other than the United States, any similar insolvency or bankruptcy code applicable under the laws of such jurisdiction.

“Baseline Facilities Record” has the meaning set forth in subsection 9.2(A).

“Base Operating Charge” has the meaning specified in Section 11.3.

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

“CAP” means the Central Arizona Project, which is otherwise known as the Central Arizona Water Conservation District (or “CAWCD”), a water conservation district organized under the laws of the State, which serves as the implementing agency under the Water Services Contract.

“Capital Modification” means any material change to any of the Facilities occurring after the date of Final Completion, including the installation of new equipment, systems or technology. If a replacement of any part of the Facilities made by the Company pursuant to its obligations under Article IX results in a material change to the Facilities, such replacement shall be considered to be a Capital Modification.

“Categorical Exclusion” means the Categorical Exclusion for the Raw Water Pump Station, Raw Water Main, and Water Treatment Plant Project issued by the United States Bureau of Reclamation on August 15, 2001.

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

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance therewith materially expands the scope of the obligations of either party hereunder, materially interferes with, materially delays or materially increases the cost of performing the obligations of either party hereunder:

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

(b) the order or judgment of any Governmental Body issued on or after the Proposal Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Proposal Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Company or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(c) except as provided in (ii) and (iii) below, the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination or interruption of any Governmental Approvals, or the imposition of a term, condition or requirement which is more stringent or burdensome than the Contract Standards in effect as of the Proposal Date in connection with the issuance, renewal or failure of issuance or renewal of, any Governmental Approval to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Company or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

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

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

(ii) acts, events and circumstances with respect to the Governmental Approvals required for construction of the Facilities, to the extent that the Company has expressly assumed the permitting risk under Section 4.5;

(iii) acts, events and circumstances with respect to the Approval of Construction or an Interim Operations Approval required for the introduction and continued delivery of water to the Water System, to the extent that the Company has expressly assumed the permitting risk under Section 5.3;

(iv) any Change in Law (including the issuance of any Governmental Approval, the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Company than are imposed by the Contract Standards in effect as of the Proposal Date; or

(v) any event that affects generally applicable working conditions or standards that is not specific to the water treatment industry or to the Facilities, and that does not require a Capital Modification.

“Change Order” means a written order issued by the City to the Company after the Contract Date requiring a change in the Design/Build Work which is City-directed and not due to Uncontrollable Circumstances.

“City” means the City of Phoenix, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State.

“City Engineer” means either (1) an engineer employed by the City or (2) a nationally-recognized consulting engineer or firm of engineers having experience with respect to the permitting, design, construction, testing, operating, maintenance, repair, replacement and management of water treatment facilities, in either case designated as the City Engineer from time to time in writing by the City.

“City Fault” means (1) any breach by the City of its representations, warranties and covenants, all as set forth in this Service Agreement (including the untruth of any City representation or warranty herein set forth), and (2) any failure, non-performance or non-compliance by the City with respect to its obligations and responsibilities under this Service Agreement to the extent not directly attributable to any Uncontrollable Circumstance.

“City High Pressure Finished Water Transmission Line” means that portion of the High Pressure Finished Water Transmission Line which is between the High Pressure Line Point of Interconnection and the balance of the Water System, to be designed, constructed and

maintained by the City. The City High Pressure Finished Water Transmission Line constitutes part of the Water System.

“City Indemnitee” has the meaning specified in Section 13.3.

“City Low Pressure Finished Water Transmission Line” means that portion of the Low Pressure Finished Water Transmission Line which is between the Low Pressure Line Point of Interconnection and the balance of the Water System, to be designed, constructed and maintained by the City. The City Low Pressure Finished Water Transmission Line constitutes part of the Water System.

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

“Company” means _____, a [corporation] organized and existing under the laws of _____, and its permitted successors and assigns. **[Insert name of Company identified in the Selected Proposer’s Final Technical Proposal.]**

“Company Construction Superintendent” has the meaning specified in subsection 4.19(B).

“Company Fault” means (1) any breach by the Company of its representations, warranties and covenants, all as set forth in the Service Agreement (including the untruth of any Company representation or warranty herein set forth), and (2) any failure, non-performance or non-compliance by the Company with respect to its obligations and responsibilities under this Service Agreement to the extent not directly attributable to any Uncontrollable Circumstance.

“Company High Pressure Finished Water Transmission Line” means that portion of the High Pressure Finished Water Transmission Line, which is between the Finished Water Pumping Station and the High Pressure Line Point of Interconnection, to be designed, constructed and maintained by the Company pursuant hereto, as more particularly described in Appendix 5. The Company High Pressure Finished Water Transmission Line constitutes part of the Plant.

“Company Low Pressure Finished Water Transmission Line” means that portion of the Low Pressure Finished Water Transmission Line, which is between the Finished Water

Pumping Station and the Low Pressure Line Point of Interconnection, to be designed, constructed and maintained by the Company pursuant hereto, as more particularly described in Appendix 5. The Company Low Pressure Finished Water Transmission Line constitutes part of the Plant.

“Construction Date” has the meaning specified in subsection 4.11(B).

“Construction Period” means the period from and including the Construction Date through the date of Final Completion.

“Construction Subcontract” has the meaning specified in subsection 15.9(F).

“Construction Subcontractor” means _____, the lead Subcontractor to the Company for the construction of the Facilities. **[Insert name of Construction Subcontractor identified in the Selected Proposer’s Final Technical Proposal.]**

“Consumables” means those materials, supplies and similar consumables used in connection with the operation of the Facilities, which may include fuel oil, diesel fuel, liquid chlorine, alum, lime, sand, granular activated carbon, gravel, office supplies and other chemicals and fuels.

“Consumer Price Index” or “CPI” means the final non-seasonally adjusted Consumer Price Index - All Urban Consumers for the West - Size Class A, as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

“Contract Administration Memorandum” has the meaning set forth in subsection 15.2(B).

“Contract Administrator” has the meaning specified in subsection 15.3(B).

“Contract Customers” means those public and private entities that the City may contract with from time to time for the purchase of Finished Water from the Plant.

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

“Contract Representative” means, in the case of the Company, the individual specified in writing by the Company as the representative of the Company from time to time for all purposes of this Service Agreement and, in the case of the City, the WSD Director or such other representative as shall be designated in writing by the WSD Director from time to time.

“Contract Services” means the Design/Build Work and the Operation Services.

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

“Contract Year” means the City’s fiscal year commencing on July 1 in any year and ending on June 30 of the following year. The first Contract Year shall be the fiscal year in which the Contract Date occurs. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Cost Substantiation” has the meaning specified in Section 15.8.

“DB Quality Management Plan” means the Company’s plan for quality assurance and quality control in implementing the Design/Build Work to be developed in accordance with the requirements set forth in Appendix 3.

“Deliverable Material” has the meaning specified in Section 4.18.

“Delivered Water Volume” means the volume of Finished Water delivered to the City hereunder, as measured by the Finished Water Pumping Station flow meters and expressed in MGD.

“Design/Build Period” means and includes both the Development Period and the Construction Period.

“Design/Build Price” has the meaning specified in subsection 6.3(A).

“Design/Build Work” means everything required to be furnished and done for and relating to the design and construction of the Facilities by the Company pursuant to this Service Agreement during the Design/Build Period. Design/Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Company’s design,

engineering, construction, start-up, Acceptance Testing, obtaining Governmental Approvals and related obligations with respect to the construction of the Facilities during the Design/Build Period under this Service Agreement, including all completed structures, assemblies, fabrications, acquisitions and installations, all commissioning and testing, and all of the Company's administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under this Service Agreement pertaining to such obligations. A reference to Design/Build Work shall mean any part and all of the Design/Build Work unless the context otherwise requires, and shall include all Extra Design/Build Work authorized by Change Order.

"Design Documents" means the Company's plans, technical specifications, drawings, bluelines and other design documents prepared in connection with the Design/Build Work.

"Design Firm" means the firm or firms responsible for the design of the Facilities. The Lead Design Firm is a Design Firm.

"Design Requirements" means Appendix 5; Attachments 5A, 5B and 5C to Appendix 5; and those portions of Attachments 5D, 5E and 5F to Appendix 5 that are designated as "Design Requirements" in the index thereto.

"Design Subcontract" has the meaning set forth in subsection 15.9(E). **[This definition will be deleted, as necessary, in the final Service Agreement to conform with Selected Proposer's team structure.]**

"Development Period" means the period from and including the Contract Date to the Construction Date.

"Drawings" means the Company's preliminary drawings and plans for the Facilities submitted in response to the RFP and set forth in Attachment 5E to Appendix 5.

"Encumbrances" means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Facilities, other than Permitted Encumbrances.

"Engineer" means a professional engineer licensed in the State who is in responsible charge for a portion of or all of the Company's Design/Build Work.

"Enhanced Standards" has the meaning specified in subsection 8.2(B).

"Environmental Guarantee" has the meaning specified in Section 8.6.

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

“Event of Default” means, with respect to the Company, those items specified in Section 12.2 and, with respect to the City, those items specified in Section 12.3.

“Exit Test Procedures and Standards” means the test procedures and standards for the performance test of the Facilities to be conducted by the Company prior to termination or expiration of this Service Agreement as set forth in Appendix 16.

“Extension Period” means the period commencing on the day after the Scheduled Acceptance Date and ending 180 days following the Scheduled Acceptance Date, or in the event of one or more delays caused by Uncontrollable Circumstances, Change Orders or City Fault occurring during such period, the date which is the next business day following the date calculated by adding to the Scheduled Acceptance Date the aggregate number of days of such delay.

“Extra Design/Build Work” means any Design/Build Work that is City-directed pursuant to Section 4.17, and that is in addition to the Design/Build Work originally required hereunder.

“Facilities” means the Plant, the Intake, the Raw Water Pumping Station and the Raw Water Transmission Line, all as required to be constructed hereunder. The term “Facilities” shall include any Capital Modification thereto.

“Facilities Equipment” means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, constituting part of the Facilities, including tanks (other than concrete tanks); basins (other than concrete basins); process and treatment, mechanical, piping (with an original useful life of less than 20 years), electrical, instrumentation and controls, remote monitoring and communications, HVAC, chemical and other storage and feed systems, cranes and hoists, and any ancillary, appurtenant and support equipment and systems utilized in or at the Facilities.

“Facilities Structures” means all structures, buildings, concrete tanks, concrete basins, the Raw Water Transmission Line, and piping (with an original useful life of equal to or greater than 20 years) constituting part of the Facilities. “Facilities Structures” is further defined in Appendix 15.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs

of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“50-Year Right-of-Way” means the 50-Year Right-of-Way between the State of Arizona and the City of Phoenix dated February 9, 2001 pertaining to that portion of the Raw Water Transmission Line Site owned by the State, as amended from time to time.

“Final Completion” means completion of the Design/Build Work in compliance with the Design Requirements, the Supplemental Technical Information and the requirements of Section 4.24.

“Final Design” means the detailed plans and specifications necessary and sufficient to allow complete construction of the Facilities in conformance with the requirements of this Service Agreement.

“Final Punch List” has the meaning specified in Section 4.23.

“Finished Water” means Raw Water which has been treated at the Plant in accordance herewith and delivered by the Company to the Water System from the Finished Water Pumping Station.

“Finished Water Pumping Station” means the pumping station for the conveyance of Finished Water to the High Pressure Finished Water Transmission Line and the Low Pressure Finished Water Transmission Line, including the High Pressure Pumps, the Low Pressure Pumps and all other related buildings, structures, pipes, valves and equipment, as more particularly described in Appendix 5.

“Finished Water Reservoirs” means the reservoirs located on the Plant Site for the storage of treated water prior to conveyance to the Water System.

“Firm Annual Water Demand Volume” means for any Contract Year, the average of each of the Firm Daily Water Demand Volumes established for each day of the Contract Year, expressed in MGD.

“Firm Daily Water Demand Volume” means, for any day during the Operation Period, the firm volume of Finished Water demanded by the City to be delivered by the Company in accordance with the City’s demand schedule for that day, as determined pursuant to Section 8.3 and expressed in MGD.

“Fixed Design/Build Price” has the meaning specified in subsection 6.3(B).

“Fixed Design/Build Price Adjustments” has the meaning specified in subsection 6.3(C).

“Flow Rates” means, collectively, the High Pressure Flow Rate and the Low Pressure Flow Rate.

“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the municipal water treatment industry as followed in the southwestern region of the United States.

“Good Industry Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the municipal water treatment industry as observed in the southwestern region of the United States.

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

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

“Guaranteed Maximum Annual Electricity Costs” means the Company’s guaranteed maximum annual electricity costs for the Facilities for which the City is responsible and which are calculated based on the applicable Guaranteed Maximum Electricity Utilizations, the Guaranteed Maximum Electricity Demands, Finished Water delivered, peak City-requested Flow Rates, and the electric rate schedule in place for the particular Contract Year, all as provided in subsection 11.10(B).

“Guaranteed Maximum Electricity Demand” has the meaning specified in Appendix 10.

“Guaranteed Maximum Electricity Utilization” has the meaning specified in Appendix 10.

“Guarantor” means _____. **[Insert name of entity identified as Guarantor in the Selected Proposer’s Final Technical Proposal.]**

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

“Hazardous Material” means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

“High Pressure Finished Water Transmission Line” or “HPFWTL” means, collectively, the Company High Pressure Finished Water Transmission Line and the City High Pressure Finished Water Transmission Line for the delivery of Finished Water under high pressure to the Water System, including any related buildings, structures, pipes, valves and other equipment.

“High Pressure Flow Rate” means the rate of flow of Delivered Water Volume delivered to the High Pressure Finished Water Transmission Line, as measured by the Finished Water Pumping Station flow meter or meters and expressed in MGD.

“High Pressure Line Point of Interconnection” means the point at which the Company High Pressure Finished Water Transmission Line interconnects with the City High Pressure Finished Water Transmission Line, as described in Appendix 5. The High Pressure Line Point of Interconnection constitutes part of the Plant.

“High Pressure Pumps” means the high pressure pumps located in the Finished Water Pumping Station for delivery of Finished Water to the High Pressure Finished Water Transmission Line, as more particularly described in Appendix 5.

“Independent Evaluator” means a qualified independent evaluator or evaluation firm with demonstrated skill and experience in the evaluation of utility property, not otherwise associated with the transactions contemplated hereby, selected with the mutual consent of the parties for the purpose of evaluating and determining the condition and weighted average useful life of the Facilities pursuant to Section 9.2. The Independent Evaluator may be an engineer or other technical professional competent to perform such services.

“Initial Term” has the meaning specified in Section 3.1.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurance company which has issued a policy of Required Design/Build Period Insurance or Required Operation Period Insurance under this Service Agreement, as in effect during the Term of this Service Agreement, compliance with which is a condition to the effectiveness of such policy.

“Intake” means the Raw Water intake, including any related structures and equipment, located on and adjacent to the Waddell Canal and those portions of the Raw Water Pumping Station Site within the perimeter of the fence line determined by CAP, as more particularly described in Appendix 5.

“Interim Operations Approval” has the meaning set forth in subsection 5.3(A).

“Jurisdictional Determination” means the Letter of Jurisdictional Determination, dated December 11, 2000, issued by the United States Army Corps of Engineers.

“Lake Pleasant” means Lake Pleasant located in Maricopa and Yavapai Counties, Arizona.

“Lead Design Firm” means _____, the primary engineering firm contracting with the Company and responsible for the design of the Facilities. **[Insert name of firm identified as the Lead Design Firm in the Selected Proposer’s Final Technical Proposal.]**

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

“Letter of Credit” has the meaning specified in subsection 14.3(B).

“Lien” means any and every lien against the Facilities or against any monies due or to become due from the City to the Company under this Service Agreement, for or on account of the Contract Services, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Loss-and-Expense” means any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, Tax, cost or expense, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Service Agreement.

“Low Pressure Finished Water Transmission Line” or “LPFWTL” means, collectively, the Company Low Pressure Finished Water Transmission Line and the City Low Pressure Finished Water Transmission Line for the conveyance of Finished Water under low pressure to the Water System, including related buildings, structures, pipes, valves and other equipment, as more particularly described in Appendix 5.

“Low Pressure Flow Rate” means the rate of flow of Delivered Water Volume delivered to the Low Pressure Finished Water Transmission Line, as measured by the Finished Water Pumping Station flow meters and expressed in MGD.

“Low Pressure Line Point of Interconnection” means the point at which the Company Low Pressure Finished Water Transmission Line interconnects with the City Low Pressure Finished Water Transmission Line, as described in Appendix 5. The Low Pressure Line Point of Interconnection constitutes part of the Plant.

“Low Pressure Pumps” means the low pressure pumps located in the Finished Water Pumping Station for delivery of Finished Water to the Low Pressure Finished Water Transmission Line, as more particularly described in Appendix 5.

“Material Decline in Guarantor’s Credit Standing” has the meaning specified in subsection 14.1(B).

“MBE” means a Minority-Owned Business Enterprise as defined in Chapter 18, Article VI of the Phoenix City Code, as amended from time to time.

“MCESD” means the Maricopa County Environmental Services Department or any successor entity thereto.

“mg” or “MG” means millions of gallons.

“mg/L” means milligrams per liter.

“mgd” or “MGD” means millions of gallons per day.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 12.14.

“Moody’s” means Moody’s Investors Service Inc., or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the City.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 12.14 for the resolution of any dispute arising under this Service Agreement.

“Notice to Proceed” means a notice issued by the City establishing the Construction Date on a date other than that date proposed by the Company, and which authorizes the Company to commence construction of the Facilities, all as provided in subsection 4.11(B).

“On-Line Electronic Operation and Maintenance Manual” means the on-line manual prepared by the Company as part of the IAS (Administrative Information Access System) as described in Appendix 5.

“Operating Protocol” means the protocol governing operation of the Facilities, including all interface, coordination, and water delivery and supply policies, procedures, plans and protocols to be established, adopted and revised in accordance with Section 8.9 and Appendix 13.

“Operation Period” means the period from and including the Provisional Acceptance Date, to and including the last day of the Term.

“Operation Services” means everything required to be furnished and done for and relating to the operation of the Facilities by the Company pursuant to this Service Agreement during the Operation Period. Operation Services include the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the full performance of the Company’s operation, maintenance, repair, replacement, management, obtaining Governmental Approvals and related obligations under this Service Agreement, and all of the Company’s administrative, accounting, recordkeeping, reporting, notification and similar responsibilities of every kind whatsoever under this Service Agreement pertaining to such obligations.

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

“Payment Bond” means the payment bond required by ARS Section 34-608 which shall be provided in accordance with Section 14.2 and in substantially the form set forth in the Transaction Forms.

“Performance Bond” means the performance bond required by ARS Section 34-608 which shall be provided in accordance with Section 14.2 and substantially in the form set forth in the Transaction Forms.

“Performance Guarantees” means the guarantees of performance made by the Company specifically set forth in Article VIII and Appendix 9.

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

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

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

(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 construction and operation of the Facilities by the Company;

(5) zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the construction and operation of the Facilities by the Company;

(6) encumbrances which are created on or before the Proposal Date;

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

(8) any encumbrance created by an act or omission by the City.

“Plant By-Products” means Residuals and Wastewater requiring disposal by the Company in accordance with Sections 8.12 and 8.13.

“Plant or “LPWTP” means the Lake Pleasant Water Treatment Plant, consisting of the treatment works for the production of Finished Water from Raw Water. The Plant includes the Plant Site, the Finished Water Reservoirs, the Finished Water Pumping Station, the Company High Pressure Finished Water Transmission Line, the Company Low Pressure Finished Water Transmission Line, the High Pressure Line Point of Interconnection and the Low Pressure Line Point of Interconnection, any related structures and equipment, and all roads, grounds, fences and landscaping appurtenant thereto, as further described in Appendix 5. The Plant will be located at 37,800 New River Road in Maricopa County, Arizona.

“Plant Site” means the parcel of real property described in Appendix 1 on which the Plant is to be constructed by the Company.

“Points of Interconnection” means the High Pressure Line Point of Interconnection and the Low Pressure Line Point of Interconnection.

“Pre-Existing Environmental Condition” means, and is limited to, (1) the presence anywhere in, on or under the Sites on the Proposal Date of underground storage tanks, to the extent not disclosed to the Company as of the Proposal Date, and (2) the presence of Regulated Substances in environmental media anywhere in, on or under the Sites (including presence in surface water, groundwater, soils or subsurface strata), whether or not disclosed to the Company.

“Prime Rate” means the prime rate as published in The Wall Street Journal (Western Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Western Edition) or the method of computation thereof is substantially modified.

“Process Permits” means (1) the Approval to Construct, to be issued by the MCESD, and (2) the 404 permit, to be issued by the U.S. Army Corps of Engineers, each of which is a Required Construction Date Governmental Approval.

“Proposal Date” means November 22, 2002, the date on which the Company submitted its final technical proposal and price proposal in response to the RFP.

“Provisional Acceptance” has the meaning set forth in Section 5.7.

“Provisional Acceptance Date” has the meaning set forth in Section 5.7.

“Qualified Commercial Bank” has the meaning set forth in subsection 14.3(A).

“Rating Service” means Moody’s or Standard & Poor’s.

“Raw Water” means any water made available by the City from the Waddell Canal to the Facilities for treatment hereunder.

“Raw Water Pumping Station” means the pumping station for the conveyance of Raw Water to the Plant, including all related buildings, structures, piping, valves and equipment, as more particularly described in Appendix 5. The Raw Water Pumping Station includes the Raw Water Pumping Station Site, but excludes the Intake and the Raw Water Transmission Line.

“Raw Water Pumping Station Site” means the parcel of real property described in Appendix 1 on which the Raw Water Pumping Station and the Intake are to be constructed; provided that, following Acceptance of the Intake, the Raw Water Pumping Station Site shall exclude the portion of such site on which the Intake is located as identified by CAP.

“Raw Water Transmission Line” means the transmission line for the conveyance of Raw Water to the Plant, including all related pipes, valves and equipment, as more particularly described in Appendix 5. The Raw Water Transmission Line includes the Raw Water Transmission Line Site.

“Raw Water Transmission Line Site” means the real property described in Appendix 1 on or over which the Raw Water Transmission Line is to be constructed, including the 50-Year Right-of-Way.

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

“Regulated Substance” means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Materials.

“Reimbursable Costs Charge” has the meaning specified in Section 11.6.

“Renewal Term” has the meaning specified in Section 3.1.

“Required Construction Date Governmental Approvals” means all Governmental Approvals required for the commencement of excavation and physical construction of all of the Facilities, including the Process Permits and the Use Permits.

“Required Design/Build Period Insurance” has the meaning specified in Appendix 11.

“Required Insurance” means the Required Design/Build Period Insurance and the Required Operation Period Insurance.

“Required Operation Period Insurance” has the meaning specified in Appendix 11.

“Residuals” means any semi-solid or solid material resulting from the treatment of Raw Water which requires disposal as waste material.

“Response Action” means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Regulated Substance. “Response Actions” include, without limitation, any action which constitutes a “removal”, “response”, or “remedial action” as defined by Section 101 of CERCLA.

“RFP” means the City’s Request for Proposals for the Lake Pleasant Water Treatment Plant Project, issued on September 5, 2001, as amended from time to time.

“Scheduled Acceptance Date” means February 1, 2007 or, in the event of (1) one or more delays caused by Uncontrollable Circumstances or City-requested Change Orders occurring during the Design/Build Period or (2) a determination by the City to extend the Construction Date pursuant to Section 4.11, the date which is the next business day following the date calculated by adding to February 1, 2007 the aggregate number of days of such delay. Any such extension in the Scheduled Acceptance Date shall be evidenced by a Contract Administration Memorandum or Change Order, as appropriate.

“Schedule of Values” means the detailed itemized list that establishes the value or cost of each detailed part of the construction portion of the Design/Build Work, and which is used as the basis for preparing progress payments and is in the form required by Appendix 4.

“Security Instruments” means the Guaranty Agreement, the Performance Bond, the Payment Bond and the Letter of Credit.

“Senior Supervisors” has the meaning specified in subsection 15.3(A).

“Service Agreement” means this Service Agreement for the Design, Construction and Operation of the Lake Pleasant Water Treatment Plant Project between the Company and the City, including the Appendices and the Transaction Forms, as the same may be amended or modified from time to time in accordance herewith.

“Service Area” means the City of Phoenix, the Contract Customers and all other territory in which customers are served by the Water System during the Term hereof.

“Service Fee” has the meaning specified in Section 11.1.

“Service Manager” has the meaning specified in subsection 7.3(A).

“Sites” means the Plant Site, the Raw Water Pumping Station Site and the Raw Water Transmission Line Site.

“Small Scale Capital Modification” means a Capital Modification requested by the Company, and not required as a result of Uncontrollable Circumstances or directed by the City, which has a cost of less than \$50,000, as adjusted annually from the Contract Date by the CPI.

“Specified Raw Water Quality Parameters” means those Raw Water quality parameters which are listed in Table 9-3 of Appendix 9.

“Specified Site Conditions” means, and is limited to, the presence at the Sites of: (1) subsurface structures, materials or conditions having historical, archaeological, religious or similar significance; (2) any man-made object or structure; (3) functioning subsurface structures used by Utility providers on, underneath, near or adjacent to the Sites; and (4) the presence at the Sites of any habitat of an endangered or protected species as provided in Applicable Law (unless, in each case, disclosed to the Company as of the Proposal Date as set forth in Appendix 1).

“Standard & Poor’s” means Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the City.

“State” means the State of Arizona.

“Stated Amount” has the meaning set forth in subsection 14.3(B).

“Subcontract” means an agreement or purchase order by the Company, or a Subcontractor to the Company, 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 privity with the Company (including all subcontractors and every sub-subcontractor of whatever tier) for any portion of the Contract Services, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Substantial Completion” has the meaning specified in Section 4.22.

“Supplemental Technical Information” means those portions of Attachments 5D, 5E and 5F to Appendix 5 other than the portions which are designated as “Design Requirements” in the index thereto.

“Surety” means the surety company issuing the Performance Bond or the Payment Bond.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

“Term” has the meaning set forth in Article III.

“Termination Date” means the last day of the Term of this Service Agreement resulting from either a termination under Article XII or expiration under Article III.

“Transaction Document” means any of the documents identified in Section 15.14.

“Transaction Form” means any of the Transaction Forms appended to this Service Agreement and identified as such in the Table of Contents.

“Turbidity Curve” means the Raw Water turbidity curve set forth in Figure 9-1 of Appendix 9.

“Uncontrollable Circumstance” means any act, event or condition that is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Service Agreement, and that materially expands the scope of the obligations of either party hereunder, materially interferes with, materially delays or materially increases the cost of performing the obligations of either party hereunder, to the extent that such act, event or condition is not the

result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Service Agreement on the part of such party.

(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances shall include the following:

(a) a Change in Law, except as otherwise provided in this Service Agreement;

(b) the existence of a Pre-Existing Environmental Condition, except as otherwise provided in Section 13.4;

(c) the existence of a Specified Site Condition;

(d) contamination of the Sites or the Facilities from groundwater, soil or airborne Hazardous Material migrating from sources outside of the Sites and not caused by Company Fault;

(e) naturally occurring events (except weather conditions normal for the Service Area) such as landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;

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

(g) labor disputes, except labor disputes involving employees of the Company, its Affiliates, or Subcontractors which affect the performance of the Contract Services (provided, however, that the Company shall be afforded schedule relief for labor disputes only affecting those Subcontractors which are equipment fabricators or transporters);

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

(i) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Facilities are located to provide and maintain Utilities to the Facilities which are required for the performance of this Service Agreement, except as provided in items (j) and (k) in the "Exclusions" below;

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

(k) the failure of the City to complete and have operational the City High Pressure Finished Water Transmission Line, the City Low Pressure Finished Water Transmission Line or the sanitary sewer force main servicing the Plant by October 1, 2006;

(l) any shortfalls in the delivery of Raw Water to the Facilities, as and to the extent provided in subsection 8.3(N);

(m) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Facilities;

(n) a violation of Applicable Law by a person other than the affected party or its Subcontractors;

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

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

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

(a) any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;

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

(c) changes in the financial condition of the City, the Company, the Guarantor, or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;

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

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

(f) weather conditions normal for the Service Area;

(g) any and all surface, subsurface and other conditions affecting the Sites, which may increase costs of performing or cause delay in the performance of the Design/Build Work, including particularly any subsurface geotechnical conditions,

except those constituting Pre-Existing Environmental Conditions and Specified Site Conditions;

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

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

(j) power outages from any cause that are of a duration less than the greater of (1) 12 consecutive hours, or (2) the period of time during any power outage over which the cumulative City demand and the cumulative delivery of Finished Water are both less than or equal to 30 MG; provided that during any power outage the City's demand rights shall be capped at a Flow Rate of 60 MGD;

(k) power outages not caused by third-party Utilities and which are of a duration greater than specified in (j) above;

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

(m) a Change in Law pertaining to Taxes (except a Change in Law which imposes a State or local Tax on the private provision of water treatment services, or the imposition of a new State Tax, or an increase or decrease in the rate of the local Tax currently imposed on building materials used in the construction of the Facilities or imposed for the use of the City's sewers).

(3) Raw Water Quality. The nature, condition or quality of Raw Water shall constitute an Uncontrollable Circumstance only as and to the extent provided in Section 8.7 and Appendix 9.

"Use Permits" means (1) the Special Use Permit, to be issued by the Maricopa County Planning and Development Department, and (2) the Conditional Use Permit (Intake, Raw Water Pumping Station and Raw Water Transmission Lines), to be issued by the City of Peoria, each of which is a Required Construction Date Governmental Approval.

"Utilities" means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"Waddell Canal" means the canal connecting the CAP Canal to Lake Pleasant, and which will constitute the source of Raw Water.

“Wastewater” means any sanitary or process wastewater discharged into the City’s sewer system in accordance with this Service Agreement.

“Water Availability Guarantee” has the meaning specified in subsection 8.3(F).

“Water Delivery Guarantee” has the meaning specified in subsection 8.3(E).

“Water Services Contract” means the Subcontract Providing for Water Services, dated October 25, 1984, among the United States of America (acting through the Secretary of the Interior), the CAWCD and the City, as amended from time to time.

“Water System” means the City’s water distribution system (including all pipes, pumping stations, mains, valves, distribution facilities and equipment, treatment works, sources of water supply, and related buildings, structures, improvements and assets) managed by the WSD and serving the Service Area. Except as otherwise provided herein, for purposes of this Service Agreement, “Water System” shall not include the Facilities.

“Water Treatment Guarantee” has the meaning specified in Section 8.2.

“WBE” means a Woman-Owned Business Enterprise as defined in Chapter 18, Article VI of the Phoenix City Code, as amended from time to time.

“WSD” means the City of Phoenix Water Services Department.

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

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

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

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

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

(E) Entire Service Agreement. This Service Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Service Agreement. Without limiting the generality of the foregoing, this Service Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFP, the proposal of the Company submitted in response thereto, and any amendments or supplements to the RFP or the proposal.

(F) Design Requirements and Supplemental Technical Information. The Design Requirements and Supplemental Technical Information are intended to include the basic design principles, concepts and requirements for the Design/Build Work but do not include the final, detailed design, plans or specifications or indicate or describe each and every item required for full performance of the physical Design/Build Work and for achieving Acceptance. The Company agrees to prepare all necessary and required, complete and detailed designs, plans, drawings and specifications and to furnish and perform, without additional compensation of any kind, all Design/Build Work in conformity with the Design Requirements and the Supplemental Technical Information and the final designs, plans, drawings and specifications based thereon. The Company further agrees that it shall not have the right to bring any claim whatsoever against the City or any of its consultants or subcontractors, arising out of any design drawings, specifications or design requirements included in the RFP or made available during the procurement process.

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

(H) Technical Standards and Codes. References in this Service Agreement to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Proposal Date.

Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Design Requirements and the Supplemental Technical Information and (2) if any material revision occurs, to the Company's knowledge, after the Proposal Date, and prior to completion of the applicable Design/Build Work, the Company shall notify the City. If so directed by the City, the Company shall perform the applicable Design/Build Work in accordance with the revised professional and technical standard, code, or specification as long as the Company is compensated, subject to Cost Substantiation, for any additional cost or expense attributable to any such revision.

(I) Liquidated Damages. This Service Agreement provides for the payment by the Company of liquidated damages in certain circumstances of non-performance, breach or default. Each party agrees that the City's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that could occur as a result of such non-performance, breach or default of the Company), and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the City in the same economic position as it would have been in had the circumstance not occurred. Except where additional remedies are otherwise specifically provided for in Sections 8.2(C), 8.3(E), 8.3(G), 8.3(H), 8.8 and 8.14, such liquidated damages shall constitute the only damages payable by the Company to the City in such circumstances of non-performance, breach or default, regardless of legal theory. The parties acknowledge and agree that such additional remedies are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. The amounts of the liquidated damages have been determined taking into account, among other things, cost savings which a party might realize as a result of the circumstance resulting in the requirement to pay liquidated damages, and any such savings shall not mitigate or off-set the requirement of a party to pay the full amount of such liquidated damage.

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

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

(L) Cost of Performing Excludes Costs Resulting from Legal Proceeding. The “cost of performing” a party’s obligations hereunder, when used with respect to one party’s obligation to pay additional costs incurred by the other party, shall not include any Loss-and-Expense incurred by the party resulting from any third-party Legal Proceeding. Notwithstanding the foregoing, each party retains its rights to bring any Legal Proceeding or to implead the other party as to any matter arising hereunder.

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

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

(O) Good Industry Practice and Good Engineering and Construction Practice. Good Industry Practice and Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term of this Service Agreement, Good Industry Practice or Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Company, the Company shall be relieved of its obligation to comply with such evolved Good Industry Practice and Good Engineering and Construction Practice (but not Good Industry Practice and Good Engineering and Construction Practice as of the Proposal Date) unless the City agrees to adjust the Fixed Design/Build Price or the Service Fee on a Cost-Substantiated basis to account for such additional costs. Except to the extent that the Company is relieved of its obligation to comply with such evolved Good Industry Practice or Good Engineering and Construction Practice, as provided above, in no event shall any evolution of Good Industry Practice or Good Engineering and Construction Practice, or any City election to pay or not pay any such additional costs, relieve the Company of its obligations hereunder.

(P) Applicability and Stringency of Contract Standards. The Company shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular

performance obligation of the Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern.

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

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

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

(T) No Third-Party Rights. This Service Agreement is exclusively for the benefit of the City and the Company and shall not provide any third parties (with the sole

exception of the rights of any third-party City Indemnitees as expressly set forth in Section 13.3) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(U) References to Treatment. The terms “treat,” “treated,” “treatment,” “treating” and any similar terms, when used with respect to Raw Water, shall mean and refer to the operation of the Plant to clarify, filter, disinfect and treat Raw Water and supply Finished Water to the Water System, all in accordance with this Service Agreement.

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

(W) References to Include. All references to “include” or “including” herein shall be interpreted as meaning “include, but not be limited to” or “including without limitation”.

(X) References to As Amended. All references to “as amended” or “as amended from time to time”, when used with respect to specific references to Applicable Law, shall refer to the parties’ obligation to comply with such specific Applicable Law at all times during the Term of this Service Agreement. To the extent any such Applicable Law is amended during this Service Agreement, either party shall have the right to assert that a Change in Law has occurred in accordance with the definition thereof and Section 13.2.

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

(Z) References to CPI Adjustments. All references to “adjusted annually from the Contract Date by the CPI”, when used in connection with the escalation of certain dollar amounts hereunder (other than the Service Fee under Article XI), shall be calculated using the formula for the Adjustment Factor set forth in subsection 11.3(D); provided that the Adjustment Factor Modifier defined therein shall equal one; and provided further that no such CPI adjustment in any Contract Year shall be less than one.

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

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

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

(A) Existence and Powers. The City is a municipal corporation organized and existing under and by virtue of 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 Service Agreement.

(B) Due Authorization. This Service Agreement has been duly authorized, executed and delivered by all necessary action of the City.

(C) City Ownership Interest in the Plant Site. The City owns the Plant Site in fee simple.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. In addition to any other representations and warranties made by the Company in this Service Agreement, the Company represents and warrants that:

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

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

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Company of this Service 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, governmental regulation, by-laws or certificates of incorporation 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.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Service Agreement by the Company except as such have been duly obtained or made.

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

(F) Claims and Demands. Except as disclosed in writing to the City, to the best of its knowledge, there are no material and adverse claims and demands based in environmental, contract or tort law pending or threatened against the Company with respect to any water or wastewater plant providing service to the general public designed, constructed, operated, maintained or managed by the Company.

(G) Applicable Law Compliance. Except as disclosed in writing to the City, neither the Company, the Guarantor nor any Affiliate has knowledge of any material violation of any law, order, rule or regulation applicable to any water or wastewater plant providing service to the general public within the United States, which has been designed, constructed, operated, maintained or managed by the Company.

(H) Practicability of Performance. The Design Requirements, the Supplemental Technical Information, the technology and the construction and management practices to be employed in the design, construction and operation of the Facilities are furnished exclusively by the Company and its Subcontractors pursuant to the terms of this Service Agreement, and the Company assumes and shall have exclusive responsibility for their efficacy, notwithstanding the inclusion of design principles or other terms and conditions in the RFP or the clarification of the terms of the Design Requirements, the Supplemental Technical

Information, Acceptance Test Procedures and Standards, and Performance Guarantees between the Company and the City. The Company assumes the risk of the practicability and possibility of performance of the Facilities on the scale, within the time for completion and in the manner required hereunder, and of treating Raw Water and supplying Finished Water through the operation of the Facilities in a manner which meets all of the requirements hereof, even though such performance and operation may involve technological or market breakthroughs or overcoming facts, events or circumstances (other than Uncontrollable Circumstances) which may be different from those assumed by the Company in entering into this Service Agreement, and agrees that sufficient consideration for the assumption of such risks and duties is included in the Fixed Design/Build Price and the Service Fee. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance.

(I) Patents and Licenses. The Company owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Facilities without any known material conflict with the rights of others.

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

SECTION 2.3. KNOWLEDGE-BASED REPRESENTATIONS. Whenever a representation or warranty hereunder is made to the best of the knowledge of either party, such representation or warranty hereunder shall be deemed made, as the case may be, to the knowledge of the City Attorney and the WSD Director or to the knowledge of the General Counsel and Chief Executive Officer of the Company.

ARTICLE III

TERM

SECTION 3.1. EFFECTIVE DATE AND INITIAL TERM. This Service Agreement shall become effective on the Contract Date, and shall continue in effect for the first partial Contract Year and the 15 full Contract Years following the Provisional Acceptance Date, but in no event shall the Service Agreement be effective for a period greater than 20 years from the Contract Date (the "Initial Term") or, if renewed at the option of the City as provided in Section 3.2, until the last day of the renewal term (the "Renewal Term"; the Initial Term and any Renewal Term being referred to herein as the "Term"), unless earlier terminated pursuant to the termination provisions under Article XII, in which event the Term shall be deemed to have ended as of the date of such termination. All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. At the end of the Term of this Service Agreement, all other obligations of the parties hereunder shall terminate, except as provided in Sections 12.9 and 12.10.

SECTION 3.2. CITY RENEWAL OPTION. This Service Agreement may be renewed and extended for a single additional term of five full Contract Years (subject to convenience termination without cost to the City at any time upon 90 days written notice) at the sole option of the City; provided, however, that in the event the period of time between the Provisional Acceptance Date and the twentieth anniversary following the Contract Date is less than 15 full Contract Years, the City's renewal right under this Section shall be for a term of five full Contract Years plus the amount of time by which the period between the Provisional Acceptance Date and the twentieth anniversary was less than 15 full Contract Years. The Company shall give the City notice of the approaching expiration of the Initial Term no later than 180 days prior to such expiration. The City, not later than 90 days prior to the expiration of the Initial Term, shall give the Company written notice of its intent whether or not to exercise its renewal option.

ARTICLE IV

PERMITTING, DESIGN AND CONSTRUCTION OF THE FACILITIES

SECTION 4.1. DESIGN/BUILD WORK GENERALLY. (A) Commencement of Design/Build Work. On the Contract Date, the Company shall promptly proceed to undertake, perform and complete the Design/Build Work in accordance with the Contract Standards, any applicable Transaction Document and Appendices 3, 4, 5, 6, 8 and 9. The Company's failure to achieve Provisional Acceptance on or before the Scheduled Acceptance Date shall result in the assessment of delay liquidated damages under Section 5.8.

(B) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Facilities and covered by any Application for Payment, whether incorporated in the Facilities or not, shall pass to the City no later than the time of payment, free and clear of all Liens as provided in subsection 6.5(B). The Company shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until Final Completion has occurred, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

(C) Elements of the Design/Build Work. In performing the Design/Build Work generally, the Company shall, in accordance with the Contract Standards and this Service Agreement: (1) apply for, obtain and maintain all Governmental Approvals required for the Design/Build Work; (2) prepare and excavate the Sites; (3) demolish and remove any existing improvements; (4) re-route or replace any Utilities; (5) remove from the Sites and dispose of any demolition or construction debris resulting from the Design/Build Work and any unused soil excavated therefrom; (6) design and construct the Facilities; (7) conduct commissioning and start up operations; and (8) conduct the Acceptance Tests, all so that the Facilities are suitable and adequate for the purposes thereof. Laydown and staging areas for construction materials shall be located on the Sites, or at other locations approved by the City and any other appropriate Governmental Body and arranged and paid for by the Company.

(D) Quality Assurance and Quality Control. The Company shall have full responsibility for quality assurance and quality control for the Design/Build Work, including compliance with the DB Quality Management Plan.

(E) Environmental Requirements. All Design/Build Work shall be performed in accordance with the environmental requirements set forth in the Design Requirements, the Supplemental Technical Information and Appendix 9.

(F) Subcontractors. Section 15.9 shall be applicable to the Company's use of Subcontracts and Subcontractors in connection with the Design/Build Work.

(G) Damage or Destruction to the Design/Build Work. The procedures set forth in Section 9.8(A) shall be applicable in the event of any damage to or the destruction of the Design/Build Work.

(H) Encumbrances. The Company shall promptly discharge or bond any Encumbrance arising on the Facilities, Sites or Design/Build Work arising out of the Company's construction of the Facilities.

(I) Warranties. The Company warrants to the City that the structures, improvements, fixtures, machinery, equipment and materials incorporated in the Facilities, and in all Capital Modifications that are undertaken or made by the Company or its Subcontractor, will be new, of recent manufacture, of good quality, free from faults and defects, suitable for its intended purpose and in conformity with Appendix 5 and the Contract Standards. The Company shall, for the protection of the City, obtain from all Subcontractors, vendors, suppliers and other persons from which the Company procures structures, improvements, fixtures, machinery, equipment and materials such warranties and guarantees as are normally provided with respect thereto and as specifically required in Appendix 5 and the Contract Standards, each of which shall be assigned to the City to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Company of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee or non-performance of the Contract Services unless such failure is itself attributable to an Uncontrollable Circumstance.

(J) Payment of Costs. The Company shall pay directly all costs and expenses of the Design/Build Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Company; obtaining and maintaining the Security Instruments; payments due under the Construction Subcontract, subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Company; sales, use and similar taxes on building supplies, materials and equipment; general supervision by the Company of all Design/Build Work; Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Final Completion.

(K) Notice of Default. The Company shall provide to the City, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received

under or in connection with any Governmental Approval or Subcontract pertaining to the Development Period or the Construction Period.

SECTION 4.2. ACCESS TO AND SUITABILITY OF THE SITES. (A) Familiarity with the Sites. The Company acknowledges that the Company's agents and representatives have visited, inspected and are familiar with the Sites, their surface physical condition relevant to the obligations of the Company pursuant to this Service Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, topographical conditions and air and water quality conditions; 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 Service Agreement (including, but not limited to transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities), and has received and reviewed all information regarding the Sites provided to it as part of the Sites-related information or obtained in the course of performing its obligations hereunder; and that based on the foregoing, the Sites constitute acceptable and suitable sites for the construction and operation of the Facilities in accordance herewith, and the Facilities can be constructed on the Sites within the Fixed Design/Build Price and by the Scheduled Acceptance Date.

(B) Access to Sites Prior to Commencement of Construction. The execution of this Service Agreement shall be deemed to constitute the granting of a license to the Company to access the Plant Site and a portion of the Raw Water Transmission Line Site for the purposes of performing engineering, analysis and such additional subsurface and geotechnical studies or tests as deemed necessary by the Company prior to commencement of construction. Such access shall be subject to the City's prior approval, which shall not be unreasonably withheld, as to time and scope. The Company shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the City and the City Indemnitees in accordance with Section 13.3 from and against all Loss-and-Expense arising therefrom. The Company shall obtain all required approvals and licenses for further investigations of the Raw Water Pumping Station Site and the balance of the Raw Water Transmission Line Site including any approvals or licenses that may be required by CAP or the State.

(C) City Responsibility for Pre-Existing Environmental Conditions and Specified Site Conditions. Nothing in this Section shall be deemed to limit or otherwise affect

the scope of the City's obligations with respect to Pre-Existing Environmental Conditions and Specified Site Conditions, as expressly set forth in this Service Agreement.

SECTION 4.3. SURFACE AND SUBSURFACE GEOTECHNICAL CONDITIONS.

Based on the investigations of the Sites and other inquiries made by the Company prior to the Contract Date, which the Company acknowledges to be sufficient for this purpose, and except with respect to Specified Site Conditions and Pre-Existing Environmental Conditions, the Company assumes the risk of all surface and subsurface geotechnical conditions at the Sites as they may affect the Company's performance of the Design/Build Work, including the structural suitability of the Sites or the Company's excavation or construction costs or schedules, and agrees that any such subsurface geotechnical condition revealed during the Design/Build Work which has such an affect shall not be an Uncontrollable Circumstance.

SECTION 4.4. ENVIRONMENTAL CONDITION OF THE SITES. (A) Phase I

Environmental Assessments. Each party acknowledges that it has reviewed the Phase I environmental assessments of the Sites prepared on behalf of the City and that, based thereon, neither party requires any further environmental review of the Sites for purposes of this Service Agreement prior to the commencement of construction; provided that the foregoing shall not be deemed to limit or otherwise affect the scope of the City's obligations with respect to Pre-Existing Environmental Conditions, as expressly set forth in this Service Agreement. Such Phase I environmental assessments consist of the following: (1) Phase I Environmental Site Assessment, Proposed Lake Pleasant Water Treatment Plant, West of New River Road and One Mile North of Carefree Highway, Maricopa County, Arizona, dated March 2000; and (2) Phase I Environmental Site Assessment for the Proposed Raw Water Pump Station and Transmission Line Site, Northeast of Waddell Canal and State Route 74, dated August 2000.

(B) Discovery of Hazardous Materials Prior to Construction Date. If, prior to

the Construction Date, Hazardous Materials are discovered on the Sites through any further environmental assessments, geotechnical investigations conducted by the Company or from any other information source, the City shall elect either: (1) to cause the Hazardous Materials so identified to be removed from the Sites at its sole cost and expense; (2) to designate another area within the Sites for the construction of the Facilities, in which case the Fixed Design/Build Price, the Scheduled Acceptance Date and the Service Fee shall be adjusted to the extent necessary to place the Company in the same position following the site redesignation as it was in hereunder as of the Contract Date; or (3) to terminate this Service Agreement, with the same effect as if this Service Agreement was terminated under Section 12.5(B) for the City's

convenience prior to the Construction Date. The discovery of Hazardous Materials on the Sites after the Construction Date shall be treated as an Uncontrollable Circumstance governed by the terms of Section 13.4.

(C) NEPA. The Company shall not make any change to the Design/Build Work which would result in a requirement that an environmental impact statement be prepared under the National Environmental Policy Act.

SECTION 4.5. COMPANY PERMITTING. (A) Applications for Governmental Approvals. The Company shall make all applications and take all other action necessary to obtain and maintain all Required Construction Date Governmental Approvals and all other Governmental Approvals necessary to commence, continue and complete the Design/Build Work, including payment of all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of the City, subject to the City's rights hereunder. The Company shall manage the process of obtaining the Governmental Approvals on behalf of the City for which it is responsible hereunder in a manner which affords the City a reasonable opportunity to review and comment upon such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 6. The Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or burden on the City or that would contravene any City policies with respect to the matters contained therein. The City reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Company which would have the effect described in the preceding sentence.

(B) Applications for Process Permits and Use Permits. The Company shall, by the dates specified in Appendix 2 and without excuse for Uncontrollable Circumstances other than a Change in Law, submit complete applications for the Process Permits and the Use Permits.

(C) Limited Permitting Assistance by the City. The City shall provide reasonable assistance to the Company in connection with the Company's obligation to obtain and maintain the Governmental Approvals required under this Section, including signing permit applications, attending public hearings and meetings of the Governmental Bodies charged with issuing such Governmental Approvals, and providing the Company with existing relevant data and documents that are within its custody or control and which are reasonably

required for such purpose; provided, however, that the City's obligation to provide such reasonable assistance shall be limited, in light of the Company's primary role in the permitting and development of the Facilities, only to those actions which are legally required to be taken by the City as permittee or which involve providing information which is solely in the possession of the City. Any such assistance shall be provided only upon the reasonable request of the Company made directly to the City, and the City shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate the City to staff the Company's permitting efforts, to undertake any new studies or investigations with respect to the Facilities, or to affirmatively seek to obtain the issuance of the Governmental Approvals required under this Section. The City, however, shall not take any action which seeks to cause the denial or delay of any application for a Required Construction Date Governmental Approval or other Governmental Approval. With respect to any Governmental Approvals required to be issued by the City, nothing in this subsection (C) shall obligate the City to issue such Governmental Approval, or affect the City's ministerial duties with respect thereto.

(D) Company Assumption of Permitting Risk for Design/Build Work. The Company explicitly assumes the risk of obtaining and maintaining all Governmental Approvals required for the Design/Build Work, including the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Company shall be afforded relief from the assumption of such risk on account of the occurrence of any Change in Law described in items (a) and (b) of the definition thereof. In assuming this risk, the Company acknowledges in particular that (1) the delay or non-issuance for any reason of any of the Required Construction Date Governmental Approvals beyond the date which is 548 days after the Contract Date will prevent the occurrence of the Construction Date prior to such date and, as provided in Section 4.11, give the City the right in its sole discretion to terminate this Service Agreement for its convenience without any payment to the Company, thereby resulting in a loss to the Company of all of its costs and expenses incurred for work performed prior to and during the Development Period (other than those for which the Company has been previously compensated under Section 6.4), (2) the delay or non-issuance of any of the Required Construction Date Governmental Approvals beyond the Company's earliest date for commencement of construction set forth in subsection 4.11(C) will prevent the occurrence of the Construction Date prior to such date and have the effect of compressing the period within which the completion of design, construction, acceptance testing and all other Design/Build Work will need to be completed hereunder, and (3) the Governmental Body

issuing any Required Construction Date Governmental Approval may impose terms and conditions which require the Company to make changes or additions to the Facilities or Facilities operations which may increase the cost or risk to the Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Company.

SECTION 4.6. COMPANY DESIGN – GENERAL. (A) Sole Responsibility and Liability. The Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Facilities hereunder, notwithstanding the Contract Standards or the fact that the RFP included certain minimum conceptual design criteria for the Design/Build Work and certain performance standards that the Facilities would be required to meet. The Company shall indemnify, defend and hold harmless the City and the City Indemnitees in accordance with Section 13.3 from any and all Loss-and-Expense arising out of the design, construction or performance of the Facilities. The Company acknowledges that, in the proposal and clarification process leading to the execution of this Service Agreement, the Company had the unrestricted right and opportunity not to submit a proposal, and not to execute this Service Agreement if the Company had determined that such minimum conceptual design criteria would in any manner or to any degree impair the Company's ability to perform the Design/Build Work and the Operation Services in compliance herewith.

(B) City Review and Comment on Design Documents. The City shall have the right to review and comment on all Company Design Documents as provided in Appendix 6 in order to confirm the compliance and consistency of the Design Documents with the Design Requirements and the Supplemental Technical Information. The Company shall give due consideration and provide written responses, in the time and manner provided in Appendix 6, to any comments delivered by the City as to the Company's design submittals. Neither compliance by the Company with the Design Requirements and the Supplemental Technical Information, nor review and comment by the City of the Company's Design Documents, nor any failure or delay by the City in commenting on any design submittals shall in any way relieve the Company of full responsibility for the design, construction, operation and performance of the Facilities in accordance with the Contract Standards.

(C) Documents at the Plant Site. The Company shall maintain at the Plant Site all design and construction documents, including a complete set of record drawings, in accordance with Appendix 4. These documents shall be available to the City for reference,

copying and use, and a complete set thereof shall be delivered to the City upon completion of the Design/Build Work.

(D) Changes Resulting from Uncontrollable Circumstances or City Direction. Changes to the Design/Build Work, the Design Requirements or the Supplemental Technical Information, which are required due to Uncontrollable Circumstances, shall be handled in the manner set forth in Section 13.2; any such changes, which are directed by the City, shall be handled in the manner set forth in Section 4.17.

SECTION 4.7. COMPANY DESIGN - DESIGN REQUIREMENTS. (A) Conformity of Company Design Documents with the Design Requirements. The Company shall prepare all Design Documents necessary or appropriate to carry out and complete the Design/Build Work. All Company working and final Design Documents shall comply with the Design Requirements and shall ensure that the Facilities are constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Design Requirements.

(B) City Interest in the Design Requirements. The Company acknowledges the City's material interest in each provision of the Design Requirements and, notwithstanding the Acceptance Test Procedures and Standards and Performance Guarantees of the Company and the associated non-performance remedies of the City, agrees that no change to the Design Requirements shall be made except with the consent of the City, which may be withheld or conditioned in its sole discretion. Any such changes shall be evidenced by a Contract Administration Memorandum, amendment to this Service Agreement, or Change Order, as applicable.

SECTION 4.8. COMPANY DESIGN - SUPPLEMENTAL TECHNICAL INFORMATION. (A) Relation to Design Requirements. As of the Contract Date, the Company's design for the Facilities is approximately 25-30% complete. The Design Requirements, as provided in Section 4.7, shall form the basis of design for the Facilities, and all design work shall be completed in accordance therewith. The Supplemental Technical Information contained in Appendix 5 is provided in order to establish in further detail (1) the manner in which the design work, as of the Contract Date, is reasonably expected to be developed and carried to full completion and (2) the standards of quality, integrity, durability and reliability to which the Facilities are to be constructed.

(B) Permissible Variations. The design portion of the Design/Build Work shall be completed in accordance with the Supplemental Technical Information. In light of the design/build/operate nature of this Service Agreement and the partially completed level of the design work as of the Contract Date, however, reasonable, minor variations from the Supplemental Technical Information shall be permitted in the final design of the Facilities. Examples of elements of the Supplemental Technical Information from which there may be reasonable, minor variations in the final design include thickness, level and composition of individual structural members; exact dimensions of rooms and buildings (to the extent overall functionality is not impaired or total square footage decreased); routes and depth of pipe work; exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical, power and control cables, switchgear, transformers and control panels. No such variations shall be inconsistent with the Design Requirements, with the purposes of the Supplemental Technical Information as set forth in subsection (A) of this Section, or with any limits specifically provided in the Supplemental Technical Information regarding the range or nature of permissible variations or with any standards or principles regarding permissible deviations set forth therein. Variations in the final design from the Supplemental Technical Information which conform to the provisions of this Section shall not require affirmative City consent; provided, however, that any such variations which do not conform to the provisions of this Section shall require the consent of the City, which shall not be unreasonably withheld or delayed. Any variation requiring the consent of the City shall be evidenced by a Contract Administration Memorandum.

SECTION 4.9. COMPLIANCE WITH APPLICABLE LAW. (A) Compliance with Applicable Law and Equipment Operating Requirements. In designing, constructing, commissioning, starting up and testing the Facilities, the Company shall comply with Applicable Law, shall construct and operate all equipment and systems comprising the Facilities in accordance with the Contract Standards and applicable equipment manufacturer's specifications and recommendations, and shall observe the same safety standards as are set forth in Section 7.8 with respect to the operation of the Facilities and such other safety requirements set forth in Appendix 4.

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

(C) Governmental Approvals Necessary for Continued Construction. The Company shall make all necessary filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the continuance of the Design/Build Work once commenced. The City, subject to the limitations set forth in subsection 4.5(C), shall cooperate with the Company in connection with the foregoing undertaking.

(D) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law with respect to the Design/Build Work, the Company shall, without limiting any other remedy available to the City upon such an occurrence and notwithstanding any other provision of this Service Agreement: (1) immediately correct such failure and resume compliance with Applicable Law; (2) bear all Loss-and-Expense of the Company and the City resulting therefrom; (3) pay or reimburse the City for any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all changes in performing the Design/Build Work which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law.

SECTION 4.10. PREPARATION FOR CONSTRUCTION. The Company shall, as soon as practicable following the Contract Date, take all steps reasonably necessary in accordance with Good Engineering and Construction Practice to prepare for the commencement of construction of the Facilities, including the following:

1. Conditions of the Sites. The Company shall make all further soil test borings and conduct analyses of subsurface conditions, inspections and applicable site history reviews of the Sites in each case as necessary under Good Engineering and Construction Practice to prepare for excavation and construction hereunder in accordance with Applicable Law and to obtain all required Governmental Approvals.

2. Plans Related to the Sites. The Company shall prepare and submit to the appropriate Governmental Body, as needed to support any permit applications or meet permit conditions, all plans related to the Sites.

3. Required Construction Date Governmental Approvals Generally. The Company shall prepare and submit, on its own behalf or on behalf the City as applicant, completed applications and take all other steps which are necessary under

Applicable Law to obtain and maintain all Required Construction Date Governmental Approvals required for the performance of the Design/Build Work, including those specified in Appendix 2, in accordance with Section 4.5.

4. Environmental Notification Forms and Impact Reports. The Company shall prepare and submit any environmental notification forms and impact reports with respect to the Facilities or the Sites which are required under Applicable Law to be prepared due to the design of the Facilities furnished by the Company.

5. Information to Support Site Easements. In the event the City is required to grant Utility easements on the Sites in connection with the Design/Build Work, the Company shall provide complete descriptions of all Utility connections and routes on the Sites necessary for such purposes.

6. Survey. The Company shall prepare or have prepared by a surveyor licensed in the State a property line survey of the Sites as of a date subsequent to the Contract Date showing: (a) the exact dimensions and locations thereof; (b) the exact location of all means of access thereto and all easements relating thereto; (c) that the proposed location of each component of the Facilities on the Sites is in compliance with all applicable building and setback lines and does not encroach on or interfere with existing easements (whether on, above or below ground); (d) existing elevations sufficient to demonstrate compliance of the Facilities with the elevation limitations in the Design Requirements; (e) that there are no encroachments from the Facilities extending to adjacent property or from adjacent property onto the Facilities, nor any gaps, gores, projections, protrusions or other survey defects; (f) that the Facilities will comply with the zoning classification applicable thereto, if any; and (g) that the Sites are not located in any special flood hazard zone.

7. Zoning. The Company shall apply to the appropriate Governmental Body for any required change in the zoning classification applicable to the Sites so that, no later than the Construction Date, a zoning ordinance, or a variance or special exception thereto, shall then be effective which permits the construction of the Facilities on the Sites, and the Company shall furnish confirming evidence thereof satisfactory to the City.

8. Utilities. The Company shall make all arrangements necessary to secure the availability of all Utilities required to construct and operate the Facilities in the capacities required hereunder, and shall evidence such availability by letters from the providers of such Utilities.

9. Document Submittal Protocol. Within 30 days following the Contract Date, the Company shall provide to the City the document submittal protocol in accordance with the requirements of Appendix 6.

10. Design Documents. The Company shall provide to the City copies of all Design Documents relating to the Facilities sufficient to begin construction prepared by or on behalf of the Company for permitting, regulatory, financing, bonding, credit enhancement and insurance purposes.

11. Schedule of Values. The Company shall prepare and submit to the City the preliminary and final versions of the Schedule of Values in accordance with the requirements set forth in Attachment 4B of Appendix 4.

12. Plans for Design/Build Work. The Company shall prepare and submit to the City the draft and final versions of all plans required for the Design/Build Work in accordance with the requirements set forth in Appendices 3, 4, 5 and 6.

13. Progress Schedules and 90-Day Bar Chart Schedule. The Company shall prepare and provide to the City the preliminary and baseline progress schedules and the 90-day Bar Chart Schedule in accordance with the requirements of Attachment 4A of Appendix 4. The Company acknowledges that no Development Period milestone payments shall be made to the Company pursuant to Section 6.4 until the 90-day Bar Chart Schedule has been submitted to and approved by the City.

14. Design and Construction Subcontracts. The Company shall negotiate and execute the Design Subcontract and the Construction Subcontract in accordance with the requirements of Section 15.9. **[This item will be modified, as necessary, in the final Service Agreement to conform with Selected Proposer's team structure.]**

15. Financing Assistance. The Company shall cooperate with and assist the City in providing any information, certifications or documents which may be reasonably required in connection with the issuance of City revenue obligations or otherwise obtaining the funds necessary to pay the Fixed Design/Build Price.

SECTION 4.11. COMMENCEMENT OF CONSTRUCTION. (A) Conditions to Commencement of Construction. The Company shall not commence excavation of the Sites or physical construction of the Facilities unless and until:

(1) Required Construction Date Governmental Approvals. All Required Construction Date Governmental Approvals have been issued or obtained and are in full force and effect, are not subject to further appeal, and are not subject to any third-party Legal Proceeding which materially threatens their validity or effectiveness.

(2) CAP Approval. The Company has obtained a construction license or other interest in real property from CAP, as the administrator of Bureau of Reclamation land, in the name of the City sufficient for the purpose of constructing the Intake, the Raw Water Pump Station and the Raw Water Transmission Line on their respective sites as described in Appendix 1.

(3) Pre-Construction Conference. The Company has held a pre-construction conference with the City in accordance with Appendix 4.

(4) Final D/B Quality Management Plan. The Company has provided the City with the final D/B Quality Management Plan for the Construction Period in accordance with Appendix 3.

(5) Occurrence of Construction Date. The Construction Date has occurred.

(B) Construction Date. The Company shall provide 10 days' written notice to the City as to the completion of the conditions to the commencement of construction as provided in subsection (A) of this Section, and the date it proposes to establish as the Construction Date hereunder, subject to the limitations set forth in subsection (C) of this Section. The date proposed by the Company shall constitute the Construction Date unless the City, by written notice to the Company delivered not later than three days prior to the Construction Date proposed by the Company, determines that the Construction Date shall not occur until the City delivers a subsequent written Notice to Proceed. In such event, (1) the Construction Date shall be the date stipulated as such by the City in the Notice to Proceed, and (2) the Scheduled Acceptance Date shall be extended by the number of days between the Construction Date proposed by the Company and the actual Construction Date established by the City in its Notice to Proceed. The Company shall have the right at any time following the Construction Date to commence excavation of the Sites and physical construction of the Facilities.

(C) Earliest and Latest Date for Proposed Commencement of Construction. In no event shall the Construction Date proposed by the Company under subsection (B) of this Section for commencement of physical construction, including excavation of the Sites, of the Facilities be earlier than [_____, 2004] or later than December 1, 2004. **[To be completed based on the Company's proposed guaranteed earliest construction start date on Proposal Form 34, but not earlier than July 1, 2004 or later than December 1, 2004.]**

(D) City Convenience Termination Right for Failure to Commence Construction. If by the date which is 548 days following the Contract Date, any one or more of the Required Construction Date Governmental Approvals have not been issued in final form or the requirements therefor waived by the appropriate Governmental Body, the City may, by notice in writing to the Company, terminate this Service Agreement for its convenience. Neither party shall be liable to the other for the termination of this Service Agreement pursuant to this Section, and each party shall bear all of its respective costs and expenses incurred prior to the date of termination. The Company in such circumstances shall have no obligation to repay the City any of the amounts previously paid to the Company hereunder, and shall not be entitled to receive any further payments under Section 6.4 for its Development Period work, whether billed, accrued or to be performed.

SECTION 4.12. CONSTRUCTION PRACTICE. The Company shall perform the Design/Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design/Build Work as required by this Service Agreement. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but not be limited to, the obligation of the Company to provide the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Sites; construction trade management; temporary parking; vehicle traffic; safety and first aid facilities and equipment; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Sites; temporary utilities; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

SECTION 4.13. ENGAGEMENT OF CITY ENGINEER. (A) Duties. The Company shall fully cooperate with any City Engineer designated by the City to assist it in connection with the administration of this Service Agreement and the performance of its duties for the City. In the performance of such services, the Company agrees that the City Engineer may, without limiting other possible services to the City: review and monitor construction progress, payments and procedures; determine the completion of specified portions of the Design/Build Work; review proposed changes to the Design Requirements and proposed variations in the Supplemental Technical Information; review plans, drawings and specifications of the Facilities

for compliance with the Design Requirements and the Supplemental Technical Information; monitor the Acceptance Tests undertaken by the Company and review the Company's certified Acceptance Test report to determine whether the Acceptance Test Procedures and Standards have been satisfied pursuant to Article V and Appendix 8; review the validity of the Company's written notice that an Uncontrollable Circumstance has occurred; review the Company's submissions with respect to Capital Modifications pursuant to Article X; and provide certificates and perform such other duties as may be specifically conferred on the City Engineer hereunder. It is understood that the services intended to be provided by the City Engineer shall be of an observational and review nature only, and that the City Engineer shall not have authority to interfere with, halt or delay in any way the construction of the Facilities or to require or approve changes to the Design Requirements and the Supplemental Technical Information or the Company's plans and specifications made in accordance therewith.

(B) Fees. Any fees of the City Engineer shall initially be paid by the City, but shall be reimbursed by the Company to the City (together with allocable costs of City personnel) to the extent any such fees and costs are attributable to the failure of the Company to cause Acceptance to occur on or before the Scheduled Acceptance Date. The Company also shall reimburse the City for the reasonable fees and expenses of the City Engineer and costs of City personnel and consultants for services in connection with repetition of any Acceptance Tests unless such additional or repeated Acceptance Tests are required as a result of Uncontrollable Circumstances.

SECTION 4.14. PROGRESS SCHEDULE AND REPORTS. The Company shall submit to the City a monthly progress schedule and report in accordance with the requirements of Appendix 4. The Company agrees that the Company's submission of the monthly progress schedule and report (or any revised progress schedule and report) is for the City's information only, and the City's acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the City in any manner. Thus, the City's acceptance of the monthly progress schedule and report (or any revised monthly progress schedule and report) shall not imply City approval or consent to any of the matters set forth therein.

SECTION 4.15. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK. (A) Observation and Design Review Program. During the progress of the Design/Build Work through Final Completion, the Company shall at all times during normal working hours afford the City and the City Engineer every reasonable

opportunity for observing all Design/Build Work, and shall comply with the Design/Build Work review procedures set forth in Appendix 6. The Company shall use its best efforts to provide City employees with safe access to the Design/Build Work. During any such observation, all representatives of the City and the City Engineer shall comply with the Company's site-specific Health and Safety Plan for the Design/Build Period applicable to areas visited, and shall in no material way interfere with the Company's performance of any Design/Build Work.

(B) Company Tests. The Company shall conduct all tests of the Design/Build Work (including shop tests) or inspections required by the Contract Standards. The Company shall give the City and the City Engineer reasonable advance notice (at least 10 business days) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or refusal to attend or be present of the City or the City Engineer at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design/Build Work. If required by the Contract Standards, the Company shall engage an Engineer or architect licensed in the State at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction and shall be subject to the approval of the City, which approval shall not be unreasonably withheld. In addition to the foregoing, Acceptance Testing of the performance of the completed Facilities shall be conducted in accordance with Article V and Appendix 8.

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

(D) Certificates and Reports. The Company shall secure and deliver to the City promptly, at the Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design/Build Work as and when required by the Contract Standards. The Company shall provide to the City, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Company under or in connection with any Governmental Approval, Subcontract or Security Instrument pertaining to the Construction Period.

(E) Notice of Covering Design/Build Work. The Company shall give the City notice in the monthly progress report of its upcoming schedule with respect to the covering and completion of any Design/Build Work, and shall update such notice, if necessary, within a reasonable time period (at least five business days) before such covering and completion. The City shall give the Company reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design/Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the City a reasonable opportunity to conduct a full inspection of such Design/Build Work. At the City's written request, the Company shall take apart or uncover for inspection or testing any previously-covered or completed Design/Build Work; provided, however, that the City's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the City as to whether the disputed Design/Build Work complies with the requirements of this Service Agreement. The cost of uncovering, taking apart, or replacing such Design/Build Work along with the costs related to any delay in performing Design/Build Work caused by such actions, shall be borne as follows:

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

(2) in all other cases, as follows:

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

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

In the event such Design/Build Work does comply with this Service Agreement, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be borne by the City (through and only through a Fixed Design/Build Price Adjustment).

(F) Meetings and Design/Build Work Review. During the Construction Period, the Company and the City shall conduct periodic meetings in accordance with Appendix 4.

SECTION 4.16. CORRECTION OF DESIGN/BUILD WORK. (A) Correction of Non-Conforming Design/Build Work. Throughout the Design/Build Period, the Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design/Build Work which does not conform with the Contract Standards.

(B) Election to Accept Non-Conforming Design/Build Work. The City may elect by Change Order, at the Company's request, to accept non-conforming Design/Build Work and charge the Company (by a reduction in the Fixed Design/Build Price) for the amount agreed upon by the parties by which the value of the Company's services or Design/Build Work has been reduced.

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

SECTION 4.17. CITY-DIRECTED CHANGES. (A) Right to Issue Change Orders. The City, subject to the provisions of subsection (E) of this Section, shall have the right to direct the Company to make any change in the Design/Build Work. The Company shall, in accordance with and subject to the terms of subsection (E) of this Section, undertake and complete promptly all Extra Design/Build Work authorized under this Section. The Company shall not commence performance of, or be entitled to additional compensation for, any Extra Design/Build Work without a Change Order authorized by the City.

(B) Uncontrollable Circumstances. The Change Order procedures set forth in this Section are applicable solely to City-directed changes to the Design/Build Work not due

to Uncontrollable Circumstances. In the event an Uncontrollable Circumstance occurs affecting the Design/Build Work, the procedures set forth in Section 13.2 shall apply.

(C) Cost Reductions. The Fixed Design/Build Price shall be reduced if and to the extent that any Change Order, whether for omitted Design/Build Work or otherwise, results in any reduction in the Company's cost of the Design/Build Work.

(D) Proposal for Extra Design/Build Work. The Company shall submit a written quotation on a lump-sum basis for Extra Design/Build Work covered by any proposed Change Order. Any such quotation shall be deemed the Company's offer to the City, binding for 60 days to perform the Extra Design/Build Work at the price quoted. In addition, each quotation shall include the effect, if any, of the Extra Design/Build Work on the critical path method schedule, the Scheduled Acceptance Date, the Fixed Design/Build Price, the Performance Guarantees, the Service Fee and any of the other obligations of the Company under this Service Agreement.

(E) Conditions to Obligation to Proceed. The parties shall promptly proceed to negotiate in good faith to reach agreement on the price to be paid the Company for the Extra Design/Build Work and on the effect of the Extra Design/Build Work on any other obligations of the Company under this Service Agreement. The Company acknowledges that it shall not be entitled to seek nor shall it receive a price for the Extra Design/Build Work which is in excess of the fair market price of such Extra Design/Build Work, whether such work is to be performed solely by the Company or by a Subcontractor under the Company's supervision. The Company shall not be obligated to proceed with the Extra Design/Build Work except following agreement as to the price to be paid therefor and as to any adjustments to the Performance Guarantees and its other obligations hereunder which are necessitated by the Change Order requiring the Extra Design/Build Work. Payments for Extra Design/Build Work shall be paid only as a Fixed Design/Build Price Adjustment. In order to be entitled to such payments, the Company shall submit all Cost Substantiation information to the City on a monthly basis, for amounts specified in this Section as they are incurred. Except to the extent that the City and the Company shall agree, no such work shall modify the Scheduled Acceptance Date, increase the Service Fee, or impair the ability of the Company to meet the Performance Guarantees, comply with any other term or condition of this Service Agreement, affect any right of the Company or impose any additional liability or obligation on the Company under this Service Agreement; but the Company shall have no right of objection with respect to

such work if the City affords the Company price, schedule and any other relief hereunder agreed to by the parties to be necessary to avoid any such impairment.

(F) Disputed Work. If the Company is of the opinion that any Design/Build Work which it elects to perform in the absence of any agreement hereunder is Extra Design/Build Work and not original Design/Build Work ("Disputed Work"), the Company shall give the City a written notice of dispute before commencing the Disputed Work.

(G) Notice; Waiver. The Company shall give at least 30 days advance notice to the City in writing of the scheduling of all Extra Design/Build Work and all Disputed Work. The Company's failure to give such written notice of Disputed Work under this Section shall constitute a waiver of Extra Payment, any extension of time, and all other Loss-and-Expense whatsoever relating to the particular Disputed Work.

SECTION 4.18. DELIVERABLE MATERIAL. As the Design/Build Work progresses (or upon the termination of the Company's right to perform the Design/Build Work), the Company shall deliver to the City all Design Documents, reports, submittals and other materials ("Deliverable Material") required to be delivered under Appendices 3, 4, 5, 6 and 8. The provisions of Section 15.5 shall apply to any Deliverable Material used by the Company in the Design/Build Work that is proprietary in nature or otherwise subject to the property rights of a third party. The City shall have the right from and after the Contract Date to use (or permit use of) all such Deliverable Material, all oral information received by the City in connection with the Design/Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation. The City's use of any such Deliverable Material for any purpose other than the Facilities shall be at its own risk and the Company shall have no liability therefor.

SECTION 4.19. PERSONNEL. (A) Personnel Performance. The Company shall enforce discipline and good order at all times among the Company's employees and all Subcontractors. All persons engaged by the Company for Design/Build Work shall have requisite skills for the tasks assigned. The Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design/Build Work. All firms and personnel performing Design/Build Work, including Subcontractor firms and personnel, shall meet the licensing and certification requirements imposed by Applicable Law.

(B) Company Construction Superintendent. The Company shall designate an employee of the Company, any Affiliate of the Company, or the Company's Construction Subcontractor or construction manager (the "Company Construction Superintendent"), who shall be present on the Sites with any necessary assistants on a full-time basis when the Company or any Subcontractor is performing the Design/Build Work. The Company Construction Superintendent shall, among other things:

- (1) be familiar with the Design/Build Work and all requirements of this Service Agreement;
- (2) coordinate the Design/Build Work and give the Design/Build Work regular and careful attention and supervision;
- (3) maintain a daily status log of the Design/Build Work; and
- (4) attend all monthly construction progress meetings with the City and the City Engineer.

The Company may change the person assigned as Company Construction Superintendent, subject to the provisions of subsection (C) of this Section.

(C) City Rights With Respect to Key Personnel. The Company acknowledges that the identity of the key management and supervisory personnel proposed by the Company and its Subcontractors in its proposal submitted in response to the RFP was a material factor in the selection of the Company to perform this Service Agreement. Such personnel and their affiliations are set forth in Appendix 12. The Company shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects for the Company or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement or resignation. In the event of any such permissible unavailability, the Company shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-site personnel change shall be proposed to the City for its review, consideration and determination of compliance with this subsection with reasonable advance notice.

(D) Labor Disputes. The Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design/Build Work. The Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Company or its

Subcontractors, whether pertaining to organization of the Design/Build Work, arrangement or subdivision of the Design Requirements and the Supplemental Technical Information, employee hiring, or any other matters. The City shall have no responsibility whatsoever for any such disputes or issues and the Company shall indemnify, defend and hold harmless the City and the City Indemnitees in accordance with Section 13.3 from any and all Loss-and-Expense resulting from any such labor dispute.

SECTION 4.20. MBE/WBE PARTICIPATION. (A) City Goals. In accordance with Chapter 18, Article VI of the Phoenix City Code, as amended, the City has established the MBE and WBE participation goals for the construction portion of the Design/Build Work as follows:

- (a) MBEs shall participate at a level of not less than 7% of the Fixed Design/Build Price relating to the construction portion of the Design/Build Work; and
- (b) WBEs shall participate at a level of not less than 3% of the Fixed Design/Build Price relating to the construction portion of the Design/Build Work.

The Company's MBE/WBE Plan for compliance with these requirements is set forth in Appendix 17. **[Note: The MBE/WBE Plan contained in Volume I of the Final Technical Proposal and the related information contained in Proposal Form 11 will be inserted into Appendix 17.]**

(B) Requirements. Except to the extent waived by the City, the Company shall meet the goals identified in subsection (A) of this Section by making available opportunities for both MBEs and WBEs for utilization on the construction portion of the Design/Build Work set forth in this Service Agreement. For this purpose the Company at a minimum shall undertake the following:

- (1) Notify MBEs and WBEs that the Company has subcontracting opportunities available and maintain records of the MBE and WBE responses;
- (2) Maintain a file of names and addresses of each MBE and WBE contacted and action taken with respect to each such contract;
- (3) Disseminate the Company's MBE/WBE participation policy within the Company's management and externally communicate this policy to all Subcontractors and suppliers;
- (4) Undertake and continue specific and personal recruitment efforts (both written and oral) directed at MBEs and WBEs as well as MBE/WBE contractor trade and assistance organizations;

(5) Subdivide the construction portion of the Design/Build Work under this Service Agreement into economically-feasible segments to facilitate MBE and WBE participation;

(6) Adopt and comply with the MBE/WBE Plan submitted in its proposal in response to the RFP, as approved by the City Manager or his or her representative for this purpose, and included in Appendix 17;

(7) The Company further agrees that any breach of the MBE/WBE provisions of this Service Agreement shall be material and shall entitle the City to any or all of the following remedies, in addition to all other remedies allowed by Applicable Law:

(a) Withholding of 10% of all future payments on the construction portion of the Design/Build Work until it is determined that the Company is in compliance;

(b) Withholding of all future payments on the construction portion of the Design/Build Work until it is determined that the Company is in compliance;

(c) Rejection of all future bids for any eligible project with the City or any of its departments or divisions unless the Company demonstrates that it has adopted and faithfully performed its approved MBE/WBE provisions contained in this Service Agreement; or

(d) Termination of this Service Agreement.

(C) Maintenance of MBE/WBE Reports and Records. The Company shall submit, as part of its monthly Application for Payment, monthly updated participation reports in the form required by the City summarizing the number and dollar amounts of subcontract awards made to MBEs and WBEs during the prior month.

(D) Maintenance of List of Contractors. The Company shall submit, as part of its monthly Application for Payment, a monthly updated list of all subcontractors and suppliers that submitted quotations to the Company for the construction portion of the Design/Build Work. The following information is required:

(1) Name of the Subcontractor providing the bid/quote;

(2) Type of work or product that was bid or quoted by the Subcontractor;

and

- (3) The MBE, WBE, or non-MBE/WBE status of each Subcontractor.

The information submitted to the City may be in a form convenient to the Company. This may include a project spreadsheet, hand-written list, or other form normally used by the Company in the preparation of their bid. The Company acknowledges that the sole purpose of this subsection is to allow the City to identify Subcontractors participating in City public works projects and to further understand the local construction market.

SECTION 4.21. CONSTRUCTION BOOKS AND RECORDS. The Company shall prepare and maintain proper, accurate and complete books and records regarding the Design/Build Work and all other transactions related to the permitting, design, construction, startup and testing of the Facilities, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Design/Build Work, this Service Agreement, any Subcontract or any operations or transactions in which the City has or may have a financial or other material interest hereunder, in each case to the extent required to determine changes in the Design/Build Price or the Service Fee. Pursuant to ARS Section 34-610.A, all books and records required to be prepared and maintained under this Section shall comply with generally accepted accounting principles. The Company shall produce such construction books and records (except financial ledgers and statements) for examination and copying in connection with the costs of Extra Design/Build Work, Uncontrollable Circumstance costs, or other changes in or additions to the Fixed Design/Build Price or the Service Fee for which the City may be responsible with respect to work performed prior to the Final Completion. To the extent any such information is delivered or made available to the City, such information shall be presented in a format such that an independent auditor will be able to perform a review of such information in accordance with generally accepted accounting principles. The Company shall keep and maintain all such construction books and records for at least ten years after the date of Final Completion, or such longer period during which any Legal Proceeding with respect to the Facilities commenced within ten years of the date of Final Completion may be pending.

SECTION 4.22. SUBSTANTIAL COMPLETION. (A) Conditions to Substantial Completion. Substantial Completion shall be deemed to have occurred only when all of the following conditions have been satisfied:

(1) the Company has submitted and the City has approved in writing, such approval not to be unreasonably withheld, a certification by the Company and the Lead Design Firm that construction of the Facilities is physically complete and all other Design/Build Work pertaining to the Facilities, excepting the Acceptance Tests and the items on the Final Punch List, is complete and in all respects is in compliance with this Service Agreement;

(2) a preliminary or temporary certificate of occupancy has been issued for the Facilities, if required by Applicable Law;

(3) the Company has delivered to the City a red-lined set of “as-built” construction record drawings as required by Appendix 4;

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

(5) the Company and the City have agreed in writing upon the Final Punch List (or, if they are unable to agree, the City shall have prepared and issued the Final Punch List to the Company within 15 business days of the Company having submitted its proposed Final Punch List to the City);

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

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

(8) the Company has delivered to the City the initial Operating Protocol and the draft On-Line Electronic Operation and Maintenance Manual in accordance with Appendices 5 and 13;

(9) the Company has delivered to the City a copy of its medical insurance coverage plan as required by subsection 7.4(C) with respect to the Company’s operating staff; and

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

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

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

SECTION 4.23. FINAL PUNCH LIST. As required by Section 4.22, the Company shall submit a proposed Final Punch List to the City and the City Engineer when the Company believes that the Design/Build Work has been substantially completed in compliance with this Service Agreement. The "Final Punch List" shall be a statement of repairs, corrections and adjustments to the Design/Build Work, and incomplete aspects of the Design/Build Work, which in the Company's opinion:

(1) the Company can complete before the Final Completion deadlines provided in Section 4.24, and with minimal interference to the occupancy, use and lawful operation of the Facilities; and

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

In no event shall the Final Punch List contain any incomplete items necessary for full Facilities operations. The Final Punch List shall be approved by the City, and completion of the Final Punch List work shall be verified by a final walk-through of the Facilities conducted by the City and the City Engineer with the Company and the Company Construction Superintendent.

SECTION 4.24. FINAL COMPLETION. (A) Requirements. "Final Completion" shall be deemed to have occurred when all of the following conditions have been satisfied:

(1) Acceptance Achieved. The Company has achieved Acceptance of the Facilities in accordance with Article V;

(2) Approval of Construction. MCESD has issued the Approval of Construction;

- (3) Design/Build Work Completed. All applicable Design/Build Work (including all items on the Final Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Service Agreement;
- (4) Certificate of Occupancy Issued. A final certificate of occupancy has been issued for the Facilities or any component thereof, if required by Applicable Law;
- (5) Deliverable Material. The Company shall have delivered to the City all Deliverable Material required by Section 4.18;
- (6) Final Record Drawings. The Company shall have delivered to the City a final and complete reproducible set of “as-built” construction record drawings as required by Appendix 4;
- (7) Equipment Warranties and Manuals. The Company shall be in possession of, and shall have delivered to the City, copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Facilities required to be obtained under subsection 4.1(I), together with copies of all related operating manuals supplied by the equipment supplier;
- (8) Spare Parts In Storage. All spare parts required by the applicable Design Requirements and Supplemental Technical Information have been delivered and are in storage at the Facilities;
- (9) Baseline Facilities Record. The Company shall have furnished to the City the Baseline Facilities Record and record documentation required by subsection 9.2(A);
- (10) Consent of Surety. The Surety has consented to the release of final payment to the Company as provided in subsection 6.5(F); and
- (11) Payment of Claims. The Company has certified to the City that all of its claims against the City have been paid as provided in subsection 6.5(F).
- (B) Effect of Final Completion. Upon Final Completion, (1) the required Stated Amount of the Letter of Credit shall be reduced as provided in Section 14.3, (2) the parties’ obligations hereunder during the Design/Build Period shall terminate, including the Company’s obligation to furnish and maintain the Payment and Performance Bonds and the Required Design/Build Period Insurance, and (3) the City shall release any amounts retained from the Design/Build Price to which the Company is entitled pursuant to subsection 6.5(H).

(C) Failure to Achieve Final Completion. The Company shall achieve Final Completion within 180 days after the Provisional Acceptance Date; provided that, if MCESD has issued an Interim Operations Approval that stipulates a condition for obtaining the Approval of Construction which is of a duration greater than 180 days after the Provisional Acceptance Date, the Company shall achieve items (1) and (3) through (11) in subsection (A) of this Section not later than 180 days after the Provisional Acceptance Date, and shall achieve item (2) in subsection (A) of this Section not later than 60 days following the specified timeframe for completing such condition. Unless, as of the last day of the applicable period specified in the preceding sentence, Final Completion has been achieved, an Event of Default by the Company will be deemed to have occurred under Section 12.2 notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and the City shall thereupon have the right to terminate this Service Agreement upon written notice to the Company. The City's right of termination under this Section shall apply notwithstanding any interim operations under Section 5.5 or the earlier occurrence of Provisional Acceptance. Upon any such termination, the City shall have all of the rights provided in Article XII upon a termination of the Company for cause.

SECTION 4.25. REQUIRED COMPANY ENGINEER CERTIFICATION. Any notice, certification, report or application delivered by the Company to the City in connection with the Design/Build Work, or payment therefor, under this Article, Article V, Article VI or any Appendix shall be accompanied by a certificate of the Lead Design Firm's Engineer affirming the accuracy thereof to the best of his or her knowledge.

ARTICLE V

INTERIM OPERATIONS AND ACCEPTANCE OF THE FACILITIES

SECTION 5.1. RAW WATER SUPPLY DURING COMMISSIONING, ACCEPTANCE TESTING AND INTERIM OPERATIONS. The Company shall provide the City with a statement as to the Company's requirements for Raw Water during commissioning of the Facilities, Acceptance Testing, and interim operations to be conducted prior to Provisional Acceptance. Any such statement shall be provided to the City reasonably in advance of the date by which the City is required to order such Raw Water from CAP under the Water Services Contract. In the event the Company fails to use all of the Raw Water so ordered from CAP for such purposes, and the City is unable to mitigate the effect of such failure through the use of such Raw Water at other City water treatment facilities, the Company shall reimburse the City for its actual cost for any such ordered but unused Raw Water.

SECTION 5.2. COMMISSIONING. (A) General. The Company may commission and start-up the Facilities, test equipment and subsystems, and conduct post-start-up operations at its election at any time, whether prior or subsequent to Substantial Completion. The cost of all such commissioning activities, regardless of their extent or duration, has been priced into the Fixed Design/Build Price. The Company shall reimburse the City for its actual cost for all Raw Water used in all such commissioning activities.

(B) Water Deliveries and Disposal During Commissioning. The Company shall not deliver any Finished Water to the Water System at any time during commissioning irrespective of whether the Company has received an Interim Operations Approval or the Approval of Construction. Any water, whether or not Finished Water, produced by the Facilities during commissioning shall be either recycled within the Facilities or shall be disposed of in accordance with Applicable Law.

SECTION 5.3. INTERIM OPERATIONS APPROVAL AND APPROVAL OF CONSTRUCTION. (A) Authorization of Operation and Water Introduction. The Company acknowledges that the operation of the Facilities and the introduction of Finished Water into the Water System are prohibited by Applicable Law until the Approval of Construction is issued by MCESD. MCESD may, but is not legally obligated to, issue a letter or other instrument authorizing temporary operation of Facilities and introduction of Finished Water into the Water System until such time as the conditions of such letter or other instrument have been satisfied and the Approval of Construction is issued (an "Interim Operations Approval"). The Company further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of MCESD.

(B) Company Assumption of Risk. The Company explicitly assumes the risk of obtaining and maintaining the Approval of Construction and any Interim Operations Approval from MCESD as contemplated in subsection (A) of this Section, including the risk of delay, non-issuance, withdrawal, expiration, revocation or imposition of any term or condition in connection therewith; provided, however, that the Company shall be afforded relief from the assumption of such risk on account of the occurrence of any Change in Law described in items (a) and (b) of the definition thereof. In assuming this risk, the Company acknowledges in particular that (1) the delay or non-issuance of the Approval of Construction or an Interim Operations Approval may delay or prevent the delivery of Finished Water to the Water System during commissioning, the commencement of the Acceptance Tests, the right of the Company to certify Provisional Acceptance, or the occurrence of Acceptance, and thereby give the City the right to impose delay liquidated damages or terminate this Service Agreement as provided in Sections 4.24, 5.8 and 5.10, and (2) MCESD may impose or enforce terms and conditions which require the Company to make changes or additions to the Facilities or Facilities operations which may increase the cost or risk to the Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Company. The exercise by MCESD of any of its rights with respect to the Approval of Construction or an Interim Operations Approval shall not constitute a Change in Law. For example, an Interim Operations Approval that is time-limited or revocable, or that conditions its effectiveness on further capital investment in the Facilities, use of additional technologies, material changes in expected operating practices, or substantial revision to expected testing protocols, are terms and conditions with respect to which the Company assumes the risk. For further example, an extended delay in issuing the Approval of Construction pending interim operating results or the correction of identified deficiencies or delays due to inadequate administrative staffing or funding, are also terms and conditions with respect to which the Company assumes the risk.

SECTION 5.4. ACCEPTANCE TESTING. (A) Submittal of Acceptance Test Plan. At least 360 days before the earlier of the Scheduled Acceptance Date or the date upon which the Company plans to begin Acceptance Testing, the Company shall prepare and submit to the City for its approval a detailed Acceptance Test plan, which shall conform to the requirements of Appendix 8 in all respects. If the Company and City are unable to agree upon an acceptable Acceptance Test plan within 90 days of such submittal, their inability to agree may be mediated as provided in Section 12.14.

(B) Notice of Commencement of the Acceptance Tests. The Company shall provide the City with at least 30 days' prior written notice of the expected initiation of the

Acceptance Tests in accordance with the requirements of Appendix 8. At least 10 days prior to the actual commencement of Acceptance Testing, the Company shall certify in writing that it is ready to begin Acceptance Testing in accordance with the Acceptance Test plan and Appendix 8.

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

(1) The requirements of subsections (A) and (B) of this Section have been met and the City has approved the Acceptance Test plan;

(2) If required by Applicable Law, MCESD has approved the Acceptance Test plan proposed by the Company and approved by the City;

(3) Substantial Completion has occurred;

(4) The Approval of Construction or an Interim Operations Approval has been issued by MCESD, and contains sufficient authorization to permit the Acceptance Tests and post-Acceptance Test operations to be conducted in accordance herewith;

(5) The construction of the City High Pressure Finished Water Transmission Line and the City Low Pressure Finished Water Transmission Line has been completed;

(6) The Company has submitted its personnel training program required by subsection 7.4(F); and

(7) The Company has certified that it has complied with the pre-Acceptance Testing requirements of Appendix 8.

(D) Conduct of the Acceptance Tests. The Company shall conduct the Acceptance Tests in accordance with Appendix 8 and the Acceptance Test plan, and shall notify the City when the test shall occur. The Company shall permit the City Engineer and the other designated representatives of the City to inspect the preparations for the Acceptance Tests and to be present for the conduct of the Acceptance Tests for purposes of ensuring compliance with the Acceptance Test plan and the integrity of the Acceptance Tests results.

(E) Earliest Date for Completion of First Acceptance Tests. Unless otherwise authorized by the City, the Company shall conduct its first Acceptance Tests so that the final day of such first Acceptance Tests does not occur before January 1, 2007. The Company may conduct any required subsequent Acceptance Tests at any time thereafter.

(F) Test Report. Within 30 days following the last day of any Acceptance Test, the Company shall furnish the City and the City Engineer with ten copies of a written Acceptance Test report consistent with the requirements specified in Appendix 8, certified as true, complete and correct by the Company and the Lead Design Firm. The failure of the Company to furnish the certified Acceptance Test report within such 30-day period shall constitute a breach of this Service Agreement and such failure shall not operate to extend the Extension Period or the City's rights to terminate this Service Agreement pursuant to Sections 4.24 and 5.10.

SECTION 5.5. WATER DELIVERIES DURING ACCEPTANCE TEST AND INTERIM OPERATIONS. (A) Acceptance Tests. During any Acceptance Test, the Company shall deliver to the Water System Finished Water in volumes and on the schedule established by the parties pursuant to the approved Acceptance Test plan. The cost of all Acceptance Test activities, including any repetition of the Acceptance Tests, has been priced in the Fixed Design/Build Price. The City shall pay for the cost of all Raw Water used by the Company in the production of Finished Water during the first Acceptance Tests; provided, however, that the Company shall reimburse the City for its actual costs of all Raw Water wasted as a result of the Company's failure to achieve a Raw Water to Finished Water production efficiency of at least 96.5% over the course of the first Acceptance Tests. If repeated Acceptance Tests are required due to the failure of the Company to achieve Acceptance, the Company shall reimburse the City for its actual costs of all Raw Water purchased by the City and used by the Company in conducting the repeated Acceptance Tests, and all costs of the City in monitoring and reviewing the results of any such repeated Acceptance Tests, including the costs of the City Engineer related thereto as provided in subsection 4.13(B).

(B) Interim Operations. Following the Acceptance Tests, the Company shall deliver Finished Water to the Water System at Flow Rates negotiated by the parties. The City acknowledges that the Company is not obligated to deliver Finished Water during interim operations and may periodically reduce or curtail Finished Water deliveries for any reason upon at least one day's prior notice to the City. The Company acknowledges that, to the extent the parties have negotiated a Flow Rate as provided herein, the City shall be entitled to rely on such negotiated Flow Rate for purposes of coordinating its water production requirements at its other water treatment facilities. The City shall pay for the cost of all Raw Water used by the Company in the production of Finished Water during interim operations. The Company shall be responsible for any liquidated damages resulting from its failure to deliver Finished Water at the negotiated Flow Rates as determined in manner provided in subsection 8.3(E), and shall be

entitled to compensation under subsection (C) of this Section only for Finished Water actually delivered. Interim operations shall continue until (1) the Company certifies Provisional Acceptance pursuant to Section 5.7, (2) this Service Agreement is terminated by the City for the Company's failure to achieve Acceptance by the end of the Extension Period, or (3) any authority to operate the Facilities contained in an Interim Operations Approval, if applicable, expires or terminates.

(C) Payment for Finished Water During Interim Operations. The City shall pay the Company for Finished Water actually delivered during interim operations on a unit basis. For each one MG of Finished Water so delivered, the City shall pay the Company an amount equal to: (1) the annual Service Fee which would be applicable in the first full Contract Year at a reset level of 40 MGD (as reasonably estimated by the parties), divided by (2) 14,600 (365 days times 40 MGD). The Company shall invoice the City on a monthly basis, and the City shall render payment within 30 days of receipt of the invoice.

(D) Other Obligations of the Parties During Interim Operations. During interim operations, the Operation Period shall not have commenced, but the parties shall comply with all of their respective obligations hereunder during the Operation Period, except that: (1) the Company's Finished Water delivery obligations shall be as described in subsection (B) of this Section; (2) the City shall have no obligation to pay the Service Fee, but shall pay for delivered Finished Water on the terms described in subsection (C) of this Section; and (3) the Company shall be permitted to deliver Finished Water not complying with the Enhanced Standards, but such Finished Water shall comply at all times with Applicable Law.

(E) Water Disposal and Disinfection Required by Curtailments. The Company shall be responsible for the City's actual costs of any required disposal of stagnant water in and disinfection of the High Pressure Finished Water Transmission Line and the Low Pressure Finished Water Transmission Line, resulting from the Company's curtailment of Acceptance Testing or interim operations for any reason other than Uncontrollable Circumstances.

SECTION 5.6. ACCEPTANCE DATE CONDITIONS. The following conditions shall constitute the "Acceptance Date Conditions," each of which must be satisfied in all material respects by the Company in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date:

(1) Achievement of Acceptance Test Procedures and Standards. The Company shall have completed the Acceptance Tests and such test shall have demonstrated that the Facilities have met the Acceptance Test Procedures and Standards;

(2) Operating Governmental Approvals. All Governmental Approvals required under Applicable Law which are necessary for the continued routine operation of the Facilities (other than the Approval of Construction) shall have been duly obtained by the Company and shall be in full force and effect. Certified copies of all such Governmental Approvals, to the extent not in the City's possession, shall have been delivered to the City;

(3) Final On-Line Electronic Operation and Maintenance Manual. The Company has delivered to the City the final On-Line Electronic Operation and Maintenance Manual in accordance with Appendix 5;

(4) Required Operation Period Insurance. The Company has obtained and submitted to the City certificates of insurance for all Required Operation Period Insurance specified in Appendix 11; and

(5) No Default. The Company has certified that there is no Event of Default by the Company existing under this Service Agreement or by the Guarantor under the Guaranty Agreement, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Company hereunder or an Event of Default by the Guarantor under the Guaranty Agreement.

SECTION 5.7. PROVISIONAL ACCEPTANCE. (A) Company Certification. The Company shall have the right, following (1) the conduct of the Acceptance Tests as provided in subsection 5.4(D) and (2) the preparation and delivery to the City of the Acceptance Test report as required by subsection 5.4(F), to certify Acceptance on a provisional basis. In order to certify Acceptance on a provisional basis, the Company shall deliver a written certification to the City and the City Engineer that, in the good faith judgment of the Company based on all information available to it at the time of the certification, all of the Acceptance Date Conditions have occurred, except that if the Approval of Construction has not been issued, (1) the Interim Operations Approval is in full force and effect, and contains sufficient authority to operate the Facilities in accordance with the Contract Standards until the Approval of Construction is issued, and (2) the Company reasonably expects that the Approval of Construction will be

issued within the applicable time period provided in Section 4.24. The date upon which the Company's provisional Acceptance certification is delivered is referred to herein as the "Provisional Acceptance Date," and thereupon "Provisional Acceptance" shall be deemed to have occurred.

(B) Effect of Provisional Acceptance. Upon the occurrence of Provisional Acceptance, the Operation Period shall commence and all of the Operation Period rights and obligations of the parties hereunder shall apply on a permanent basis (including the Performance Guarantees of the Company, the Service Fee payment obligations of the City, and the obligation of the Company to pay liquidated damages for any failure to meet the Performance Guarantees). Thereafter, the parties shall be bound as if Acceptance had permanently occurred, except as provided in subsection 5.9(B) in the event the City disputes the substance of the Company's Provisional Acceptance certification and this Service Agreement is terminated as provided in Section 5.10 as a result of the failure of the Company to achieve Acceptance.

(C) Overlap of Design/Build Period and Operation Period. The parties acknowledge that the Operation Period (which commences on the Provisional Acceptance Date) and the Design/Build Period (which ends on the date of Final Completion) will overlap, and that during the period of overlap the obligations of the Company to be performed during both such periods shall apply. The parties further acknowledge that the Provisional Acceptance Date shall demarcate the City's respective rights to convenience terminate this Service Agreement during the Construction Period and during the Operation Period as provided in subsections 12.6(B) and 12.7(A), respectively.

SECTION 5.8. DELAY LIQUIDATED DAMAGES. (A) Provisional Acceptance Prior to Scheduled Acceptance Date. In the event that Provisional Acceptance occurs prior to the Scheduled Acceptance Date, the Company shall have no obligation to pay delay liquidated damages hereunder. The Company shall, however, following the Provisional Acceptance Date, be responsible for all performance-related damages provided for in this Service Agreement during the Operation Period.

(B) Provisional Acceptance Subsequent to the Scheduled Acceptance Date. In the event that Provisional Acceptance occurs subsequent to the Scheduled Acceptance Date, the Company shall pay to the City daily delay liquidated damages for each day that the Provisional Acceptance Date falls after the Scheduled Acceptance Date, in the amount of (1) \$25,000 for each day up to and including April 7, 2007, and (2) \$50,000 for each day after

April 7, 2007, up to the end of the Extension Period and thereafter until any termination of this Service Agreement for an Event of Default.

SECTION 5.9. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.

(A) Acceptance Date Concurrence. If the Company and the Lead Design Firm verify in the written report delivered pursuant to subsection 5.4(F) that the Acceptance Date Conditions have been satisfied, the City shall determine, within 60 days of its receipt of such report, whether it concurs with such certification. If the City states in writing that it concurs with the Company's certification, the Facilities shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on a permanent basis from the Provisional Acceptance Date.

(B) Acceptance Date Disagreement. If the City determines at any time during such 60-day review period that it does not concur with the Company's certification of Provisional Acceptance, the City shall immediately send written notice to the Company of the basis for its disagreement. In the event of any such non-concurrence by the City, either party may elect to refer the dispute to Non-Binding Mediation for resolution pursuant to Section 12.14. The Mediator shall issue a decision within 60 days of the dispute referral unless both parties agree that more time is appropriate. In the event that the Mediator fails to issue a decision within the applicable time period, then either party may initiate judicial proceedings. The parties acknowledge and agree that any decision rendered by the Mediator as to whether Acceptance has occurred shall be non-binding. Acceptance shall not be deemed to have been achieved unless the Acceptance Tests, conducted in a unified and continuous manner as provided in the Acceptance Test plan and in Appendix 8, demonstrate that all of the Acceptance Test Procedures and Standards have been met. In the event the Company, in conducting the Acceptance Tests, does not successfully meet the Acceptance Test Procedures and Standards, the Company shall re-test the Facilities in accordance with Appendix 8. Nothing in this Section shall prevent the Company from bringing an action or from repeating any Acceptance Test in order to establish the achievement of Acceptance. The Company shall provide the City with at least three days' written notice of any re-test of the Acceptance Tests.

(C) Effect of Acceptance - Letter of Credit. Once a final determination is reached as to when the Acceptance Date in fact occurred either through the City's concurrence pursuant to subsection (A) of this Section or, if the City disagrees, through mediated or judicial dispute resolution, the required Stated Amount of the Letter of Credit shall be reduced as provided in Section 14.3.

SECTION 5.10. FAILURE TO ACHIEVE ACCEPTANCE. Unless, as of the last day of the Extension Period, Acceptance has been achieved, an Event of Default by the Company will be deemed to have occurred under Section 12.2 notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Company thereunder, and the City shall thereupon have the right to terminate this Service Agreement upon written notice to the Company. The City's right of termination under this Section shall apply notwithstanding any interim operations under Section 5.5 or the earlier occurrence of Provisional Acceptance. Upon any such termination, the City shall have all of the rights provided in Article XII upon a termination of the Company for cause.

ARTICLE VI

OWNERSHIP OF THE FACILITIES; FINANCING AND PAYMENT OF THE DESIGN/BUILD PRICE

SECTION 6.1. OWNERSHIP OF THE FACILITIES AND USE OF THE SITES. The Facilities shall be owned by the City at all times, except for the Intake which CAP will own following Acceptance thereof. The Company shall perform the Design/Build Work and Operation Services provided for herein as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the Facilities. The execution of this Service Agreement shall be deemed to constitute the granting of a license to the Company to access the Sites for all purposes of this Service Agreement.

SECTION 6.2. CITY FINANCING. The City shall secure the availability of all funds necessary to pay the Design/Build Price in a timely manner, whether through the authorization or issuance of revenue obligations of the City or otherwise as determined by the City. Payments of the Design/Build Price shall be made by the City to the Company in the manner provided in Sections 6.4 and 6.5 and Appendices 4 and 7.

SECTION 6.3. DESIGN/BUILD PRICE. (A) Design/Build Price Generally. The Design/Build Price shall be the sum of the Fixed Design/Build Price and the Fixed Design/Build Price Adjustments.

(B) Fixed Design/Build Price. The Fixed Design/Build Price shall be equal to \$_____ **[Amount to be inserted as set forth in Proposal Form 34]**. Except as provided in subsection (C) of this Section, the Fixed Design/Build Price shall not be subject to adjustment in any manner whatsoever.

(C) Fixed Design/Build Price Adjustments. The following items shall constitute the Fixed Design/Build Price Adjustments:

- (1) An adjustment for the cost of any Change Orders issued by the City with respect to the Facilities pursuant to Section 4.17; and
- (2) An adjustment for the cost of any Uncontrollable Circumstances required pursuant to Section 13.2.

(D) Limitation on Payments for Costs of the Facilities. The Company agrees that the Design/Build Price shall be the Company's entire compensation and reimbursement for the performance of the Design/Build Work, including obtaining all Utilities that the Company will require to perform the Design/Build Work, commissioning and starting up the Facilities, and operating the Facilities during the Acceptance Tests and prior to the Provisional Acceptance Date. In no event shall the Company be entitled to any payment for Facilities costs

in excess of the Design/Build Price, notwithstanding any cost overruns the Company may incur. The Company shall finance and pay for any such excess cost of the Facilities in any manner it chooses without reimbursement from or other claim upon the City.

SECTION 6.4. PAYMENT FOR CERTAIN DEVELOPMENT PERIOD EXPENSES.

The Company shall be entitled to payment for Development Period activities hereunder in accordance with the milestones set forth in Appendix 7, which payments are and shall be considered to be partial payments of the Fixed Design/Build Price to the Company. Such payments shall be based on the Company's completion of each such Development Period activity and shall not exceed the individual and aggregate maximum Development Period payments therefor. All other costs and expenses incurred by the Company in performing its obligations during the Development Period shall be for the account of the Company and shall not be reimbursable until and unless the Construction Date occurs or the City exercises its right to suspend or terminate this Service Agreement during the Development Period as provided in Section 12.5 (including the limitations on amounts reimbursable thereunder).

SECTION 6.5. PAYMENT PROCEDURE FOR CONSTRUCTION WORK.

(A) Schedule of Values. The Schedule of Values established in accordance with Section 4.10 and Attachment 4B of Appendix 4 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the City.

(B) Application for Progress Payment. At least 20 days before the date established for each progress payment (but not more often than once a month), the Company shall submit to the City Engineer for review an Application for Payment filled out and signed by the Company covering the construction portion of the Design/Build Work completed as of the date of the Application and since the date of the prior Application for Payment, and accompanied by such supporting documentation as required by subsection (D) of this Section. If payment is requested on the basis of materials and equipment not incorporated in the Design/Build Work but delivered and suitably stored at one of the Sites or at another location agreed to in writing by the parties, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the City's interest therein, all of which will be satisfactory to the City. The amount of retainage with respect to progress payments will be as stipulated in subsection (H) of this Section.

(C) Review of Application for Progress Payment. The City Engineer shall, within seven days after receipt of each Application for Payment, either certify, approve and present the Application to the City, or return the Application to the Company indicating in writing the City Engineer's reasons for refusing to recommend payment. In the latter case, the Company may make the necessary corrections and resubmit the Application. Fourteen days after presentation of the Application for Payment to the City or, if required to be resubmitted hereunder, the resubmitted Application for Payment, the amount recommended will, subject to the provisions of subsection (E), become due and when due will be paid by the City to the Company. If payment is not made when due, simple interest, as provided in ARS Section 34-221(I), as amended, shall be paid by the City to the Company (excluding any fee to the Company). Disputes regarding progress payments of the Fixed Design/Build Price and Fixed Design/Build Price Adjustments shall be resolved in accordance with subsection (I) of this Section.

(D) Supporting Documentation for Application for Payment. Each Application for Payment shall be filled out and signed by the Company's Contract Representative covering the construction work completed as of the date of the Application and since the prior Application for Payment, and shall include: (1) a certification of the Company and the Lead Design Firm that all QA/QC procedures have been implemented in full compliance with the DB Quality Management Plan and that the Design/Build Work performed is in compliance with the Service Agreement; (2) the monthly updated MBE/WBE reports and lists required by subsections 4.20(C) and 4.20(D); and (3) written consent of the Surety for payment of the amount requested in the Application for Payment.

(E) Permissible Withholdings. The City may disapprove and withhold and retain all or any portion of any progress payment requested in any Application for Payment in an amount equal to the sum of:

- (1) any amounts which are permitted under this Section to be withheld from any payment requested in any Application for Payment;
- (2) any delay liquidated damages which are payable under Section 5.8;
- (3) any indemnification or other amounts which are due and owing to the City under any provision of this Service Agreement;
- (4) any deductions which are required by Applicable Law;

- (5) any claims that have been made against the City on account of the Company's performance or furnishing of the Design/Build Work;
- (6) the amount of any Liens that have been filed in connection with the Design/Build Work, except where the Company has delivered a specific bond satisfactory to the City to secure the satisfaction and discharge of such Liens;
- (7) an amount equal to the cost to the City of performing any portion of the Design/Build Work in the event of a failure by the Company or any Subcontractor to timely perform its obligations under the warranties given pursuant to subsection 4.1(I);
- (8) any payments with respect to which the construction portion of the Design/Build Work covered by such Application for Payment (or any previous Application for Payment) does not comply with this Service Agreement; and
- (9) all progress payments, if an Event of Default of the Company has occurred under Section 12.2.

The entire amount of any progress payment may be withheld if the Company has either failed to submit the MBE/WBE utilization report with any Application for Payment or has failed to meet the MBE/WBE utilization goals as established in Section 4.20.

(F) Final Application for Payment. The Company shall prepare and submit to the City for purposes of demonstrating Final Completion: (1) a certificate of the Lead Design Firm certifying (a) that all applicable Design/Build Work has been completed in accordance herewith and with the Design Requirements and the Supplemental Technical Information, (b) that Acceptance of the Facilities has occurred, and (c) all other conditions of Final Completion have occurred or been achieved; and (2) a final Application for Payment. The final Application for Payment shall enclose: (i) AIA Document G707 (Consent of Surety Company to Final Payment) certifying the Surety agrees that final payment of the Fixed Design/Build Price shall not relieve the Surety of any of its obligations under the Performance and Payments Bonds; (ii) a "Contractor's Affidavit Regarding Settlement of Claims" (available from the City) and complete and legally effective releases or waivers acceptable to the City in the full amount of the Design/Build Price, or if any Subcontractor refuses or fails to furnish such release or waiver, a bond or other security acceptable to the City to indemnify the City against any payment claim; and (iii) a list of all pending property damage and personal injury or death insurance claims arising out of or resulting from the Design/Build Work, identifying the claimant and the nature of the claim.

(G) Final Payment. If based on the City Engineer's (1) observation of the Design/Build Work, (2) final inspection, and (3) review of the final Application for Payment and other documents required by subsection (F) of this Section, the City Engineer is satisfied that conditions for Final Completion have been satisfied, the City Engineer shall, within 30 days after receipt of the final Application for Payment, furnish to the City and the Company the City Engineer's recommendation of final payment and Final Completion. If the City Engineer is not satisfied, the City Engineer shall return the final Application for Payment to the Company, indicating in writing the reasons for not recommending final payment, in which case the Company shall make the necessary corrections and resubmit the final Application for Payment.

(1) City Concurrence. If the City concurs with the City Engineer's recommendation of final payment, the City will, within 15 days, file a written notice of final completion of the Design/Build Work and notify the Company and the City Engineer of such acceptance. Within 60 days after filing such notice, the City shall pay to the Company the balance of the Design/Build Price, subject to any withholdings and those other provisions governing final payment specified herein.

(2) City Non-Concurrence. If the City does not concur with the City Engineer's determination, the City will return the Application to the Company, through the City Engineer, indicating in writing its reasons for refusing final payment and Final Completion. The Company shall promptly make the necessary corrections and resubmit the Application to the City Engineer. The City's written determination shall bind the Company, unless the Company delivers to the City, through the City Engineer, written notice of claim within 30 days after receipt of that determination.

(3) Partial Release of Final Payment. If recommended by the City Engineer, the City may, upon receipt of the Company's final Application for Payment and without terminating the Design/Build Period, make payment of the balance due for that portion of the Design/Build Work fully completed and accepted, if Final Completion is significantly delayed due to Uncontrollable Circumstances. If the balance to be held by the City for the Design/Build Work not fully completed or corrected is less than the retainage on that work, the affidavits specified in subsection (F) of this Section and the release or waiver, or Performance and Payment Bonds, shall be furnished as required and submitted by the Company. Payment of the balance due shall be made under the provisions for final payment, but shall not constitute a waiver of claims. The City shall

pay with reasonable promptness any amounts deducted from the final payment, upon resolution of the claims for which the amounts were withheld.

Final payment does not constitute a waiver by the City of any rights relating to the Company's obligations under the Service Agreement. Final payment constitutes a waiver of all claims by the Company against the City other than those previously filed in writing with the City on a timely basis and still unsettled.

(H) Retainage. Each progress payment made by the City to the Company pursuant to a duly certified and approved Application for Payment shall be subject to retainage in amounts specified in ARS Section 34-607. Interest earned on the retainage holdback shall be for the City's benefit only, unless the Company has otherwise provided security in lieu of such retainage as provided in ARS Section 34-607. The City shall release to the Company the accumulated funds (with or without interest, as appropriate) so retained upon receipt of certification from the Company and confirmation by the City Engineer that Final Completion has occurred. Upon confirmation by the City Engineer that Final Completion has been achieved, the City shall release to the Company an amount equal to the aggregate retainage holdback. Prior to reduction in or partial release of retainage, the Company shall submit AIA Document G707A (Consent of Surety to Reduction in or Partial Release of Retainage) certifying that the Surety agrees that such reduction in or partial release of retainage shall not relieve the Surety of any of its obligations under the Performance and Payment Bonds.

(I) Disbursement Dispute Procedures. If the City Engineer determines pursuant to subsection (C) of this Section not to recommend any payment requested in an Application for Payment, or disputes any progress payment for Fixed Design/Build Price Adjustments, the City Engineer shall provide prompt written notice to the Company and the City as to the City Engineer's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Company may make the necessary corrections and resubmit an Application for Payment to the City Engineer, or the City Engineer may agree on a revised amount or estimate, as applicable, in which case the Company shall promptly notify the City of such agreement and thereupon be entitled to payment. Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if: (1) the Company demonstrates to the City Engineer that the Design/Build Work providing the basis for the progress payments covered in the Application for Payment giving rise to the dispute or that any disputed Application for Payment is correct; and (2) the City Engineer concurs with such demonstration. The Company shall not be

entitled to progress payments disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the Company shall be entitled to all progress payments which are not in dispute. In the event that upon resolution of any such dispute it is determined that the Company was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Company shall be entitled promptly to receive such disputed amount, together with interest thereon for the period of dispute calculated at the rate of 1.0% per month. Nothing contained in this subsection shall be deemed to alter the rights of the parties, if any, under Article XII hereof, including the right of either party to request a referral of the dispute to Non-Binding Mediation.

(J) Certification of Amounts Due. Whenever requested by the City, the Company shall submit a sworn statement certifying all amounts then due (or yet to become due) the Company for the Design/Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Company and any Subcontractor.

SECTION 6.6. PROMPT PAYMENT. (A) Company Payment to Subcontractor or Supplier. The Company shall pay its Subcontractors within seven days of receipt of each progress payment from the City. The Company shall pay for the amount of Design/Build Work performed or materials supplied by each Subcontractor as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the Company shall result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Company shall pay Subcontractors the reduced retention within 14 days of the payment of the reduction of the retention to the Company. No contract between Company and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided herein. If the Company fails to make payments in accordance with this Section, the City may take any one or more of the following actions and the Company agrees that the City may take such actions: (1) to hold the Company in default under this Service Agreement; (2) withhold future payments including retention until proper payment has been made to Subcontractors in accordance with this Section; or (3) terminate this Service Agreement.

(B) Alternative Dispute Resolution Between Company and Subcontractor or Supplier. If Company's payment to a Subcontractor is in dispute, the Company and the Subcontractor agree to submit the dispute to any of one of the following dispute resolution processes within 14 days from the date any party gives notice to the other: (1) binding arbitration; (2) a form of alternative dispute resolution (ADR) agreeable to all parties; or (3) a

City-facilitated mediation. When disputed claim is resolved through ADR or otherwise, the Company and the Subcontractor agree to implement the resolution within seven days from the resolution date.

(C) Inspection and Audit. The City shall have all rights and remedies to inspect and audit the records and files of the Company or the Subcontractor in accordance with the provisions of ARS Section 35-214.

(D) Non-Waiver. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

(E) Inclusion of Provisions in Subcontracts. The Company shall include these prompt payment provisions in every Subcontract, including procurement of materials and leases of equipment for this Service Agreement.

(F) No Subcontractor Claims. Nothing contained in this Section shall provide a basis for any Subcontractor claim against the City from its administration, enforcement or waiver of this prompt payment provision.

SECTION 6.7. NO ACCEPTANCE, WAIVER OR RELEASE. Unless other provisions of this Service Agreement specifically provide to the contrary, none of the following, without limitation, shall be construed as (i) the City's acceptance of any Design/Build Work which is defective, incomplete, or otherwise not in compliance with this Service Agreement, (ii) the City's release of the Company from any obligation under this Service Agreement, (iii) the City's extension of the Company's time for performance, (iv) an estoppel against the City, or (v) the City's acceptance of any claim by the Company:

(1) the City's payment to the Company or any other person with respect to the Facilities;

(2) the City's review, consent, approval or acceptance, as applicable, of any Design Documents, submissions, permit applications, punch lists, other documents, certifications (other than certificates relating to Acceptance or Final Completion of the Facilities), or Design/Build Work of the Company or any Subcontractor;

(3) the City's review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Design/Build Work;

(4) the City's entry at any time on the Sites (including any area in which the Design/Build Work is being performed);

(5) any observation, inspection or testing of (or failure to observe, inspect or test) any Design/Build Work (whether finished or in-progress) by the City or any other person;

(6) the failure of the City or any City consultant to respond in writing to any notice or other communication of the Company; or

(7) any other exercise of rights or failure to exercise rights by the City hereunder.

ARTICLE VII

OPERATION AND MANAGEMENT

SECTION 7.1. COMPANY OBLIGATIONS GENERALLY. (A) Operation and Management Responsibility. Commencing on the Provisional Acceptance Date, the Company shall operate and manage the Facilities on a 24-hour per day, 7-day per week basis, and shall treat Raw Water, produce and supply Finished Water, and transport and dispose of Plant By-Products and operating wastes, provide all information necessary to secure and maintain Governmental Approvals, and otherwise operate and manage the Facilities so as to comply with the Contract Standards applicable to such activities, each of the plans pertaining thereto set forth in the Appendices, and the other terms and conditions of this Service Agreement, including the Transaction Documents.

(B) Transfer and Application of Industry Experience. The Company shall use all reasonable efforts to transfer to and apply at the Facilities the benefit of the advances and improvements in technology, management practices and operating efficiencies which are developed by the Company, the Guarantor and their Affiliates through the operation of their worldwide water treatment businesses and industry research and development activities conducted over the full Term of this Service Agreement, and which are useful and appropriate in the good faith judgment of the Company for carrying out the Operation Services in a manner which improves upon the Contract Standards.

(C) Administrative Space. The Company shall provide suitable and sufficient office space at the Plant for the exclusive use of the City's compliance personnel and advisors in accordance with the requirements set forth in Appendices 5 and 14. The cost related to the City's use of such office space (including janitorial services) has been priced into the Service Fee.

SECTION 7.2. CITY OBLIGATIONS GENERALLY. The City, in addition to the obligations it has accepted elsewhere in this Service Agreement, shall:

(1) Make available to the Company upon request copies of all information relating to the Facilities which is in the possession of the City and material to the Company's performance hereunder;

(2) Grant and assure the Company access to the Facilities for the performance of its obligations hereunder;

(3) Maintain and repair in good working order all Water System assets which are material to the Company's performance of the Operation Services;

(4) Cause CAP to perform its responsibilities with respect to the Intake pursuant to the Water Services Contract as and to the extent required to permit the performance by the Company of the Operation Services in accordance with the Contract Standards; and

(5) Pay the Service Fee and any other amounts due the Company in accordance with the terms and conditions of this Service Agreement.

SECTION 7.3. SERVICE COORDINATION. (A) Company's Service Manager.

The Company shall appoint a full-time manager of the Plant and all of the other components of the Facilities (the "Service Manager") who shall be licensed, trained, experienced and proficient in the management and operation of water treatment systems comparable to the Facilities, shall have a Grade IV operator's certification and be otherwise appropriately certified under Applicable Law, and whose sole employment responsibility shall be managing the Company's performance of the Operation Services. The Service Manager shall reside in Maricopa County at all times during the Term of this Service Agreement. The Company acknowledges that the performance of the individual serving from time to time as the Service Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the City and the Service Manager will be essential to effectuating the intent and purposes of this Service Agreement. Accordingly, not fewer than 30 days prior to the date on which any candidate for Service Manager from time to time during the Term of this Service Agreement is proposed by the Company to assume managerial responsibility for the Facilities, the Company shall: (1) provide the City with a comprehensive resume of the candidate's licenses, training, experience, skills and approach to management and customer relations; and (2) afford the City an opportunity to interview the candidate with respect to such matters. The City shall have the right within 30 days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The initial Service Manager shall be _____ **[Insert name of individual identified in the Company's Proposal]**, who shall not be replaced, unless otherwise approved by the City in its sole discretion, for a period of three years from the Acceptance Date absent death, disability, retirement, resignation or cessation of employment with the Company. The Company shall replace the Service Manager at the request of the City, after notice and a reasonable opportunity for corrective action, in the event the City determines, in its sole discretion, that an unworkable relationship has developed between the Service Manager and the City.

(B) Communications and Meetings. On or before the Provisional Acceptance Date, the Company shall inform the City of the telephone, fax and pager numbers, e-mail

address and other means by which the Service Manager and Senior Supervisors may be contacted. The City shall furnish to the Company comparable communications information with respect to the Contract Administrator. The Company shall meet with the City each month to review the contents of the monthly operations reports required to be prepared pursuant to Section 7.14. The Service Manager and, if requested by the City, the Senior Supervisors each shall personally attend the monthly operations meetings with the City, and all special meetings which the City may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Facilities and this Service Agreement. Any issue in dispute which the parties are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation, and the resolution of any issues resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum.

(C) Complaints and Communications. The Company shall respond in a timely and effective manner to all complaints and communications received by the Company or the City regarding the treatment and distribution of water, odor and air emissions, noise, construction or any other matter related to the Operation Services. The Company shall investigate each such complaint and communication and, if it has a valid basis, the Company shall promptly rectify the matter. Complaints and communications concerning spillages, leaks, breaks and emergencies relating to the Facilities shall be responded to within one hour, and other communications within 24 hours. All such complaints and communications shall be immediately logged and promptly responded to in writing, faxed to the City on a daily basis, and reported to the City as part of the monthly operations reports delivered pursuant to Section 7.14. The Company shall establish, maintain and make freely known a telephone number, e-mail address and mailing address to which customer or citizen complaints and communications may be directed.

(D) Relations with Contract Customers. The Company shall cooperate with and assist the City in performing its obligations under its agreements with the Contract Customers relating to the Facilities, including providing all information, data and reports required under such agreements.

SECTION 7.4. STAFFING AND PERSONNEL. (A) Staffing Generally. The Company shall staff the Facilities during the Term of this Service Agreement with qualified personnel who meet the licensing and certification requirements of the State in accordance with the Contract Standards. The Company shall discipline or replace, as appropriate, any employee of the Company or any Subcontractor engaging in unlawful, unruly or objectionable

conduct. The Company shall notify the City of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would adversely affect the ability of the Company to provide the Operation Services.

(B) Key Operations Staff. Key operations staff for the Facilities shall each have prior experience with the operation of at least one of the advanced technologies utilized in the Facilities for clarification, organics removal or disinfection. Collectively, key operations staff shall have experience with all of the advanced technologies utilized in the Facilities.

(C) Prohibition Against Contacting WSD Employees. The Company shall not at any time during the Term of this Service Agreement directly contact and recruit any WSD employee for employment at the Facilities or any other water treatment facilities operated by the Company or any of its Affiliates.

(D) Minimum Health Benefits. The Company shall provide and maintain during the Term of this Service Agreement continuous medical coverage for its employees and their dependents, which coverage shall include at a minimum:

- (1) hospitalization with at least 60% coverage (in-and-out patient);
- (2) doctor's visits with at least 60% coverage; and
- (3) prescription drug coverage.

The Company shall promptly notify the City of any changes to its medical insurance coverage plan which reduces the medical benefits below those levels prescribed above and provide the City with copies thereof.

(E) Employee Dispute Resolution Process. The Company shall provide and maintain during the Term of the Service Agreement a dispute resolution process for resolving disputes between on-site Company employees and the Company. Such process shall conform with the dispute resolution process outlined in Appendix 14. **[The dispute resolution process that will be contained in Appendix 14 will be based on the description of dispute resolution process set forth in the Selected Proposer's Final Technical Proposal.]**

(F) Training. The Company shall be responsible for training the Service Manager, operations supervisors and other Company personnel. No later than 90 days prior to the commencement of the Acceptance Tests, the Company shall submit to the City for its review and comment a personnel training program which the Company proposes to institute in order to ensure that the Facilities are managed and operated by qualified personnel throughout the Term hereof and in accordance with this Service Agreement. Such personnel training

program shall include the personnel training guidelines, policies and procedures established: (1) by the City, ADEQ and the EPA; (2) in any Governmental Approval or operator's certificate required or issued by any Governmental Body; and (3) in any other Applicable Law.

SECTION 7.5. TRAINING OF CITY PERSONNEL. (A) Emergency Preparedness. The Company acknowledges that, notwithstanding the execution of this Service Agreement, the City will retain the responsibility for supplying potable water in its Service Area and serving the public health, safety and welfare needs of its citizens and customers. The City accordingly shall have the right from time to time to designate five officers or employees for the purpose of receiving emergency preparedness training from the Company. Such training shall be regularly repeated and renewed so as to be sufficient to enable any of the five officers or employees to be familiar with the equipment, supplies, processes, operations and performance of the Facilities at a level which will permit such officials to properly respond to any operating or water supply emergency and to assume managerial responsibility for the City in the event the City elects to exercise its rights in an emergency to take temporary possession of the Facilities pursuant to Section 7.16.

(B) Ongoing Training. During start-up and Acceptance Testing of the Facilities and at least annually during the Term of this Service Agreement, the City shall have the right to send not more than five City employees to any personnel training programs offered by the Company to its personnel pursuant to subsection 7.4(F). The Company shall provide the City with notice of each personnel training program at least 15 days prior to the scheduled date or dates thereof. The City shall notify the Company, prior to the commencement of any such training program, of the names of those City employees scheduled to attend such program. Such employees may include any of the individuals designated by the City for emergency preparedness training as provided in subsection (A) of this Section. The Company shall be responsible for the cost of training such City employees, and the City shall be responsible for all employee expenses (travel, lodging, meals, etc.) incurred while participating in such training programs.

(C) Permanent Operations. The Company shall, on not less than 30 days' prior written notice from the City, conduct a training program for the City and its designees in order to enable the City to assume operating and management responsibility for the Facilities at the expiration or termination of this Service Agreement. The program shall train supervisory and operating personnel in sufficient numbers and job classifications so as to allow the City and its designees to operate and manage the Facilities in accordance herewith and with the same degree of skill and performance as the Facilities are required to be operated by the

Company during the Term hereof. The training afforded to City employees or designees shall be substantially equivalent to the training afforded the Company's and Subcontractor's employees in connection with the start-up of the Facilities prior to the Acceptance Tests. In addition, the Company shall permit City supervisory and operating personnel to observe the Company's operation of the Facilities for a period of up to six months prior to expiration or termination of the Service Agreement, which observation activities shall not interfere unreasonably with the Company's performance of the Operation Services. All costs pertaining to the observation activities of City supervisory and operating personnel shall be borne by the City.

SECTION 7.6. ELECTRICITY SUPPLY AND CONSUMPTION. The City shall have the exclusive right at any time to arrange for the supply of electricity to the Facilities, to determine the electricity supplier, and to negotiate and establish electric rates with the electricity supplier. The Company shall cooperate with and assist the City in making such arrangements, and the City shall give reasonable consideration to any requests and recommendations made by the Company as to the terms and conditions of electricity supply. The City shall pay all electricity bills in a timely manner, subject to annual reimbursement by the Company as part of the Annual Settlement Statement process set forth in Section 11.10 in the event that the Guaranteed Maximum Annual Electricity Costs are exceeded as provided in subsection 11.10(B). Notwithstanding the preceding sentence, the Company shall reimburse the City on a monthly basis in an amount equal to all fines and penalties imposed by the electricity provider resulting from the Company's performance of this Service Agreement. The Company shall operate the Facilities in a manner which minimizes, to the maximum extent reasonably practicable in light of its obligation to provide the Operation Services, charges for electricity use, demand, transmission and distribution which are payable by the City hereunder.

SECTION 7.7. ON-LINE ELECTRONIC OPERATION AND MAINTENANCE MANUAL. (A) Company Responsibility. The Operation Services shall be performed substantially in compliance with the On-Line Electronic Operation and Maintenance Manual, the Operating Protocol and the Company's computerized maintenance management system required by Section 9.4. The Company shall keep the On-Line Electronic Operation and Maintenance Manual current and shall update its database, at least annually, with appropriate procedural updates, supplements or revisions to maintain the content current with Good Industry Practices and in accordance with Attachment 5C to Appendix 5. Such updates shall not diminish in any manner the standards set forth in the initial On-Line Electronic Operation

and Maintenance Manual. The Company shall provide to the City and the City Engineer five copies of a report detailing any proposed updates, supplements or revisions to the On-Line Electronic Operation and Maintenance Manual for their review and comment. The Company shall discuss in good faith with the City any aspect of the proposed updates, supplements or revisions. Notwithstanding any such review and comment by and discussion with the City, the On-Line Electronic Operation and Maintenance Manual shall remain, at all times, the responsibility of the Company. Neither the review of or comment upon, nor the failure of the City to comment upon, the On-Line Electronic Operation and Maintenance Manual shall: (1) relieve the Company of any of its responsibilities under this Service Agreement; (2) be deemed to constitute a representation by the City that operating the Facilities pursuant to the On-Line Electronic Operation and Maintenance Manual will cause the Facilities to be in compliance with this Service Agreement or Applicable Law; or (3) impose any liability upon the City.

(B) Supplements for Capital Modifications. The Company shall prepare supplements and revisions to the On-Line Electronic Operation and Maintenance Manual which are required due to the design, construction and installation of all Capital Modifications. Such supplements and revisions shall be provided and reviewed in the same manner as provided in this Section. The cost and expense of all such supplements and revisions shall be borne by the Company, except with respect to supplements and revisions necessitated by Capital Modifications directed by the City or required by a Change in Law or other Uncontrollable Circumstance.

(C) City-Directed Changes to On-Line Electronic Operation and Maintenance Manual. The City may, from time to time during the Term of this Service Agreement, direct the Company to modify its On-Line Electronic Operation and Maintenance Manual to conform with changes made by the City to its Administrative Information Access System. Such modifications, which shall be subject to the City's approval, shall be provided and reviewed in the same manner as provided in this Section. The Company's cost and expense of any such modification shall be borne by the City, subject to Cost Substantiation.

SECTION 7.8. SAFETY. The Company shall maintain the safety of the Facilities at a level consistent with the Contract Standards. Without limiting the foregoing, the Company shall: (1) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Facilities to, (a) all employees working at the Facilities and all other persons who may be involved with the operation, construction, maintenance, repair and replacement of the

Facilities, (b) all visitors to the Facilities, (c) all materials and equipment under the care, custody or control of the Company on the Sites, (d) other property constituting part of the Facilities, and (e) City Property; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and implementing a comprehensive safety program; (3) give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the Facilities whose duty shall be the development and implementation of safety rules at the Facilities, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, State and City officials; (5) operate all equipment in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movements; and (7) develop and implement a Health and Safety Program that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections, and a written site-specific Health and Safety Plan designed to implement the requirements of this Section and Appendix 14. The Company shall make all Capital Modifications to the Facilities which may be required under the Occupational Safety and Health Act which are or become applicable to the Facilities, whether due to the Company's assumption of management responsibilities or otherwise.

SECTION 7.9. SECURITY. (A) Security Generally. The Company, in accordance with the Contract Standards and Appendix 14, shall be responsible for the security and protection of the Facilities. The Company shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Facilities in accordance with the Contract Standards and Appendix 14.

(B) Security Guards and Vehicles. The Company shall be responsible for Subcontracting for specialized security guards or vehicles to patrol the Sites for the protection of the Facilities in a manner that is consistent with the City's security program for the entire Water System. The security services hereunder shall be performed by unrelated third-parties and in no event shall the Company use its own employees for the provision of such services. The Company shall pay for all costs relating to such third-party specialized security and vehicles and shall be reimbursed therefor by the City as provided in Section 11.6. The City may, from time to time during the Term of this Service Agreement, direct the Company to

modify the number of any such security guards or vehicles to conform with changes made by the City to its Water System security program.

SECTION 7.10. COMPLIANCE WITH APPLICABLE LAW. (A) Compliance Obligation. The Company shall perform the Operation Services in accordance with Applicable Law, and shall cause all Subcontractors to comply with Applicable Law. The Company shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the Facilities, Raw Water, Finished Water, Plant By-Products, air emissions and odor notwithstanding the fact that the Company may not be a permittee or co-permittee on some or all of such Governmental Approvals.

(B) Sampling, Testing and Laboratory Work. The Company shall perform and provide all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be ADEQ and EPA certified, as applicable, for the applicable test, shall be operated in accordance with Good Industry Practice, and shall be audited and monitored by the Company for compliance with EPA standard test methods. All sampling and test data shall be available for review by, and reported to, the City in accordance with Section 7.14 and Appendix 14. The Company explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or third parties, both as to failures to detect and as to false detections. The Company shall permit the City, at the City's expense, to perform any testing, sampling or analytical procedure it deems appropriate, using the Facilities or otherwise.

(C) Investigations of Non-Compliance. In connection with any actual or alleged event of non-compliance with Applicable Law, the Company shall, in addition to any other duties which Applicable Law may impose: (1) fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body; (2) attend all meetings and hearings required by any Governmental Body; (3) provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to the City; (4) in conjunction with the City, communicate in a timely and effective manner with the general public as to the nature of the event, the impact on the public, and the nature and timetable for the planned remediation measures; and (5) immediately upon receipt thereof, provide the City with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body. The Company shall furnish the

City with an immediate written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or non-compliance to the extent the Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. To the greatest extent practicable, the Company shall provide the City an opportunity to review and comment on any proposed Company response to any non-compliance with Applicable Law hereunder prior to its implementing such response.

(D) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances, in the event that the Company or any Subcontractor fails at any time to comply with Applicable Law with respect to the Facilities, Raw Water, Finished Water, air emissions, odor, Plant By-Products or other environmental or operating conditions, the Company shall, without limiting any other remedy available to the City upon such an occurrence and notwithstanding any other provision of this Service Agreement: (1) immediately correct such failure and resume compliance with Applicable Law; (2) bear all Loss-and-Expense of the Company and the City resulting therefrom; (3) pay or reimburse the City for any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) make all Capital Modifications and changes in operating and management practices which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Company to comply with Applicable Law. The Company shall have the right to contest any fine or penalty imposed under this subsection so long as: (1) the Company is contesting any such action in good faith by appropriate proceedings conducted with due diligence; and (2) the City shall have no liability as a result of the failure of the Company to pay any such fine or penalty during the period of contest.

(E) No Nuisance Covenant. The Company shall keep the Facilities neat, clean and litter-free at all times, ensure that the operation of the Facilities does not create any odor, litter, noise, fugitive dust, vector, excessive light or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur which is not caused by Uncontrollable Circumstances, the Company shall immediately remedy the condition, pay any fines or penalties relating thereto, make all Capital Modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless the City from any Loss-and Expense relating thereto in the manner provided in Section 13.3.

SECTION 7.11. OPERATING GOVERNMENTAL APPROVALS. (A) Applications and Submittals. The Company shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained, maintained, renewed or extended by or in the name of the Company or the City under Applicable Law in order to operate the Facilities, including those set forth in Appendix 2. All permit and filing fees required in order to obtain and maintain Governmental Approvals for the Operation Services shall be paid by the Company, regardless of the identity of the applicant, except with respect to Governmental Approvals required in connection with an Uncontrollable Circumstance. With respect to Governmental Approvals which are required to be obtained in the name of the City, the Company shall: (1) prepare the application and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions of such Governmental Approvals; (4) attend all required meetings and hearings; and (5) take all other action necessary in obtaining, maintaining, renewing, extending and complying with the terms of such Governmental Approvals. The Company shall agree to be named as a co-permittee on any Governmental Approval if so required by the issuing Governmental Body or the City. The Company shall manage the process of obtaining and maintaining the Governmental Approvals on behalf of the City for which it is responsible hereunder in a manner which affords the City a reasonable opportunity to review and comment on such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 14. The City shall deliver to the Company all Governmental Approvals relating to the Facilities to which it is a party promptly following receipt thereof. With respect to any Capital Modification, the Company shall obtain, maintain, renew and extend Governmental Approvals required for their construction and operation.

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

application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose an unreasonable cost or burden on the City or that would contravene any City policies with respect to the matters contained therein. The City reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Company which would have the effect described in the preceding sentence.

(C) Non-Compliance and Enforcement. The Company shall report to the City, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Facilities. The City shall have the right independently to enforce compliance with the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body. The failure of the Company to comply with any Governmental Approval shall constitute a breach of this Service Agreement as well as an event of non-compliance with the Governmental Approval.

(D) Reports to Governmental Bodies. The Company shall prepare all periodic reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under Applicable Law with respect to the Facilities, including sampling and testing results. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the City, if such are acceptable to the Governmental Body. The Company first shall provide the City with copies of such regulatory reports for review, comment and signature, as applicable, at least seven days before their filing with the Governmental Body.

(E) Potential Regulatory Change. The Company shall keep the City regularly advised as to potential changes in regulatory requirements affecting the water treatment industry and the Facilities, and provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the City should a Change in Law actually occur. The Company, at the request of the City, shall participate in performance evaluation surveys conducted by the ADEQ and the EPA.

SECTION 7.12. CITY ACCESS TO FACILITIES. The City shall have the right at any time, on a 24-hour per day, 365-day per year basis, to visit and inspect the Facilities and observe the Company's performance of the Operation Services. The Company shall permit and facilitate access to the Facilities for such purposes by City personnel and by agents and contractors designated by the City. Keys or passwords, as applicable, for the facilities or

structures comprising the Facilities shall be provided to the City's Contract Administrator by the Company in accordance with the Company's physical security plan and key control program. All visitors shall comply with the Site-specific Health and Safety Plan and rules, and shall not interfere with the Company's operations of the Facilities. When visiting any portion of the Facilities that is staffed by the Company at the time of the visit, all City employees, agents and contractors shall announce themselves to the staff and Company employees may elect to accompany any City employees, agents and contractors during the visit. The parties agree that the City shall have immediate access to the Facilities, and no Company rule or procedure shall impede, impair or delay such access; provided that the City and its agents and contractors shall at all times comply with the Site-specific Health and Safety Plan and rules.

SECTION 7.13. ASSET AND FINANCIAL RECORDS. (A) Facilities Records. The Company, on and after the Provisional Acceptance Date, shall establish and maintain a computerized information system with respect to the Facilities for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Service Agreement and demonstrate compliance with the Contract Standards. The Company shall promptly provide the City, upon reasonable request, with copies of all operations and maintenance data and other information kept by the Company in its performance of the Operation Services.

(B) Availability of Facilities Records to City. The Company shall make available to the City all operations, maintenance, performance, Plant By-Products management, process control and similar records and data as are available to the Company's Service Manager. The City shall have real time, continuous computer access to such records and data, and hard copy reproduction capability, through information systems installed and maintained by the Company at a location in the City outside the Plant designated by the City.

(C) Record Documents. The Company shall maintain at the Facilities and make available to the City upon request for review and copying: (1) all Design Documents and "as-built" or record drawings and documents pertaining to the Facilities copies of which were delivered to the City by the Company pursuant to Appendix 4; and (2) similar documents relating to any Capital Modifications. The Company shall: (1) keep current all such records to show any changes to the Facilities (including valves, pipes, pumps, meters and other assets) made by the Company in the performance of the Operation Services; and (2) provide advice and assistance to the City, based on such records, in establishing and maintaining any City geographic mapping and information systems.

(D) Financial Records. The Company shall prepare and maintain proper, accurate, complete and current financial books, records and accounts, in accordance with generally accepted accounting principles, with respect to all aspects of the Facilities and Operation Services, including direct and indirect personnel expenses, Subcontractor costs, the costs of material, equipment and supplies, maintenance, repair and replacement items, operating expenses and overhead. These financial records shall be in form and substance sufficient to support all financial reporting, including Cost Substantiation, required hereunder. In the event the Company fails to prepare or maintain any books, records or accounts as required under this Section, the Company shall not be entitled to any requested payments or adjustment for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. The Company shall keep the relevant portions of the books, records and accounts maintained with respect to each Contract Year until at least the tenth anniversary of the last day of each such Contract Year (or such longer period as may be appropriate to account for any dispute then pending). For those circumstances that require Cost Substantiation under Section 15.8, the Company shall make such books and records available to the City for inspection, audit and copying upon reasonable notice during business hours to the extent necessary to allow the City to determine to its reasonable satisfaction the accuracy, completeness, currency and propriety of any charge or request for payment hereunder. The Company shall not be required to provide the City any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the City through the Cost Substantiation process. The provisions of this Section shall survive the termination of this Service Agreement.

(E) Company Financial Reports. The Company shall furnish the City, within 90 days after the end of each Contract Year, consolidated balance sheets and income statements for the Company attached to the audited year-end financial statements reported upon by the Company's independent public accountant. If applicable, the Company shall also furnish the City with copies of the quarterly and annual reports and other filings of the Company filed with the Securities and Exchange Commission.

(F) Allocation of Costs. For the purpose of assisting the City in retail and wholesale water rate development and apportioning the cost of service to the City's water customers, the Company shall provide an allocation of costs by treatment processes to the detail as determined by the City. Cost allocation information shall be estimated annually in advance as part of the budgetary submittal made by the Company pursuant to Section 11.9.

(G) Inspection, Audit and Adjustment. The City shall have the right to perform or commission an inspection or independent audit of the financial information required to be kept under this Section, subject to possible reimbursement as provided in this Section. If an inspection or audit reveals that the Company has overstated any component of the Service Fee, then the Company shall, at the election of the City, either immediately reimburse to the City or offset against future Service Fee payments, as a Service Fee adjustment, the overstated amount, in addition to interest, from the time such amount was initially overpaid until reimbursed or credited to the City, at the Overdue Rate. If an inspection or audit contemplated by this Section discloses an overpayment of the Service Fee to the Company of 1% or more of the total amount that should have been properly paid by the City during the period audited, then the Company shall, in addition to the reimbursement or credit of such overpaid amount, with interest, reimburse the City for any and all Fees and Costs incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the City may have, including remedies for an Event of Default by the Company.

SECTION 7.14. PERIODIC REPORTS. (A) Monthly Operations. The Company shall provide the City with monthly operations reports no later than 15 days after the end of each Billing Period. In addition to the operating data specified in Appendices 13 and 14, the monthly operations reports shall include a report by the Company of any final, regulatory enforcement actions against it or any of its Affiliates with respect to their United States water treatment plant operations.

(B) Annual Operations and Maintenance Reports. The Company shall furnish the City, within 30 days after the end of each Contract Year following the Provisional Acceptance Date, an annual summary of the information contained in the monthly operations reports. The Company shall also perform and report to the City, as part of its annual operations maintenance report, the results of a comprehensive performance evaluation which will review and analyze the administrative, operational and maintenance practices employed in the management of the Facilities. The annual operations and maintenance report shall also include a summary of all replacements or retirement of Facilities Equipment and Capital Modifications.

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

(D) Permit Communications and Reports. The Company shall provide to the City copies of all final communications and reports furnished to any Governmental Body pursuant to Section 7.11 simultaneously with their submittal to the Governmental Body.

SECTION 7.15. EMERGENCIES. (A) Emergency Plan. Within 180 days prior to the Scheduled Acceptance Date, the Company shall provide the City with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to the City and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the City and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; and (3) assure the timely availability of all personnel required to respond to any emergency (no later than two hours during nights, weekends or holidays). The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary.

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

SECTION 7.16. CITY MANAGEMENT OF THE FACILITIES IN AN EMERGENCY.

(A) Determination by City. In the event that the City determines at any time after Substantial Completion that a public health, safety or welfare emergency exists or is threatened due to water being supplied to the Water System by the Facilities, the City shall have the right to assume immediate occupancy, possession, management and control of the Facilities and all Facilities operations. Such a determination may be made: (1) based on any fact or circumstances known or suspected by the City; and (2) irrespective of whether the fact or circumstance giving rise to the public health, safety or welfare concern is caused by Uncontrollable Circumstances, and regardless of whether the cause thereof is known at the

time of the emergency determination. The City's rights under this Section are in addition to any rights it may otherwise have under any Applicable Law to assume occupancy, possession, management or control of the Facilities and its operations.

(B) Notification Procedure. An emergency determination may be made by the City solely in relation to the Facilities and for purposes of this Service Agreement, and need not be accompanied by or related to any other health or emergency action by the City for any other purpose. Such a determination may be made by the WSD Director or his or her designee. The execution of such a determination by the WSD Director or such other official shall constitute sufficient authorization for the City to act under this Section. A copy thereof shall promptly be transmitted by facsimile or e-mail to the attention of the Service Manager and the Senior Supervisors, and an original executed copy thereof shall be served personally upon the Service Manager and the Senior Supervisors as soon as practicable. Any period during which the City assumes occupancy, possession, management and control of the Facilities pursuant to this Section is referred to herein as "City Emergency Operations".

(C) Rights and Responsibilities During City Emergency Operations. During City Emergency Operations the Company shall relinquish responsibility and authority for the management of the Facilities, shall not be responsible for the performance of any of its operating obligations hereunder, and shall cooperate with and assist the City in managing and carrying out such operating obligations. To the extent requested by the City, the Company's management and staff personnel shall remain on duty and perform such tasks as the City may direct. The City may utilize the services of any person as its agent, independent contractor or consultant in exercising its rights hereunder, and in such event the Company's cooperation, assistance and performance obligations under this extension shall extend to all such persons. The Company shall use its best efforts to mitigate its costs and the costs of the City during City Emergency Operations.

(D) Discontinuance of City Emergency Operations. City Emergency Operations shall continue until such time as the City determines that: (1) the emergency or threat has ceased and safe, stable Facilities operations have been resumed; and (2) the Company has demonstrated to the satisfaction of the City that it can operate the Facilities thereafter in a manner which will prevent the recurrence of any future emergency. The City shall give the Company written notice of such determination, which notice shall specify the date on which the Company shall resume management and control of Facilities operations and on which the City shall vacate the premises. All Company Operation Period responsibilities shall resume on the date so specified.

(E) Costs and Compensation. The parties shall seek to determine the cause of an emergency or threat thereof as soon as reasonably practicable during or following City Emergency Operations. In the event that it is determined that the emergency or threat thereof was not caused by Company Fault, the Company shall be paid the Service Fee and reimbursed for any extraordinary actual costs incurred during City Emergency Operations, subject to Cost Substantiation, and the City shall, to the extent permitted by Applicable Law, indemnify, defend and hold harmless the Company from all Loss-and-Expense incurred as a result of City Emergency Operations. If the cause of the emergency or threat thereof is determined to be Company Fault, then the Company shall not be entitled to the Service Fee or reimbursement of any of its costs for the period of City Emergency Operations, and shall indemnify, defend and hold harmless the City in accordance with Section 13.3 from all Loss-and-Expense incurred as a result of City Emergency Operations. In no event shall City Emergency Operations be considered to be the taking of private property for which any payment must be made.

SECTION 7.17. COST REDUCTION AND SERVICE IMPROVEMENT. In the event either party offers the other party any idea, approach or concept for lowering the Company's cost, reducing the City's Service Fee or total costs, or improving the Company's service, the other party shall reasonably consider and explore the development and implementation of the concept. Neither party shall be obligated to negotiate or to agree to amend this Service Agreement to effectuate any such idea, approach or concept except in its sole discretion and upon terms and conditions acceptable to it.

ARTICLE VIII

PERFORMANCE

SECTION 8.1. WATER SYSTEM. (A) Reliance. The Company acknowledges that the Facilities will constitute a primary component of the Water System and that the City, in meeting the water supply requirements of the Service Area, is providing an essential public service, and in complying with Applicable Law, will rely on the performance by the Company of its obligations hereunder.

(B) Management of Water System and Facilities. The City has and shall retain full management responsibility for the Water System. The Company shall be responsible for the operation, maintenance, repair, replacement and management of the Facilities.

(C) Facilities Interface with Water System. The Company shall manage the Facilities in a manner which serves and complements the requirements of the Water System and in accordance with the Operating Protocol, and agrees that no provision hereof shall confer upon the Company any right the exercise of which may adversely affect the Water System or the ability of the City to operate the Water System in a manner which serves the water needs of the Service Area in compliance with Applicable Law.

(D) Water Ownership and Limitations on Company Rights. The City is and shall remain the owner of all Raw Water purchased from CAP and the Finished Water notwithstanding the services provided by the Company hereunder. The Company shall not treat water other than Raw Water, and shall not use the Facilities for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than the City and its customers in the Service Area. The Company shall not impose a fee or charge on any person for the supply of Finished Water. The only compensation to the Company for providing the Operation Services shall be the Service Fee payable by the City hereunder. Nothing in this Service Agreement shall confer upon the Company any rights with respect to the City's water rights under any applicable contract, permit or other Governmental Approval or with respect to the City's determination of the quantity or quality of Raw Water delivered to the Facilities for treatment hereunder.

SECTION 8.2. WATER TREATMENT GUARANTEE. (A) Applicable Law Limits. Except to the extent relieved for Uncontrollable Circumstances, the Company shall operate the Facilities on a continuous, uninterrupted 24-hour per day, 7-day per week basis so as to produce Finished Water from Raw Water in compliance with the requirements of Applicable Law. In no event shall the Company deliver Finished Water that is not in compliance with the requirements of Applicable Law.

(B) Enhanced Standards. In addition to its obligations to comply with the Finished Water requirements imposed by Applicable Law as provided in subsection (A) of this Section and except to the extent relieved for Uncontrollable Circumstances, the Company shall produce Finished Water from Raw Water in compliance with the contract requirements set forth in Table 9-1 of Appendix 9 (the “Enhanced Standards”; the Enhanced Standards and the requirements in subsection (A) of this Section shall collectively mean the “Water Treatment Guarantee”).

(C) Liquidated Damages for Breach of Water Treatment Guarantee. Except to the extent relieved for Uncontrollable Circumstances, the Company shall pay liquidated damages in the amounts set forth in Table 9-4 of Appendix 9 for the Company’s failure to comply with certain Water Treatment Guarantee parameters. The remedies are designed to recognize the benefits of consistently high performance and the relative severity of not meeting such Water Treatment Guarantee parameters. The liquidated damages are divided into the following general categories of non-compliance events:

(1) Failure to Comply with Applicable Law and the Enhanced Standards. Any supply of Finished Water for which the non-compliance events identified in Table 9-4 of Appendix 9 results in non-compliance with (i) Applicable Law or (ii) the Enhanced Standards; and

(2) Unacceptable Finished Water Event. Any supply of Finished Water for which any of the non-compliance events identified in Table 9-4 of Appendix 9 results in (i) the need for public notification of non-compliance or (ii) the need for a “boil water” notice.

In addition to the liquidated damages that may be payable by the Company above, the occurrence of certain unacceptable Finished Water events as identified in Table 9-4 of Appendix 9 shall constitute grounds for termination of this Service Agreement by the City in accordance with Section 12.2.

(D) Adjustment of Liquidated Damages. All dollar amounts referenced in this Section shall be adjusted annually from the Contract Date by the CPI.

(E) Applicability of Water Treatment Guarantees. The Water Treatment Guarantee shall apply, except to the extent excused by Section 8.7 or other Uncontrollable Circumstances, without any allowance for scheduled or unscheduled downtime for Plant maintenance, repair or replacement, which the Company acknowledges has been factored into the Water Treatment Guarantees.

(F) Indemnity for Loss-and-Expense from Non-Complying Finished Water.

In the event that any Finished Water supplied to the Water System fails to comply with the requirements of subsections (A) and (B) of this Section, except to the extent such failure of compliance is caused by an Uncontrollable Circumstance, the Company shall indemnify, defend and hold harmless the City and the City Indemnitees in accordance with Section 13.3 from any Loss-and-Expense resulting from the supply of such non-complying Finished Water. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any party from exposure to or as a result of using or consuming such non-complying Finished Water based on any theory of recovery, including theories of product liability, toxic tort or environmental impairment. The Loss-and-Expense relating such liabilities to third parties to which the indemnity provided in this Section extends shall include all special, incidental, consequential, punitive and other similar damages, notwithstanding waivers contained with respect to such damages in Section 12.12.

(G) Change in Law Affecting Finished Water. The parties acknowledge that a

Change in Law may affect Finished Water standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Proposal Date. In the event a Change in Law occurs, the Company shall not be entitled to performance relief or additional compensation under Section 13.2 unless: (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Finished Water characteristic or parameter which is more stringent or burdensome to comply with than the Contract Standards in effect as of the Proposal Date applicable to such characteristic or parameter, or requires equipment or processes not then in place or practiced at the Facilities; and (2) the Company is unable, after taking all mitigation measures required under Section 13.2 with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation. In the event that a Change in Law increases the stringency of any Applicable Law standard from the stringency level in effect as of the Proposal Date, the Company shall nonetheless pay liquidated damages for non-compliance with respect to the more stringent standard unless the Change in Law has made such standard more stringent than the applicable Enhanced Standard.

SECTION 8.3. WATER DELIVERY GUARANTEE AND WATER AVAILABILITY

GUARANTEE. (A) City Demand Rights. Except as provided in subsections (L) and (M) of this Section with respect to scheduled Plant downtime and City-directed curtailments and except as the Company's obligations hereunder may be limited upon the occurrence of an Uncontrollable Circumstance (including excess Raw Water turbidity as and to the extent provided in Section

8.7), the City shall have the right throughout the Operation Period to demand (1) the delivery of Finished Water to the High Pressure Finished Water Transmission Line at Flow Rates between 10 MGD and 80 MGD, and (2) the delivery of Finished Water to the Low Pressure Finished Water Transmission Line at Flow Rates between 10 MGD and 30 MGD. Except as necessary to respond to an Uncontrollable Circumstance, the City shall not demand combined Flow Rates to the High Pressure Finished Water Transmission Line and the Low Pressure Finished Water Transmission Line in excess of 80 MGD. The Company shall use all reasonable efforts to meet any City-requested Flow Rate in excess of 80 MGD, but shall be under no obligation to do so unless any such excess deliveries can be made while operating the Plant in accordance with Applicable Law, Good Industry Practice and within its design limits and unless the parties are able to agree on appropriate compensation therefor.

(B) Projected Firm Demand Schedule. Not later than the close of business on each day during the Operation Period, the City shall furnish the Company with a projected firm Finished Water demand schedule for the following day (midnight to midnight). The schedule shall specify the Flow Rates for the entire 24-hour period and may call for no more than two Flow Rate changes with respect to each of the High Pressure Finished Water Transmission Line and the Low Pressure Finished Water Transmission Line.

(C) Modified Firm Demand Schedule. The City shall have the right on any day to modify the projected firm Finished Water demand schedule which was established on the prior day, subject to the following limitations (except for extraordinary Flow Rate changes pursuant to subsection (I) of this Section): (1) no modification in Flow Rate demand shall be required to take effect less than four hours after the modification is requested; and (2) in any event, the Flow Rate shall not change more than twice during any day, and there shall be no more than three different Flow Rates during any day. These limitations shall apply separately to the High Pressure Finished Water Transmission Line and the Low Pressure Finished Water Transmission Line.

(D) Establishing Firm Daily Water Demand Volumes. The "Firm Daily Water Demand Volume", for purposes of this Service Agreement, shall be the volume of Finished Water demanded by the City based on the Flow Rates specified in the "day-before" projected firm Finished Water demand schedules furnished by the City pursuant to subsection (B) of this Section for both the High Pressure Finished Water Transmission Line and the Low Pressure Finished Water Transmission Line, as adjusted by any "day-of" modifications thereto made by the City pursuant to subsection (C) of this Section. The City and the Company, by mutual agreement from time to time and as appropriate, shall establish the means of communication

by which definitive City Finished Water demands may be made and definitive Company confirmations may be given, and on appropriate evidence thereof.

(E) Water Delivery Guarantee; Liquidated Damages. Except to the extent excused by Uncontrollable Circumstances, the Company shall operate the Facilities so as to deliver Finished Water to the City each day during the Operation Period in volumes at least equal to the Firm Daily Water Demand Volume established under this Section with respect to such day (the "Water Delivery Guarantee"). Finished Water delivery excesses on any one day shall not be credited to the determination of Finished Water deliveries on any other day. In the event the Company fails on any day to meet the Water Delivery Guarantee, the Company shall pay liquidated damages to the City in the amount of \$1,500 for each one million gallons of Finished Water delivery shortfalls. If a failure to meet the Water Delivery Guarantee results in the City's having to issue water use restrictions, the Company shall instead pay liquidated damages to the City in an amount equal to the City's then-current water rate schedule for each one million gallons of Finished Water delivery shortfalls. In addition to the foregoing daily liquidated damages, the Company shall reimburse the City as part of the Annual Settlement Statement process set forth in Section 11.10 for all amounts paid by the City to CAP for Raw Water ordered by the City to enable the Company to meet the City's Finished Water demands hereunder and not taken by the Company, and shall pay any and all fines or penalties imposed by CAP under the Water Services Contract as a result thereof.

(F) Water Availability Guarantee. Except to the extent excused by Uncontrollable Circumstances or otherwise as requested by the City, the Company shall, on a continuous basis throughout every day during the Operation Period, maintain a minimum availability of Finished Water in the Finished Water Reservoirs of at least 30 MG; provided that, during any City-approved downtime of one or more of the Finished Water Reservoirs, the Company shall, on a continuous basis throughout every day during such downtime, maintain a minimum availability of Finished Water in the operating Finished Water Reservoirs of at least 15 MG (the "Water Availability Guarantee"). The Company shall maintain measuring devices in the Finished Water Reservoirs sufficient for determining the level of Finished Water in the Finished Water Reservoirs on a continuous basis. The primary purpose of this guarantee is to assure the availability of Finished Water to the Water System in the event an extended power outage disables the treatment capacity of the Facilities. Compliance with the Water Availability Guarantee, and the liquidated damages for non-compliance set forth in subsection (G) of this Section, shall be determined on a daily basis. Finished Water availability excesses in the

Finished Water Reservoirs on any one day shall not be credited to the determination of Finished Water availability on any other day.

(G) Liquidated Damages for Non-Compliance with Water Availability Guarantee. In the event the Company fails on any day, except as excused by Uncontrollable Circumstances, to comply with the Water Availability Guarantee, regardless of the extent or duration of non-compliance, the Company shall pay liquidated damages to the City in the amount of \$500 per MG of availability shortfall, measured as the difference between 30 MG or 15 MG, as applicable, and the lowest total volume of Finished Water in the Finished Water Reservoirs at any time during the day (midnight to midnight).

(H) Liquidated Damages Additive and Escalated. The liquidated damages provided for in subsections (E) and (G) of this Section are additive, not alternative. All liquidated damage dollar amounts specified in this Section shall be adjusted annually from the Contract Date by the CPI.

(I) Extraordinary Flow Rate Change. The Company may be required from time to time, notwithstanding any other provisions of this Section, to change either or both of the Flow Rates established by the City's firm Finished Water demand schedule to respond to the following:

(1) City-Demanded Flow Rate Changes. The City shall have the right, at any time and for any reason, notwithstanding the other provisions of this Section, to demand a change in either or both of the Flow Rates to any other newly designated Flow Rate. The Company shall effectuate the change demanded by the City to the designated Flow Rate within 30 minutes of the City's demand therefor. The newly designated Flow Rate shall be maintained until further notice from the City, at which time the ordinary procedures for establishing the Flow Rates shall again apply.

(2) Emergency Water System Pressure Events. If a pressure problem occurs in either the High Pressure Finished Water Transmission Line or the Low Pressure Finished Water Transmission Line, the Company shall respond to such pressure problem by changing the Flow Rate to the High Pressure Finished Water Transmission Line or the Low Pressure Finished Water Transmission Line, as appropriate, in the manner described in Appendix 14. The Company shall be responsible for monitoring the pressure problem and maintaining the necessary Flow Rate changes until such time as the discharge pressure is normalized or the City issues a stop request as provided in Appendix 14.

Except for extraordinary Flow Rate changes required due to Company Fault, any extraordinary Flow Rate change required under this subsection shall be considered an Uncontrollable Circumstance, and the Company shall be relieved of its obligations under this Section and as further provided in this subsection. In particular, (1) during the period in which such demand change applies the Company shall be permitted, as necessary, to deliver all available Finished Water in the Finished Water Reservoirs notwithstanding its obligations under subsection (F) of this Section, and (2) the City shall be responsible for any electricity demand levels established as a result of actions taken by the City under this subsection which demand levels exceed those established as a result of the Company's performance of the Operation Services. In responding to any extraordinary Flow Rate changes under this subsection, the Company shall be responsible for meeting all of the other Performance Guarantees including particularly the Hydraulic Transients Guarantee in Section 8.5.

(J) Relation of Finished Water Demand and Delivery to Service Fee. The City shall have the Finished Water demand rights, and the Company shall have the Finished Water delivery obligations, provided in this Section irrespective of the methodology established in Article XI for determining the Service Fee. As provided in Section 11.4, the City shall elect one of three Annual Demand Resets for each Contract Year following the Provisional Acceptance Date, and the elected reset level shall be used to determine the Fixed Component of the Base Operating Charge of the Service Fee for such Contract Year. If the Annual Delivered Water Volume for any Contract Year is less than the Annual Demand Reset volume elected by the City, the City shall nonetheless pay the Fixed Component amount associated with the elected Annual Demand Reset. Annual Delivered Water Volumes in excess of the elected Annual Demand Reset volume for any Contract Year shall be the basis of determining the Variable Component of the Base Operating Charge of the Service Fee pursuant to Section 11.5. The Company's Annual Delivered Water Volume is capped by definition hereunder at 103% of the City's Firm Annual Water Demand Volume, and therefore the Company's entitlement to Variable Component compensation for Finished Water deliveries in excess of City demand is similarly capped.

(K) Excess Daily Deliveries. The Company shall not deliver Finished Water to the City on any day during the Operation Period in a volume which is more than 5% greater than the Firm Daily Water Demand Volume established by the City with respect to such day. The Company acknowledges that the City will order Raw Water from the CAP on a daily basis based on the City's Firm Daily Water Demand Volume established with respect to such day. The Company shall reimburse the City for any additional amounts paid by the City to CAP

under the Water Services Contract as a result of the withdrawal by the Company of Raw Water from the Waddell Canal on any day in volumes which exceed such 5% threshold.

(L) Permitted Downtime for Scheduled Maintenance, Repair and Replacement Activities. The Company shall be permitted to schedule downtime for Plant maintenance, repair or replacement in each Contract Year following the Provisional Acceptance Date up to a maximum of six weeks during the months of December through February. In order for the City to coordinate such downtime with its other Water System facilities, the Company shall provide the City for its approval 90 days' prior written notice of the proposed dates for undertaking such maintenance activities. The City shall, within 30 days of its receipt of the Company's notice, determine whether to approve the proposed dates, which approval shall not be unreasonably withheld. The Plant shall be capable of producing Finished Water in amounts up to 60 MGD and delivering Finished Water at Flow Rates between 10 MGD and 60 MGD to the High Pressure Finished Water Transmission Line and between 10 MGD and 30 MGD to the Low Pressure Finished Water Transmission Line during the period of permitted downtime. Except as necessary to respond to an Uncontrollable Circumstance, the City shall not demand combined Flow Rates to the High Pressure Finished Water Transmission Line and the Low Pressure Finished Water Transmission Line in excess of 60 MGD during such permitted downtime. The Company shall use all reasonable efforts to meet any City-requested Flow Rate in excess of 60 MGD under this subsection, but shall be under no obligation to do so unless any such excess deliveries can be made while operating the Plant in accordance with Applicable Law, Good Industry Practice and within its design limits and unless the parties are able to agree on appropriate compensation therefor.

(M) City-Directed Curtailments and Shutdowns. The Company acknowledges that operating conditions in the Water System as a whole may require the immediate curtailment or cessation of delivery of Finished Water from the Plant. Such conditions may occur as a result of mechanical or structural failure within the Water System, emergency conditions originating in the Water System or other unexpected factors. The Company shall curtail or cease supplying Finished Water at the Finished Water Pumping Station immediately upon receipt by the Company's Contract Representative or the Service Manager of such a directive by the City's Contract Representative, and the issuance of any such directive shall constitute an Uncontrollable Circumstance for purposes of this Section. In responding to any curtailment or shutdown under this subsection, the Company shall be responsible for meeting all of the other Performance Guarantees including particularly the Hydraulic Transients Guarantee in Section 8.5. The Company shall resume operations of the

Plant within 24 hours of receipt by the Company of a written resumption directive issued by the City's Contract Representative.

(N) No City Obligation to Supply or Demand Water. The City shall have the right, but not the obligation, during the Operation Period to demand Finished Water in accordance herewith, and to order Raw Water from CAP to enable the Company to meet such Finished Water demands. The City shall pay the Service Fee as provided in Article XI based on the Annual Demand Reset levels elected by the City, but shall not be liable in damages or otherwise for any failure to request Finished Water or to supply Raw Water, or for the quantity or quality (except to the extent provided in Section 8.7) of Raw Water conveyed to the Plant for treatment. Raw Water delivery shortfalls, from any cause other than Company Fault, however, shall entitle the Company to relief from its obligations under this Section, but not relief under any other Performance Guarantee. Raw Water shall be supplied by the City to the Intake without cost to the Company, except for those circumstances in which the Company is responsible for reimbursing the City for Raw Water costs as provided in this Service Agreement.

SECTION 8.4. PRODUCTION EFFICIENCY GUARANTEE. (A) Standards. Except to the extent relieved for Uncontrollable Circumstances, the Company shall operate the Facilities to achieve a Raw Water to Finished Water production efficiency of no less than 96.5% over the course each Contract Year following the Provisional Acceptance Date.

(B) Damages for Breach of Production Efficiency Guarantee. Except to the extent relieved for Uncontrollable Circumstances, the Company shall reimburse the City for its actual costs relating to the amounts of wasted Raw Water, as calculated over a full Contract Year, resulting from the Company's failure to comply with the Production Efficiency Guarantee.

SECTION 8.5. HYDRAULIC TRANSIENTS GUARANTEE. (A) Standards. Except to the extent relieved for Uncontrollable Circumstances, the Company shall operate the Facilities so as to avoid the occurrence of "hydraulic transients" in compliance with the standards set forth in Appendix 9.

(B) Damage or Destruction Resulting from Hydraulic Transients. There shall be a presumption that damage or destruction to the Facilities, the High Pressure Finished Water Transmission Line, the Low Pressure Finished Water Transmission Line or any related portion of the Water System which is characteristic of damage or destruction resulting from a hydraulic transient was caused by the Company's failure to meet the Hydraulic Transient Guarantee in this Section. The procedures set forth in Section 9.8 shall be applicable in the event of any damage or destruction to the Facilities, the High Pressure Finished Water

Transmission Line, the Low Pressure Finished Water Transmission Line or any related portion of the Water System resulting from the occurrence of a hydraulic transient hereunder.

SECTION 8.6. ENVIRONMENTAL GUARANTEES. (A) Standards. Except to the extent relieved for Uncontrollable Circumstances, the Company shall, in performing the Operation Services, comply with the environmental requirements set forth in Appendix 9 (the "Environmental Guarantee").

(B) Damages for Failure to Meet the Environmental Guarantees. If the Company fails to meet any Environmental Guarantee, the Company shall pay all fines arising from such failure, shall reimburse the City for any Loss-and-Expense resulting from such failure and shall immediately take all appropriate action necessary in accordance with Section 8.8 to remedy such failure. The City shall have the right to enforce compliance with the Environmental Guarantees regardless of regulatory action.

SECTION 8.7. RAW WATER QUALITY AND UNCONTROLLABLE CIRCUMSTANCES. (A) Relief Generally. The Company shall be entitled to relief from the Performance Guarantees set forth in this Article and from its other obligations hereunder on account of variations in the nature, condition or quality of Raw Water, only as and to the extent set forth in this Section.

(B) Turbidity Curve. The Turbidity Curve is a graphical depiction of the turbidity conditions under which the Company shall be entitled to various forms of performance relief hereunder. The term "10-day average Raw Water turbidity" used in the Turbidity Curve shall be calculated as the sum of the previous 10 daily average Raw Water turbidity values, divided by 10. The means and methods for monitoring and measuring Raw Water turbidity to determine the average Raw Water turbidity value for any day shall be approved by the City.

(C) Turbidity Relief. Excess Raw Water turbidity shall relieve the Company from its obligations hereunder only as follows: (1) if, during any rolling 10-day period, the "10-day average Raw Water turbidity" exceeds 185 NTU, the Company shall be deemed to have experienced an Uncontrollable Circumstance with respect to all of its obligations hereunder except the Water Treatment Guarantee, and during any such rolling 10-day period the Company shall be relieved from such obligations as provided in Section 13.2; and (2) if, during any rolling 10-day period, the "10-day average Raw Water turbidity" exceeds 28.8 NTU but is less than 185 NTU, the Company shall be deemed to have experienced an Uncontrollable Circumstance only with respect to the Water Delivery Guarantee, and during any such 10-day

period the daily Water Delivery Guarantee shall be deemed to have been adjusted to levels determined by the “maximum daily Finished Water delivery” rates specified in the Turbidity Curve. The Company shall be entitled to price relief under the circumstances described in item (1) above, but not in item (2). No special relief shall be given for any intra-day outlying turbidity excursion. In no event shall Raw Water turbidity at any level relieve the Company from its obligation to comply with the Water Treatment Guarantee or the Water Availability Guarantee. **[The foregoing NTU values will be modified to reflect the Selected Proposer’s proposed turbidity curve included in Proposal Form 37 and which will be incorporated in Appendix 9.]**

(D) City Demand Requests for Extra Finished Water During Excessive Turbidity Events. Notwithstanding the limitations on the Company’s obligations resulting from an excessive turbidity event as provided in subsection (C) of this Section, if so requested by the City, the Company shall use all commercially reasonable efforts to produce Finished Water in volumes greater than those required under subsection (C) of this Section up to the City’s stated demand request and the City shall pay all reasonable costs, subject to Cost Substantiation, incurred by the Company in producing such additional volumes.

(E) Raw Water Quality-Specified Parameters. The Company shall not be entitled to Uncontrollable Circumstances relief hereunder on account of Raw Water quality conditions so long as concentration levels or characteristics of any Raw Water quality parameter which is listed among the Specified Raw Water Quality Parameters are within the applicable range set forth in the Specified Raw Water Quality Parameters table. If the concentration levels or characteristics of any such Raw Water quality parameter are outside the applicable parameter range, however, the Company shall be entitled to the particular relief set forth in the Specified Raw Water Quality Parameters table. With respect to certain parameters as specified in the Specified Raw Water Quality Parameters table, the Company shall not be entitled to Uncontrollable Circumstances relief of any kind regardless of the concentration levels or characteristics of any such Specified Raw Water Quality Parameter.

(F) Raw Water Quality-Unspecified Parameters. If the concentration levels or characteristics of any Raw Water quality parameter which is not listed among the Specified Raw Water Quality Parameters vary at any time during the Term so as to materially and adversely affect the ability of the Company to meet the Performance Guarantees or otherwise provide the Operation Services, or materially increase the cost thereof to the Company, an Uncontrollable Circumstance shall be deemed to have occurred and the Company shall be entitled to relief as provided in Section 13.2.

(G) Raw Water Contamination. It shall constitute an Uncontrollable Circumstance, and the Company shall be entitled to the relief provided in Section 13.2, if a spill, release, leak or other significant uncontrolled event not caused by Company Fault takes place which introduces contaminants into the Raw Water in concentrations which materially and adversely affect the ability of the Company to meet the Performance Guarantees or provide the Operation Services, or materially increase the cost thereof to the Company. Spills, releases, leaks or other significant uncontrolled events described in this subsection which do not cause the contaminant levels or characteristics of any Raw Water quality parameter listed among the Specified Raw Water Quality Parameters to be outside the applicable range in the Specified Raw Water Quality Parameters table shall not entitle the Company to relief under this subsection.

SECTION 8.8. CITY REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES. (A) Remedies. If the Company fails to comply with any Performance Guarantee and is not excused from performance as a result of an Uncontrollable Circumstance, the Company shall, without relief under any other Performance Guarantee, and in addition to the payment of liquidated damages and any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body: (1) promptly notify the City within 24 hours of the Company's having knowledge of any such non-compliance; (2) promptly provide the City within 24 hours with copies of any notices sent to or received from the EPA, the ADEQ or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law; (3) pay any other resulting damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom; (4) take any action (including, without limitation, making all Capital Modifications or repairs, replacements and operating and management practices changes) necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of non-compliance with such Performance Guarantee; (5) promptly prepare all public notifications required by Applicable Law, and submit such notifications for publication; and (6) assist the City with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including, but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

(B) Example of City Remedies. As an example of the actions to be taken by the Company under item (4) of subsection (A) of this Section, if the capacity of the structures and equipment installed by the Company for the clarification or sedimentation of Raw Water

persistently proves to be inadequate to handle excess turbidity events within the Turbidity Curve, thereby resulting in shortfalls in the delivery of Finished Water based on the Turbidity Curve, the Company shall be obligated to install additional clarification or sedimentation structures and equipment, at its sole cost and expense, in order to prevent the recurrence of such failures, regardless of their magnitude.

(C) Performance Testing. The City may, at any time, require a performance test to be conducted by the Company, at the City's cost and expense, to demonstrate that the Facilities are operating in compliance with Applicable Law and the Performance Guarantees. The performance tests shall be conducted in the same manner as provided for the exit performance test in Appendix 16. If the test is not successfully passed, the Company shall reimburse the City and, at its own cost and expense, make all necessary repairs and replacements, including major repairs and replacements, or Capital Modifications and the test shall be re-performed at the Company's sole cost.

SECTION 8.9. SERVICE COORDINATION. At least 60 days prior to the commencement of each Contract Year following the Provisional Acceptance Date, the Company shall establish, subject to the approval of the City, an Operating Protocol for the conveyance and treatment of Raw Water at the Plant and the supply of Finished Water to the High Pressure Finished Water Transmission Line and the Low Pressure Finished Water Transmission Line consistent with the Performance Guarantees and the terms and conditions of this Service Agreement. The Operating Protocol shall set forth all practices, procedures and protocols which are necessary or useful in coordinating the activities of the parties hereunder, including particularly the establishment and modification from time to time of the City's demands for Finished Water, the City's managing and purchasing Raw Water pursuant to the Water Services Contract for the conveyance to the Plant, all operational and informational communications between the City and the Company, and all data and information required to demonstrate the extent to which the Facilities are being operated in compliance with the Performance Guarantees. The Operating Protocol also shall provide for such matters as the parties may mutually deem necessary or desirable in the implementation of this Service Agreement. The City may direct the Company to revise the Operating Protocol for the current Contract Year at any time so long as it remains consistent with the Performance Guarantees and the terms and conditions of this Service Agreement. The City's Contract Representative and the Service Manager shall be responsible for coordinating all matters relating to the Operating Protocol.

SECTION 8.10. STORAGE, METERING AND TESTING. (A) Storage. Treated water stored in the Finished Water Reservoirs prior to its supply to the Finished Water Pumping Station shall be stored safely, properly and in accordance with Applicable Law.

(B) Testing. The Company shall conduct all tests of Raw Water and Finished Water in accordance with the Contract Standards and in accordance with the Operating Protocol. The tests shall be made at State-certified laboratories to the extent required by the Contract Standards and shall be conducted at the Company's sole cost and expense, except to the extent such tests are required by a Change in Law or any other Uncontrollable Circumstances and are not required under the terms hereof as of the Proposal Date. All Raw Water and Finished Water sampling and testing for contract performance and for the application of the Variable Component of the Base Operating Charge of the Service Fee shall be conducted at the testing locations identified in the testing and sampling standards set forth in the Operating Protocol and other the Contract Standards.

(C) Metering and Weighing. The Company shall maintain in good working order, and repair and replace when necessary, devices at the Facilities capable of: (1) metering the daily total volume of Raw Water received at the Intake and the Raw Water Pumping Station; (2) metering separately the daily total volume of Finished Water delivered to (i) the High Pressure Finished Water Transmission Line and (ii) the Low Pressure Finished Water Transmission Line; (3) metering or weighing the daily total amount of Plant By-Products for disposal; and (4) any other metering or weighing requirement imposed by Applicable Law and this Service Agreement. For purposes of complying with item (1) in the preceding sentence, the Company may arrange with CAP to obtain a continuous signal from CAP's Raw Water flow meter for continuous monitoring, as and to the extent provided in Appendix 5. The City shall have full access to such meters (other than the CAP Raw Water flow meter), instruments, controls, recorders, scales and other metering and weighing devices. All operating data produced by such metering and weighing devices shall be subject to audit, and shall be summarized in the monthly operations reports delivered to the City pursuant to Section 7.14. All such metering and weighing devices shall be calibrated to the accuracy required by, and shall be operated and maintained in accordance with the requirements of, the Contract Standards. To the extent any metering or weighing device is incapacitated or is being tested, the Company shall estimate as accurately as practicable the data required by the Company to perform the Contract Services. This estimate and methodology shall, with the City's approval, be used as the basis for determining the operating data required hereunder during the outage. The City shall have the right to monitor, inspect and test such metering and weighing devices

which are part of the Facilities at any time and for any purpose and to take measurements regarding Raw Water, treated water, Finished Water and Plant By-Products without unreasonably interfering with the Company's ordinary operations.

SECTION 8.11. RELEASES, LEAKS AND SPILLS. (A) Unauthorized Releases. The Company shall operate the Facilities in such a manner that Raw Water, Finished Water, Plant By-Products or chemicals will not contaminate, or be released, leaked or spilled on or into, the environment, other than as permitted by the most stringent of any of the Contract Standards.

(B) Notification and Reporting. The Company, while contemporaneously notifying the City, shall be responsible for fulfilling all notification of and reporting requirements established by Applicable Law related to any unauthorized release of Raw Water, Finished Water, Plant By-Products or chemicals into the environment from or in connection with its operation and management of the Facilities. The Company shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the City, along with any documents provided to the relevant Governmental Body regarding the release.

(C) Cleanup and Costs. The Company shall coordinate with the City and all appropriate Governmental Bodies in effectuating the prompt remediation of any unauthorized release. The Company shall, in the most expeditious manner possible under the circumstances, cause any Raw Water, Finished Water, Plant By-Products or chemicals released without authorization to be cleaned up or remediated in accordance with Applicable Law. All costs associated with performing any such clean up and remediation measures shall be borne by the Company, except to the extent the unauthorized release of Raw Water, Finished Water, Plant By-Products or chemicals resulted from an Uncontrollable Circumstance, in which case the appropriate portion of such costs shall be borne by the City on a reimbursable basis.

SECTION 8.12. COMPANY DISPOSAL OF RESIDUALS. (A) Residuals Management. The Company shall locate an Acceptable Disposal Site, subject to the approval of the City, which shall not be unreasonably withheld, and shall make all necessary arrangements with the owner or operator thereof for the disposal of all Residuals during the Term of this Service Agreement. The Company shall collect, segregate, treat and store Residuals from treatment operations at the Plant in an enclosed building in accordance with the Design Requirements and the Supplemental Technical Information. The Company shall operate the Plant and treat Raw Water so as to minimize the production of Residuals and comply with the Performance Guarantees. The Company shall transport all Residuals to an

Acceptable Disposal Site in a safe and environmentally sound manner and in accordance with Applicable Law. All cost and expense of Residuals disposal shall be borne by the Company and, except as provided in subsection (E) of this Section, no Uncontrollable Circumstances other than a Change in Law shall entitle the Company to any relief or additional compensation hereunder.

(B) Acceptable Disposal Site. An Acceptable Disposal Site, as used herein, means either a sanitary landfill or other lawfully authorized waste disposal or management facility, which: (1) is operated in accordance with good engineering practice and Applicable Law (as applicable to waste disposal facilities disposing of such waste materials); (2) is located in the United States; (3) is not listed on or proposed for listing on any federal or state list of sites, such as but not limited to the National Priority List under CERCLA, maintained for the purpose of designating landfills which are reasonably expected to require remediation on account of the release or threat of release of Hazardous Materials; (4) if the Acceptable Disposal Site is a landfill, has fully funded, bonded or otherwise secured legally-required reserves for closure and remediation; (5) is being operated at the time of disposal or delivery in accordance with Applicable Law as evidenced by the absence of any regulatory sanctions or any significant enforcement actions with respect to material environmental matters; (6) has committed by agreement or obligation of the owner or operator to receive Residuals originating at the Plant; (7) is not under any executive or judicial order (or otherwise under any other law) barring receipt of wastes similar to the Residuals; and (8) does not otherwise expose the City to any material risk as a “generator” or “transporter” of waste under CERCLA or any similar law, or to any material risk under product liability, tort, environmental impairment or any similar law, notwithstanding the indemnities provided by the Company hereunder. The Company shall provide evidence satisfactory to the City, prior to the use of any Acceptable Disposal Site and from time to time as requested thereafter, that the intended disposal location conforms with the requirements of this Section.

(C) Transportation Operations. In the event of a release, spill, leak or loss of Residuals during transfer or transit, the Company shall immediately arrange for the clean-up of the material and transportation to an Acceptable Disposal Site, pay any resulting fines, assessments, penalties or damages resulting therefrom, all as further provided in Section 8.11.

(D) Acceptable Disposal Site Information. The Company shall keep and maintain such logs, records, manifests, bills of lading or other documents pertaining to the Residuals as are necessary or appropriate to comply with Governmental Approvals and to monitor and confirm compliance by the Company with the requirements of this Section, and

shall collect and promptly provide the City with a copy of all weights and measures data and information relating to Residuals quantities generated and disposed of hereunder.

(E) Title and Documentation. The Company shall assume title to and responsibility for all Residuals other than those Residuals that have been identified and classified as Hazardous Materials (“Hazardous Residuals”), unless with respect to such Hazardous Residuals, the Company has failed to exercise reasonable diligence under Good Industry Practice so as to prevent the generation of Hazardous Residuals. The City, only to the extent required by Applicable Law, shall sign all permits, manifests or similar documents required for handling, transportation or disposal of Residuals.

(F) Indemnity. The Company shall indemnify, defend and hold harmless the City in accordance with Section 13.3 from all Loss-and-Expense resulting from the generation, processing, transportation or disposal of Residuals.

SECTION 8.13. COMPANY DISPOSAL OF WASTEWATER. (A) Wastewater Management. The Company shall treat all Wastewater produced at the Plant during the Term of this Service Agreement in accordance with Applicable Law and shall dispose of such Wastewater into the City’s sewer system by means of the lift station and pipelines constructed and maintained by the Company on the Plant Site which connect to the City’s sanitary sewer force main located within approximately 100 feet of the property line. The Company shall operate the Plant so as to minimize the production of Wastewater and comply with the Performance Guarantees. No discharges of Residuals to the City’s sanitary sewer force main shall be permitted, except during emergency conditions and following approval by the City.

(B) Designation as Significant Industrial User. The Company shall be designated as a “significant industrial user (SIU)” under the provisions of the Phoenix City Code Article VI, Sections 28-44 *et seq.*, as such provisions shall be amended from time to time (the “Industrial Pretreatment Program” or “IPP”). The Company shall obtain all requisite permits for an SIU, pay all sewer fees and other charges imposed by the City, and otherwise comply with all requirements under the IPP and Applicable Law. In addition to its monitoring, reporting, sampling and testing responsibilities under this Service Agreement, the Company shall be responsible for complying with all monitoring, reporting, sampling and testing requirements under the IPP.

(C) Enforcement. The Company recognizes that the City is responsible for enforcing the IPP in accordance with Applicable Law and agrees to cooperate with and assist the City in any enforcement action. The City shall have the right at any time to observe,

inspect and sample any Wastewater being discharged into the City's sewer system for purposes of assuring compliance with the rules, regulations and requirements of the IPP.

SECTION 8.14. ADMINISTRATIVE SANCTIONS. Except to the extent relieved for Uncontrollable Circumstances and in addition to any other amounts payable hereunder, the Company shall pay liquidated damages in the following amounts (each as adjusted annually from the Contract Date by the CPI, rounded upward to the nearest \$5 amount) for the failure to comply with the following administrative obligations:

	<u>Non-Compliance Event</u>	<u>Liquidated Damages</u>
1.	Failure to report any violation of any Governmental Approval or Applicable Law as required by subsection 7.11(C).	\$500
2.	Failure to respond to a written request for information related to this Service Agreement made by the Contract Administrator and designated as a "priority request" within three business days as required by subsection 15.3(B) (daily charge for non-compliance).	\$100
3.	Failure to respond to complaints and communications received by the City or the Company within 24 hours, as required by subsection 7.3(C) (charge per occurrence).	\$500
4.	Failure to report complaints or communications to the City as required by subsection 7.3(C) (charge per occurrence).	\$500
5.	Failure of Company staff to attend City meetings, as reasonable requested, with advance notice from the City.	\$100
6.	Failure to provide the City with any report, record or other document required hereunder on time (daily charge for non-compliance).	\$100
7.	Failure to calibrate or verify calibration of flow meters as required by Appendix 13.	\$100
8.	Failure to respond to alarms at the Plant as required hereunder	\$500
9.	Failure to provide any plan, proposal, report or other deliverable required hereunder with respect to Uncontrollable Circumstances or any regulatory deadline agreed to by the parties thereto (daily charge for non-compliance)	\$100

The Company shall have the right to discuss with the City any such liquidated damages prior to their imposition.

ARTICLE IX

MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 9.1. MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

(A) Ordinary Maintenance. Except as otherwise provided in subsection (D) of this Section, the Company shall perform all normal and ordinary maintenance of the machinery, equipment structures, improvements and all other property constituting the Facilities, shall keep the Facilities in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards and Appendices 13 and 14, and shall maintain the aesthetic quality of the Facilities as originally constructed and in accordance with the Design Requirements and the Supplemental Technical Information. The Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, Consumables and services which are necessary for the normal and ordinary maintenance of the Facilities and shall conduct predictive, preventive and corrective maintenance of the Facilities as required by the Contract Standards. The Company shall keep maintenance logs in accordance with the maintenance, repair and replacement plan set forth in Appendix 14. This subsection (A) is not intended to include any major maintenance, repair and replacement responsibilities, which are separately undertaken by the Company under subsection (C) of this Section.

(B) Repair and Maintenance of Sites. The Company, in accordance with Appendix 14 and the Contract Standards, shall keep the grounds of the Sites in a neat and orderly condition (including the cleanup of litter and debris on a daily basis or more frequently as required). The Company shall also maintain and repair all Sites signage, fencing and other security systems. In addition, the Company shall provide all landscaping services for the Sites, including the replacement of all dead or dying plants in the manner provided in Appendix 14, and shall service and maintain the on-site irrigation system.

(C) Major Maintenance, Repair and Replacements. Except as otherwise provided in subsection (D) of this Section, the Company shall perform all major maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other property constituting the Facilities during the Term of this Service Agreement required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as “major” or “capital” in nature. The City’s approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification, other than a Small Scale Capital Modification, in which event the City shall have the approval rights set forth in Article X. The obligations of the Company under this Article are intended to assure that the Facilities are fully, properly and regularly maintained, repaired and replaced in order to preserve their long-term reliability, durability and efficiency, and that in any event the

Facilities are returned to the City at the end of the Term in a condition which does not require the City to undertake a significant overhaul or immediate replacements in order to continue to provide reasonably priced and efficient water treatment services.

(D) Intake. All operation, maintenance, repair and replacement responsibilities, including major maintenance, repair and replacement, for the Intake retained by the City, pursuant the Water Services Contract, CAP requirements and any other agreement between CAP and the City with respect to the Intake, shall be performed by the Company as part of the Operation Services. With respect to those operation and maintenance responsibilities for the Intake retained by CAP, the Company shall notify the City of any operation and maintenance activities it determines to be necessary at the Intake from time to time. The City, after consultation with the Company, shall notify CAP of such requested activities.

(E) Replacements Constituting Capital Modifications. The Company shall bear the cost and expense of all maintenance, repairs and replacements required under this Article, including the cost and expense of any maintenance, repair or replacement that may constitute a Capital Modification, unless otherwise provided in Article X.

SECTION 9.2. FACILITIES EVALUATIONS. (A) Baseline Facilities Record. The Company shall, within 180 days following the Provisional Acceptance Date, photograph, videotape and prepare an itemized inventory of all property constituting the Facilities, including records of assets originally installed, manufacturer and model number, identification number and original cost data (the "Baseline Facilities Record"). The Baseline Facilities Record shall be prepared in accordance with Appendix 15 and shall reflect, based on the Fixed Design/Build Price, the Design Requirements and the Supplemental Technical Information, the condition, functionality, value and useful life of the Facilities as originally constructed by the Company hereunder. The purpose of the Baseline Facilities Record shall be to establish an informational baseline for determining compliance by the Company with its maintenance, repair and replacement obligations under this Article.

(B) Periodic Inspection of the Facilities. The Company shall perform annual inspections of the Facilities Equipment and Facilities Structures in accordance with Appendix 15. The Baseline Facilities Record shall be annually updated by the Company as required by Appendix 15.

(C) Final Evaluation of the Facilities. Not more than 12 months prior to and not later than six months prior to the end of the Initial Term or concurrently with the

Termination Date resulting from an early termination of this Service Agreement prior to the Initial Term, the Independent Evaluator shall conduct a final evaluation of the Facilities in accordance with the protocol established in Appendix 15 and shall utilize standard utility property evaluation methods. In connection with the final asset evaluation, the Company shall furnish the City and the Independent Evaluator with the Baseline Facilities Record and record documentation prepared pursuant to Appendix 15 and all data base information developed in connection with the implementation of the Company's computerized maintenance management system pursuant to Section 9.4. The evaluation of the Facilities Structures shall determine and establish the physical condition of the Facilities Structures. The evaluation of the Facilities Equipment shall determine and establish the weighted average useful life of the Facilities Equipment as of the date of evaluation (expressed as a single number of years, carried to one decimal place), taking into account the performance capability and value of each piece of Facilities Equipment. The final evaluation shall exclude the value of any Capital Modifications to the extent paid for by the City, directly or indirectly, other than those made on account of Uncontrollable Circumstances.

(D) Required Condition of Facilities Structures Upon Return to the City. The Facilities Structures shall be returned to the City in good condition, working order and repair as when new, with ordinary wear and tear excepted as determined in light of the Company's maintenance, repair and replacement obligations under Section 9.1. Facilities Structures receiving functionality or structural integrity ratings of less than "3" (as defined in Appendix 15) shall, at the City's election, either repair such structure or make a cash payment to the City sufficient to enable the City to repair the structure.

(E) Required Condition of Facilities Equipment Upon Return to the City. The Facilities Equipment shall be returned to the City in a condition and state of repair such that, in the aggregate, the weighted average useful life of the Facilities Equipment at the end of the Initial Term is equal to or greater than seven years. In the event the final audit establishes a maintenance, repair and replacement weighted average useful life deficiency, the Company shall, at the election of the City, either remedy the deficiency or make a cash payment to the City sufficient to enable the City to remedy the deficiency. Notwithstanding any other provision hereof, as of the end of the Initial Term, each piece of Facilities Equipment having a replacement value in excess of \$25,000 (as adjusted from the Contract Date to the evaluation date by the CPI) shall have a remaining life at the end of the Initial Term of not less than five years.

(F) Capital Modifications. In the event that Capital Modifications constituting Facilities Structures are made during the Initial Term, such assets shall be returned to the City on the last day of the Initial Term in good condition, working order and repair, with ordinary wear and tear excepted as determined in light of the Company's maintenance, repair and replacement obligations under Section 9.1. In the event that Capital Modifications constituting Facilities Equipment are made during the Initial Term and are paid for by the City, such Capital Modifications shall be disregarded in preparing the final evaluation of the Facilities pursuant to subsection (C) of this Section. The weighted average useful life of all such assets as an aggregate which are paid for by the City, however, shall be separately determined in the final asset evaluation, and shall be equal to or greater than the weighted average useful life for Facilities Equipment as provided in subsection (E) of this Section. Reasonable conventions may be adopted in the weighting analysis to take account of the varying dates of installation. Capital Modifications and other maintenance, repairs and replacements paid for by the Company, including computer and other replacement systems installed based on advances in technology, shall be included in the Facilities evaluated in the final asset evaluation conducted pursuant to subsections (C) and (E) of this Section, and their remaining useful life included in such final evaluation.

(G) Disputes. The City shall have the right to appoint the Independent Evaluator for purposes of this Section, including the resolution of any disputes that arise in the preparation of the Baseline Facilities Record. The Company shall have the right to approve the City's selection, the exercise of which shall not unreasonably be withheld or delayed. The expense of the Independent Evaluator for all services performed pursuant hereto shall be borne equally by the parties. The final determination by the Independent Evaluator as to any matter arising under this Section which is in dispute between the City and the Company shall be final and binding upon the parties.

SECTION 9.3. PERIODIC MAINTENANCE INSPECTIONS. (A) Annual Maintenance Inspection. The City may, upon reasonable written notice, perform an inspection of the Facilities and relevant records of the Company each Contract Year following the Provisional Acceptance Date to determine compliance with the Contract Standards. The Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Company's performance of the Contract Services. The City's annual inspection may include, but is not limited to the inspection of: (1) all in-house and contract laboratories where tests are conducted for samples from the Facilities to ensure conformance and compliance with laboratory procedures and requirements established by the Company; (2) all areas where

chemicals are stored or used and hazardous materials procedures and records to ensure compliance with the Operating Protocol and all applicable regulations and standards; (3) all operations and maintenance records kept by the Company in accordance with Contract Standards; and (4) conformance to the Operating Protocol.

(B) Full-Scale Triennial Inspections. Every full third Contract Year following the Acceptance Date, the City may, upon reasonable written notice, perform a full-scale inspection and review of the state of repair, working condition and performance capability of the Facilities, including testing of equipment to determine its physical and operational conditions, and inspection of the general status of repairs of all Facilities Equipment and Facilities Structures, grounds, utility lines, spare parts, inventories, operation and maintenance records. Any such inspection and review shall be performed by or on behalf of the City by a City Engineer at the City's expense, and shall take place at such time as the City shall determine upon three months' written notice to the Company. The principal purpose of the inspection and review shall be to permit the City to ascertain on a comprehensive and focused basis the extent to which the Facilities are being properly maintained, repaired and replaced in accordance with the Contract Standards. The inspection shall include a concurrent review of all relevant data, records and reports. The Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Company's performance of the Contract Services.

(C) Remediation. Based on the annual operations and maintenance reports submitted by the Company pursuant to Section 7.14 or the annual or triennial inspections and reviews conducted pursuant to this Section, the City may submit a statement to the Company detailing any deficiencies found and requiring the Company to submit a plan of remediation. The remediation plan shall be sufficient to reasonably demonstrate that, if implemented, the Facilities will be promptly brought into compliance with the requirements of this Article. If the City accepts the remediation plan, the Company shall thereupon correct all deficiencies noted in accordance therewith. Failing such corrective action, the Service Fee shall be reduced by the amount of the City's estimated cost of remediation. Any disputes with respect to the cause or amounts specified in the City's statement, not resolved to the mutual satisfaction of the parties, may be submitted to Non-Binding Mediation as provided in Section 12.14.

(D) Unscheduled Inspections. Nothing in this Section shall limit the City's right, on an unscheduled basis, at any time to inspect the Facilities and relevant records of the Company to determine compliance with this Article.

SECTION 9.4. COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM. (A) Company Responsibility. The Company shall maintain, upgrade, repair and replace, as appropriate throughout the Term, the computerized maintenance management system installed as part of the Design/Build Work such that it is capable of providing a record of repair and replacement of the Facilities on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective maintenance programs; monitoring routine operations within the Facilities; issuing work orders and purchase orders; maintaining a spare parts inventory; and issuing exception, equipment status and repair priority reports. The computerized maintenance management system shall be developed consistently with the Baseline Facilities Record, and shall be modified as and when appropriate during the Term to take account of removals from and additions to the Facilities. The Company shall utilize the computerized maintenance management system to provide the City with documentation which allows it to efficiently monitor compliance by the Company with its maintenance obligations hereunder. The City shall have computer-based real time, read-only access to such system from off-site locations to be determined by the City. The Company shall permit all electronic data to be replicated and provided to the City for review by the City Engineer.

(B) City-Directed Changes to Computerized Maintenance Management System. The City may, from time to time during the Term of this Service Agreement, direct the Company to modify its computerized maintenance management system to conform with changes made by the City to its computerized maintenance management system. The Company's cost and expense of any such modification shall be borne by the City, subject to Cost Substantiation.

SECTION 9.5. MAINTENANCE, REPAIR AND REPLACEMENT PLAN. Appendix 14 contains the Company's plan and schedule for the maintenance, repair and replacement of the Facilities. The plan is intended to establish a minimum standard by which to measure the Company's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair or replacement occurs. The On-Line Electronic Operation and Maintenance Manual shall incorporate a maintenance, repair and replacement plan that is in substantial compliance with Appendix 14. The Company shall adhere to the plan as incorporated in the On-Line Electronic Operation and Maintenance Manual, except where it can demonstrate to the City that changes are reasonable under Good Industry Practice. The timing and extent of maintenance, repair and replacement activities performed by the Company hereunder with

respect to the Facilities, taken as a whole, shall equal or exceed the standard set for those activities by Appendix 14 as incorporated in the On-Line Electronic Operation and Maintenance Manual. The Company shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

SECTION 9.6. DISPOSAL OF SURPLUS EQUIPMENT. The Company may, at the direction of the City, remove, dispose of and sell, in accordance with Applicable Law, equipment constituting part of the Facilities that is unused or obsolete and no longer needed. All proceeds from any sale, net of the Company's expense in arranging the sale, shall be the property of the City.

SECTION 9.7. WARRANTIES. During the Term of this Service Agreement, the Company shall be responsible for meeting the City's maintenance obligations under all manufacturer's warranties on new equipment purchased and installed in the Facilities by the City or by the Company, and shall be the agent of the City in enforcing existing equipment warranties and guarantees. The Company shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion. The Company shall cooperate with and assist the City if the City seeks to enforce warranties and guarantees through litigation.

SECTION 9.8. LOSS, DAMAGE OR DESTRUCTION TO THE FACILITIES. (A) Prevention and Repair. The Company shall use care and diligence, and shall take all appropriate precautions, to protect the Facilities from loss, damage or destruction. The Company shall report to the City and the insurers, immediately upon obtaining knowledge thereof, any damage or destruction to the Facilities and as soon as practicable thereafter shall submit a full report to the City. The Company shall also submit to the City within 24 hours of receipt copies of all accident and other reports filed with, or given to the Company by, any insurance company, adjuster or Governmental Body. The parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Facilities to at least the character or condition thereof existing immediately prior to the loss, damage or destruction, in accordance with and subject to the procedures set forth in Article X and Article XIII, as applicable. The City shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company as if such work constituted Design/Build Work hereunder.

(B) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered

from any insurer or from another third-party, each party shall assist the other in exercising such rights as it may have to effect such recovery. Each party shall provide the other with copies of all relevant documentation at no cost to the City, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims.

(C) Uninsured Costs. The City shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Facilities in accordance with this Section and all insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Facilities shall be for the account of the City; provided, however, that such costs not covered by insurance proceeds or third-party payments shall be borne by the Company to the extent the loss, damage or destruction was not caused by Uncontrollable Circumstances.

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

ARTICLE X

CAPITAL MODIFICATIONS

SECTION 10.1. CAPITAL MODIFICATIONS GENERALLY. (A) Purpose. The parties acknowledge that it may be necessary or desirable from time to time during the Operation Period to make Capital Modifications, either at the request of the Company or at the direction of the City or to respond to an Uncontrollable Circumstance. Capital Modifications may be appropriate or desirable, for example, to improve the performance or increase the capacity of the Facilities, to address or anticipate the obsolescence of portions of the Facilities, to reduce the cost to the Company of performing this Service Agreement or to reduce the Service Fee payable by the City as provided in subsection (D) of this Section.

(B) City Approval. The City shall have the right, in its sole discretion, to approve all Capital Modifications; provided that the Company may implement Small Scale Capital Modifications without City approval, if the requirements of Section 10.2 are complied with; and provided further that any Capital Modification, including Small Scale Capital Modifications, that will affect the aesthetic quality of the Facilities as originally constructed and in accordance with the Design Requirements and the Supplemental Technical Information shall be subject to approval by the City irrespective of the value of such Capital Modification. All Capital Modifications shall be made and implemented in accordance with this Article. The City shall have the express right to condition its approval of Capital Modifications upon a sharing of any net cost savings expected to result therefrom.

(C) Party Responsible for Costs. The Company shall bear the cost and expense of all Capital Modifications and related operation, maintenance, repair and replacement costs, unless the Capital Modification is directed by the City (other than as part of an enforcement action taken in response to a breach hereof) or is necessary to address an Uncontrollable Circumstance, in each case as provided in Sections 10.3 and 10.4.

(D) Cost Savings. In the event any Capital Modification is reasonably expected to result in a net cost savings to the Company, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with the City, and the Service Fee shall be reduced accordingly.

(E) Report to Governmental Bodies. The Company shall report all Capital Modifications to MCESD and any other Governmental Body for their approval to the extent required by Applicable Law. Any such report shall be subject to the City's review and approval prior to submittal to MCESD or such other Governmental Body.

SECTION 10.2. CAPITAL MODIFICATIONS AT COMPANY REQUEST. The Company shall give the City written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Company's request. The notice shall contain sufficient information for the City to determine that the Capital Modification: (1) does not diminish the capacity of the Facilities to be operated so as to meet the Contract Standards; (2) does not impair the quality, integrity, durability and reliability of the Facilities; (3) is reasonably necessary or is advantageous for the Company to fulfill its obligations under the Service Agreement; and (4) is feasible. The Company shall not be entitled to any adjustment in the terms of this Service Agreement as a result of any such Capital Modification unless approved by the City or made a condition of approval by the City in its sole discretion.

SECTION 10.3. CAPITAL MODIFICATIONS DUE TO UNCONTROLLABLE CIRCUMSTANCES. Upon the occurrence of an Uncontrollable Circumstance, whether before or after the Acceptance Date, the City shall promptly proceed, subject to the terms, conditions and procedures set forth in this Article and Section 13.2, to make or cause to be made all Capital Modifications reasonably necessary to address the Uncontrollable Circumstance. The Company shall consult with the City concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Company and the City shall cooperate in order to minimize any delay, lessen any additional cost and modify the Facilities so as to permit the Company to continue providing the Contract Services in light of such Uncontrollable Circumstance. The design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the City except to the extent provided in Section 13.2 pertaining to cost sharing. The City shall pay the Capital Modification costs and any such related costs for which it is responsible in the manner established in accordance with the procedures set forth in Sections 10.5, 10.6 and 10.7.

SECTION 10.4. CAPITAL MODIFICATIONS AT CITY DIRECTION. The City shall have the right to make Capital Modifications at any time and for any reason whatsoever, whether and however the exercise of such rights affects this Service Agreement so long as the Company's rights are protected as provided in Section 10.8. The design and construction costs of any such Capital Modification made at the City's direction under this Section, and any related operation, maintenance, repair and replacement costs, shall be borne by the City, through an adjustment to the Service Fee, through City financing or both, as elected by the City pursuant to Sections 10.5, 10.6 and 10.7. The City shall have no obligation to direct the Company to make any Capital Modification.

SECTION 10.5. PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS. (A) Primary Implementation Procedure. Unless the City determines pursuant to Section 10.6 that an alternative implementation procedure be employed, the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications except Small Scale Capital Modifications, which the Company may implement by means of its own choosing.

(B) Company Conceptual Plan and City Review. At the request of the City and the cost and expense of the Company, the Company shall prepare and deliver to the City a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Company's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Company or any of its Affiliates. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Company is recommending. The City shall review the Company's conceptual plan and recommendations, and undertake discussions with the Company in order to reach agreement on a basic approach to the Capital Modification.

(C) Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the City and at the City's expense, the Company shall submit a formal implementation proposal to the City for its consideration. With respect to any Capital Modification to be undertaken at the City's expense and as otherwise required by Applicable Law, the implementation proposal shall contain (1) a Company services element, to be implemented through an amendment of this Service Agreement, and (2) a third-party construction services element, to be implemented through third-party contracting.

(1) Company Services Element. The Company services element shall contain: (a) the Company's offer to perform design, construction management and acceptance testing services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through an acceptance test and a guaranteed maximum construction price if so requested by the City and agreed to by the Company; and (b) the Company's offer to operate, maintain, repair, replace, obtain and maintain Governmental Approvals for, and manage the Capital Modification following construction and acceptance for a fixed fee to be added to each Annual Demand Reset

of the Fixed Component of the Service Fee, and shall include long-term performance guarantees with respect to the Capital Modification.

(2) Third-Party Construction Services Element. The third-party construction services element shall be a proposal by the Company to conduct, as allowed by Applicable Law, a bidding or competitive proposal process for the construction work as the design/build work involved in completing the Capital Modification. The bidding process shall include an advertisement for bids and a construction contract award to the lowest responsible bidder, and shall be conducted in accordance with the requirements of Applicable Law which govern construction projects undertaken by the City. The resulting construction or design/build contract shall be held by and executed in the name of the City or the Company, as determined by the City in compliance with Applicable Law. A “competitive proposal process” referred to herein may include a request for proposals and a design/build contract award to the most advantageous proposer.

With respect to any Capital Modification to be undertaken at the City’s expense and as otherwise required by Applicable Law, the City shall be a party to all such construction contracts or design/build contracts unless the City determines otherwise as permitted by Applicable Law.

(D) Negotiation and Finalization of Company Implementation Proposal. The parties shall proceed, promptly following the City’s review of the Company’s submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this Service Agreement required under Section 10.8. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable: (1) design requirements; (2) construction management services; (3) acceptance tests, standards and procedures; (4) a guarantee of completion and acceptance; (5) performance guarantees; (6) any changes to the Performance Guarantees or other Contract Standards to take effect as a consequence of the Capital Modification; (7) a payment schedule for the design and construction management-related services; (8) provisions for City Engineer review; (9) any adjustments to the Service Fee resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs; (10) a financing plan; and (11) any other appropriate amendments to this Service Agreement. The Company shall not be obligated to undertake any Capital Modification under Section 10.3 or 10.4 except following agreement as to such negotiated adjustments, unless otherwise required on an emergency basis. The City shall have no obligation to reimburse the Company for any costs

incurred pursuant to this Section except as part of a negotiated amendment to this Service Agreement. The Company shall be compensated for emergency work on a Cost Substantiation basis as provided in Section 15.8.

(E) Implementation Procedures. With respect to each Capital Modification to be made by the Company, other than Small Scale Capital Modifications, the City shall have the same substantive and procedural rights that it has with respect to the design, construction and acceptance of the Facilities, as set forth in Articles IV and V and in Appendices 3, 4, 5, 6, and 8.

SECTION 10.6. ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS. With respect to any Capital Modification to be undertaken at the City's expense and as otherwise required by Applicable Law, the City shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 10.5, and may instead, in its sole discretion, utilize any other implementation procedure available to it or required under the Applicable Law. Alternative implementation procedures may include, to the extent permissible under Applicable Law: (1) contracting with the Company on a sole source basis to implement the Capital Modification on a design/build or design/build/operate basis; (2) contracting with the Company to manage a competition for design/build services to implement the Capital Modification; and (3) contracting with third parties for the implementation of the Capital Modification on a traditional design/bid/build basis, with the City rather than the Company responsible for the design and construction of the Capital Modification, or with the Company acting as the City's agent in the design/bid/build process. While it is the intention of the City to have the Company operate, maintain, repair, replace and manage Capital Modifications on an integrated basis with the Facilities, the City is not obligated to do so and may contract for such services with a third-party. The City may determine to proceed with an alternative implementation procedure for Capital Modification at any time, whether before or after entering into negotiations with the Company under the primary implementation procedure specified under Section 10.5. No alternative implementation procedure for Capital Modifications shall impair the Company's rights under Section 10.8.

SECTION 10.7. FINANCING CAPITAL MODIFICATIONS. The City shall provide financing for any Capital Modification for which it is financially responsible under this Article, and shall make the proceeds of the financing available to the Company to pay the negotiated price based on the requirements of Applicable Law. The City in its sole discretion may voluntarily, if requested by the Company, provide financing for the Capital Modifications for

which the Company is financially responsible hereunder, on terms and conditions established by the City in its sole discretion.

SECTION 10.8. COMPANY NON-IMPAIRMENT RIGHTS. No Capital Modification, other than a Company-requested Capital Modification, shall be made that materially impairs any right, materially impairs the ability to perform, imposes any material additional obligation or liability, or materially increases the costs of the Company hereunder, including operating, maintenance, repair and replacement costs related to such Capital Modification. The Company shall have no right to object to any such Capital Modification, however, if the City affords the Company any price, schedule, performance and other relief necessary to avoid any such material effect.

ARTICLE XI

SERVICE FEE AND OTHER PAYMENTS

SECTION 11.1. SERVICE FEE GENERALLY. From and after the Provisional Acceptance Date, the City shall pay the Service Fee to the Company as compensation for the Company's performing the Operation Services under this Service Agreement. The Service Fee shall be calculated according to this Article. Examples of the calculation of the Service Fee and the application of the Adjustment Factor are included in Appendix 18.

SECTION 11.2. SERVICE FEE FORMULA. The Service Fee shall be calculated in accordance with the following formula:

$$\text{ASF} = \text{BOC} + \text{RC} \pm \text{EI}$$

Where,

ASF	=	Annual Service Fee
BOC	=	Base Operating Charge
RC	=	Reimbursable Costs Charge
EI	=	Extraordinary Items Charge or Credit

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

SECTION 11.3. BASE OPERATING CHARGE COMPONENTS. (A) Base Operating Charge Formulas. The Base Operating Charge shall be calculated in accordance with the following formulas:

$$\text{BOC} = \text{FC} + \text{VC}$$

$$\text{VC} = \text{EDE} + \text{ESE} + \text{ECE}$$

Where,

BOC	=	Base Operating Charge
FC	=	Fixed Component
VC	=	Variable Component
EDE	=	Excess Demand Element
ESE	=	Electricity Savings Element
ECE	=	Extra Chlorine Element

(B) Basis of Fixed Component. The Fixed Component of the Base Operating Charge in any Contract Year shall be one of the three fixed amounts set forth in Section 11.4, depending upon the Annual Demand Reset elected by the City to be applicable in that Contract Year in accordance with Section 11.4. Three separate Annual Demand Resets have been specified in order to establish a baseline scope of work to be performed by the Company in any Contract Year. Annual Demand Reset 1 reflects the City's expected annual average firm demand requests for Finished Water for a substantial period subsequent to the Provisional

Acceptance Date. Annual Demand Resets 2 and 3 reflect potential increases in Finished Water annual average firm demand requests which are expected to arise out of the development and growth which is projected to occur over the Term in the Service Area. A separate Fixed Component has been established for each separate Annual Demand Reset reflective of the scope of work involved in producing the applicable quantity of Finished Water.

(C) Basis of Variable Component. The Variable Component of the Base Operating Charge has been established to compensate the Company for: (1) variations in the Finished Water demand requests in excess of the Annual Demand Reset applicable in any Contract Year; (2) savings in the City's electricity expense achieved by the Company; and (3) City demands of Finished Water containing residual chlorine levels greater than 1.3 mg/L.

(D) Adjustment Factor. The "Adjustment Factor" for purposes of this Service Agreement shall be determined as follows:

$$AF_n = 1 + [AFM] \times [(CPI_{n-1} - CPI_{n-2}) \div CPI_{n-2}]$$

Where,

AF_n = The Adjustment Factor for Contract Year "n"

AFM = The Adjustment Factor Modifier

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

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

[Note: The AFM will be inserted as set forth in Proposal Form 35.]

SECTION 11.4. FIXED COMPONENT. (A) Annual Demand Resets Election. The City shall elect, by written notice to the Company given concurrently with the Acceptance Date, the Annual Demand Reset which shall be applicable in the first Contract Year of the Operation Period. For each subsequent Contract Year, the Annual Demand Reset which was applicable in the prior Contract Year shall continue to be applicable unless the City elects in its sole discretion, by written notice to the Company given not later than 60 days prior to the beginning of any subsequent Contract Year, to change the Annual Demand Reset applicable in such subsequent Contract Year.

(B) Annual Demand Resets. The three Annual Demand Resets shall be as follows, each as determined on an annual average basis over the Contract Year:

Reset Group 1:	40 MGD
Reset Group 2:	55 MGD
Reset Group 3:	70 MGD

(C) Fixed Component Applicable to Each Annual Demand Reset. The following table sets forth the Fixed Component of the Base Operating Charge for each Reset Group which would be payable if the Acceptance Date were to occur in the reference Contract Year beginning July 1, 2003 and ending June 30, 2004:

Reset Group 1:	\$ _____
Reset Group 2:	\$ _____
Reset Group 3:	\$ _____

[Note: Amounts to be inserted as set forth in Proposal Form 35]

The Fixed Component of the Base Operating Charge for each Reset Group shall be adjusted based on the Adjustment Factor for each Contract Year between the reference Contract Year and the Contract Year for which a determination is to be made.

SECTION 11.5. VARIABLE COMPONENT. (A) Variable Component. Subject to the limitations set forth in Section 11.12, the Variable Component of the Base Operating Charge shall be the sum of: (1) the Excess Demand Element; (2) the Electricity Savings Element and (3) the Extra Chlorine Element, each as determined in accordance with this Section.

(B) Excess Demand Element. If the Annual Delivered Water Volume for any Contract Year is less than or equal to the Annual Demand Reset volume applicable in such Contract Year, then the Excess Demand Element shall be equal to zero. If the Annual Delivered Water Volume for any Contract Year is greater than the Annual Demand Reset volume applicable in such Contract Year, then the Excess Demand Element shall be the product of: (1) the Excess Demand Fee applicable in such Contract Year; and (2) the difference between the Annual Delivered Water Volume for such Contract Year and the Annual Demand Reset volume applicable in such Contract Year.

(1) Excess Demand Fee Applicable to Excess Demand Between Reset Groups 1 and 2. The Excess Demand Fee for excess demand by the City in volumes between Reset Groups 1 and 2 shall be determined by dividing (1) the difference between the Fixed Components of the Base Operating Charge applicable to the particular Contract Year to Reset Group 2 and Reset Group 1, by (2) the difference between the Annual Demand Reset volumes constituting Reset Group 2 and Reset Group 1.

(2) Excess Demand Fee Applicable to Excess Demand Between Reset Groups 2 and 3. The Excess Demand Fee for excess demand by the City in volumes between Reset Groups 2 and 3 shall be determined by dividing (1) the difference between the Fixed Components of the Base Operating Charge applicable to the particular Contract Year to Reset Group 3 and Reset Group 2, by (2) the difference between the Annual Demand Reset volumes constituting Reset Group 3 and Reset Group 2.

(3) Excess Demand Fee Applicable to Excess Demand Above Reset Group 3. The Excess Demand Fee for excess demand by the City in volumes above Reset Group 3 shall be equal to the Excess Demand Fee applicable to excess demand between Reset Group 2 and Reset Group 3 as provided in subsection (B)(2) of this Section.

(C) Electricity Savings Element. No Electricity Savings Element shall be payable to the Company for electricity used during the Contract Year ending June 30, 2007. The Electricity Savings Element in each Contract Year following July 1, 2007 shall be determined in accordance with subsection 11.10(B). The Electricity Savings Element shall not be paid to the Company for electricity consumption or demand savings generated by City actions or initiatives.

(D) Extra Chlorine Element. The Extra Chlorine Element of the Variable Component shall be calculated and paid to the Company in any Contract Year to the extent the City has demanded Finished Water containing residual chlorine at levels greater than 1.3 mg/L during such Contract Year. The Extra Chlorine Element shall be an amount equal to the product of (1) \$____, multiplied by (2) an amount equal to the number of MG of Finished Water demanded by the City containing residual chlorine at levels greater than 1.3 mg/L and delivered to the Water System in any Contract Year. **[Note: The fixed “High Chlorine Residual Unit Charge” set forth in Proposal Form 35A to be inserted herein.]** The foregoing per unit dollar amount represents the Extra Chlorine Element fee that would be payable if Provisional Acceptance were to occur in the reference Contract Year beginning July 1, 2003 and ending June 30, 2004. The Extra Chlorine Element fee shall be adjusted based on the Adjustment Factor for each Contract Year between the reference Contract Year and the Contract Year for which a determination is to be made. For City demands of Finished Water containing residual chlorine at levels greater than 2.3 mg/L, the Company shall, in addition to receiving payment of the Excess Chlorine Element, be reimbursed for any incremental costs of extra chlorine incurred by it in responding to City demands for such Finished Water as provided in Section 11.6.

SECTION 11.6. REIMBURSABLE COSTS CHARGE. The Reimbursable Costs Charge shall be an amount equal to the actual and direct expenses (without markup for profit, administration or otherwise) paid by the Company during each Contract Year to unrelated third parties for the following purposes:

(1) Specialized Security Guards and Vehicles Component. Any amounts incurred by the Company to unrelated third-parties for specialized security guards and vehicles as provided in subsection 7.9(B); and

(2) Excess Chlorine Component. Any incremental costs of extra chlorine incurred by the Company in achieving a Finished Water residual chlorine level in excess of 2.3 mg/L in response to City demands for Finished Water containing such residual chlorine levels.

SECTION 11.7. EXTRAORDINARY ITEMS CHARGE OR CREDIT. The Extraordinary Items component of the Service Fee, which may be a charge or a credit, shall be equal to the sum of: (1) the amounts payable by the City for increased operation, maintenance or other costs incurred on account of the occurrence of an Uncontrollable Circumstance which is chargeable to the City hereunder, net of any operation, maintenance or other cost savings achieved by the Company in mitigating the effects of the occurrence of such an Uncontrollable Circumstance; plus (2) the adjustments to the Service Fee resulting from any Capital Modifications the costs of which are payable by the City, or the benefits of which accrue to the City, under the provisions of Article X; plus (3) any liquidated damages due to Company non-performance specifically provided for under Article VIII or any other provision hereof; plus (4) any other increase or reduction in the Service Fee provided for under any other Article of this Service Agreement.

SECTION 11.8. BILLING AND PAYMENT. (A) Billing. The City shall pay the Service Fee in monthly installments in an amount equal to the sum of: (1) one-twelfth of the annual Fixed Component; (2) one-twelfth of the estimated annual Excess Demand Element; (3) any monthly Excess Chlorine Element; (4) any monthly Reimbursable Costs Charge; (5) any Extraordinary Items determined on a monthly basis; (6) one-twelfth of any Extraordinary Items determined on an annual basis; and (7) any adjustments, plus or minus, to reconcile any prior monthly Service Fee payments. Any overpayment from prior months shall be credited against the monthly Service Fee payment. There shall be no estimated Electricity Savings Element included in any monthly invoice. Any amount due the Company on account of the Electricity

Savings Element and any amount due the City on account of exceedences of the Guaranteed Maximum Annual Electricity Costs shall be paid as part of the Annual Settlement Statement.

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

SECTION 11.9. ESTIMATES AND ADJUSTMENTS. (A) Pro Rata Adjustments. Any computation made on the basis of a stated period shall be adjusted on a pro rata basis to take into account any initial or final period which is a partial period. For purposes of this subsection, a month shall be taken as a month containing 30 days and a year shall be taken as a year containing 360 days.

(B) Budgeting. For City budgeting purposes, no later than 30 days preceding each Contract Year, the Company shall provide to the City a written statement setting forth for such Contract Year its reasonable estimate of the aggregate Service Fee, each component thereof, and the Adjustment Factor. The estimate shall not be binding on the Company but shall establish the basis for monthly billing for such Contract Year, subject to annual settlement pursuant to this Article.

(C) Adjustment to Service Fee. If any adjustment to the Service Fee is required pursuant to any express provision of this Service Agreement, the party requesting the adjustment shall submit to the other party a written statement setting forth the cause of the adjustment, the anticipated duration of the adjustment, and the amount of the adjustment, as appropriate. Except to the extent that a longer period is otherwise specifically provided for in this Service Agreement, any request for adjustment of the Service Fee hereunder shall be accepted or rejected by the party receiving the request within 45 days of receipt. If the receiving party does not notify the requesting party of its rejection and the reasons therefor within such 45-day period, the request shall be deemed rejected. A rejected request may be resubmitted, with or without change, and this paragraph shall apply to such resubmitted request as it applies to an original request. Any Service Fee adjustment request which is not rejected or

deemed rejected shall take effect as of the next monthly billing period thereafter, or as otherwise agreed to by the parties.

SECTION 11.10. ANNUAL SETTLEMENT. (A) Generally. Within 30 days after the end of each Contract Year, the Company shall provide to the City an annual settlement statement (the "Annual Settlement Statement") setting forth the actual aggregate Service Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the City with respect to such Contract Year. The annual settlement process shall provide for the reconciliation of the Variable Component in accordance with Section 8.3(J) and subject to the limitations set forth in Section 11.12. As part of the annual settlement process, the City shall pay the Company any Electricity Savings Element, or the Company shall pay the City an amount equal to any overpayment made by the City for electricity which would have been avoided had the Company met the Guaranteed Maximum Annual Electricity Costs as determined in subsection (B) of this Section. The City or the Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Company of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Company shall file with the City an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

(B) Annual Settlement of Electricity Costs. As part of the annual settlement process, the City shall, within 30 days after the end of each Contract Year, calculate the Actual Annual Electricity Costs and the Guaranteed Maximum Annual Electricity Costs. The demand component of the Guaranteed Maximum Annual Electricity Costs for a Contract Year shall be calculated on a monthly basis using the lesser of (a) peak City-requested Flow Rates and (b) actual Company-delivered Flow Rates; and the lesser of (i) historical peak City-requested Flow Rates and (ii) historical peak Company-delivered Flow Rates to the extent such historical Flow Rates influence the then-current month's electricity demand costs. The utilization component of the Guaranteed Maximum Annual Electricity Costs for a Contract Year shall be calculated based on the Company's Annual Delivered Water Volume and capped as provided in subsection 8.3(J). The Company acknowledges that the calculation of the Guaranteed Maximum Annual Electricity Costs will include any basic service charges imposed by the electricity provider, and will exclude any fines and penalties imposed by the electricity provider and reimbursed by the

Company pursuant to Section 7.6. If the Actual Annual Electricity Costs resulting from the Company's operation of the Facilities for a Contract Year is greater than the Guaranteed Maximum Annual Electricity Costs, the Company shall reimburse the City in an amount equal to such excess costs. If the Actual Annual Electricity Costs are less than 95% of the Guaranteed Maximum Annual Electricity Costs, the City shall pay the Company an Electricity Savings Element in an amount equal to 50% of the difference between 95% of the Guaranteed Maximum Annual Electricity Costs and the Actual Annual Electricity Costs, except as limited by subsection 11.5(C) and Section 11.12.

SECTION 11.11. BILLING STATEMENT DISPUTES. If the City disputes any amount billed by the Company, the City may either (1) pay the disputed amount when otherwise due, and provide the Company with a written objection indicating the amount that is being disputed and providing all reasons then known to the City for its objection to or disagreement with such amount, or (2) pay the undisputed amount when due, and provide the Company with written objection as aforesaid within the time when the disputed amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the City to the Company of amounts withheld or reimbursement to the City by the Company of amounts paid under protest is required, such payment or reimbursement shall be made within 45 days of the date of resolution, with interest at the Overdue Rate calculated from the date on which the payment was or would have been paid to the date on which the payment is reimbursed or paid.

SECTION 11.12. COMPLIANCE WITH INTERNAL REVENUE SERVICE REV. PROC. 97-13. Any provision hereof to the contrary notwithstanding, the City and the Company agree that the City shall be under no obligation to, and shall not, pay compensation for services to the Company for any Contract Year, if such payment, or any portion thereof, would result in less than 80% of the Company's compensation for services for such Contract Year being based on a periodic fixed fee or would result in any portion of the Company's compensation being based on net profit, as such terms are defined in Rev. Proc. 97-13. The payment by the City of any reimbursable costs to the Company pursuant to Section 11.6 shall not constitute "compensation for services" for purposes of this Section. The City and the Company further agree that any such payment or portion thereof that is not made by virtue of the preceding sentence shall be paid to the Company, without interest, during the next annual period in which such payment will not result in less than 80% of the Company's compensation being based on a periodic fixed fee or in which such payment will be based on net profit, all as defined by Rev. Proc. 97-13. It is the intent of the City and the Company that this Service

Agreement shall be construed and applied so as to constitute a management contract that does not result in private business use of property financed by the City within the meaning and intent of Rev. Proc. 97-13.

SECTION 11.13. TAXES. Except as otherwise provided in this Service Agreement, the Company shall be responsible for all federal, State, county and municipal Taxes and any other Tax imposed in connection with its performance of the Contract Services; provided that the City shall be responsible for all personal property and real property Taxes which may be assessed against the Facilities or the Sites by any Governmental Body.

ARTICLE XII

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 12.1. REMEDIES FOR BREACH. The parties agree that, except as otherwise provided in Sections 12.2, 12.3, 12.4, 12.5, 12.6 and 12.7 with respect to termination rights, in the event that either party breaches this Service Agreement, the other party may exercise any legal rights it may have under this Service Agreement, under the Security Instruments and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Service Agreement for cause except upon the occurrence of an Event of Default.

SECTION 12.2. EVENTS OF DEFAULT BY THE COMPANY. (A) Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Company upon which the City, by notice to the Company, may terminate this Service Agreement without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Special City Cancellation Rights. The occurrence of any of the events described in Section 12.4 permitting the City to cancel this Service Agreement;

(2) Failure to Apply for the Process Permits and the Use Permits. The failure of the Company, without excuse for Uncontrollable Circumstances, to submit completed applications or required submittals to the appropriate Governmental Body for the Process Permits and the Use Permits by the dates required in Appendix 2;

(3) Security for Performance. The failure of the Company to obtain and maintain in full force and effect any Security Instrument required by Article XIV as security for the performance of this Service Agreement (unless, in the case of the Letter of Credit, the City has released the Company from its obligation to provide the Letter of Credit pursuant to Section 14.4), without excuse for Uncontrollable Circumstances;

(4) Failure to Achieve Acceptance or Final Completion. The failure of the Company to achieve Acceptance by the end of the Extension Period as provided in Section 5.10, or the failure of the Company to achieve Final Completion by the applicable date as provided in Section 4.24;

(5) Certain Performance Standards. The failure of the Company, except to the extent excused by Uncontrollable Circumstances, to: (a) supply Finished Water to the City in quantities at least equal to 95% of the annual Water Delivery Guarantee; (b)

deliver at least 20 million gallons of Finished Water to the City on any day; (c) deliver Finished Water in volumes at least equal to the applicable Firm Daily Water Demand Volume on five or more days in any rolling 30-day period, or on 15 or more days in any rolling 365-day period; and (d) comply with the Water Treatment Guarantee which failure permits termination in accordance with subsection 8.2(C) and Appendix 9;

(6) Abandonment. The abandonment or failure to operate all or a substantial portion of the Facilities for two or more consecutive days in any Contract Year, unless caused by Uncontrollable Circumstances;

(7) Insolvency. The insolvency of the Company or the Guarantor as determined under the Bankruptcy Code;

(8) Voluntary Bankruptcy. The filing by the Company or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Company or the Guarantor to the filing of any bankruptcy or reorganization petition against the Company or the Guarantor under the Bankruptcy Code; or the filing by the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code;

(9) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company or the Guarantor or of a major part of the Company's or the Guarantor's property, respectively, or the filing against the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing, respectively;

(10) Default of Guarantor. The failure of the Guarantor to perform any obligation under the Guaranty in a timely manner; or

(11) Guarantor Credit Standing. The failure of the Company to provide credit enhancement when and as required by subsection 14.1(C).

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Company upon which the City may terminate this Service Agreement, by notice to the Company, if: (1) any representation or warranty of the Company hereunder or of the Guarantor under the Guaranty Agreement was false or inaccurate in any material respect when made, and the legality of this Service

Agreement or the Guaranty Agreement or the ability of the Company to carry out its obligations hereunder or the ability of the Guarantor to carry out its obligations thereunder is thereby materially and adversely affected; or (2) the Company fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the City under this Service Agreement within 60 days following the due date for such payment, or (b) to perform any other material obligation under this Service Agreement (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein), except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the City the right to terminate this Service Agreement for cause under this subsection unless:

(1) The City has given prior written notice to the Company stating that a specified default has occurred which gives the City a right to terminate this Service Agreement for cause under this Section, and describing the default in reasonable detail; and

(2) The Company has neither challenged in an appropriate forum the City's conclusion that such a default has occurred or constitutes a material breach of this Service Agreement nor corrected or diligently taken steps to correct such default within a reasonable time but not more than 60 days from the date of the notice given pursuant to item (1) above (but if the Company shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for so long as the Company is continuing to take such steps to correct such default).

(C) Other Remedies Upon Company Event of Default. The right of termination provided under this Section upon an Event of Default by the Company is not exclusive. If this Service Agreement is terminated by the City for an Event of Default by the Company, the City shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Service Agreement, under the Security Instruments and under Applicable Law.

SECTION 12.3. EVENTS OF DEFAULT BY THE CITY. (A) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the City upon which the Company, by notice to the City, may terminate this Service Agreement:

(1) Representations and Warranties. Any representation or warranty of the City hereunder was false or inaccurate in any material respect when made, and the

legality of this Service Agreement or the ability of the City to carry out its obligations hereunder is thereby materially and adversely affected;

(2) Failure to Pay or Perform. The failure, refusal or other default by the City in its duty: (1) to pay the amount required to be paid to the Company under this Service Agreement within 60 days following the due date for such payment; or (2) to perform any other material obligation under this Service Agreement (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein); or

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

(B) Notice and Cure Opportunity. No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Company the right to terminate this Service Agreement for cause under this subsection unless:

(1) The Company has given prior written notice to the City stating that a specified default has occurred which gives the Company a right to terminate this Service Agreement for cause under this Section, and describing the default in reasonable detail; and

(2) The City has neither challenged in an appropriate forum the Company's conclusion that such default has occurred or constitutes a material breach of this Service Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than 60 days from the date of the notice given pursuant to item (1) above (but if the City shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the City is continuing to take such steps to correct such default).

(C) Termination Liquidated Damages Upon City Event of Default. If this Service Agreement is terminated by the Company for cause as a result of an Event of Default by the City during the Term of the Service Agreement, the City shall pay the Company, as liquidated damages upon any such termination, the amounts specified in subsections 12.5(B),

12.6(B) or 12.7(A), as applicable, (calculated as provided therein) which would be payable if this Service Agreement were terminated during the Term, according to the date of termination, at the election of the City for convenience and without cause.

(D) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Contract Services to be paid as part of the Design/Build Price or Service Fee, as applicable, but not yet paid as of the date of termination.

SECTION 12.4. SPECIAL CITY CANCELLATION RIGHTS. (A) Prohibited Conflicts of Interest. The City shall have the right at any time during the three year period following the Contract Date, exercisable in its sole discretion, without penalty or further obligation, to cancel this Service Agreement for prohibited conflicts of interest, if any exist, pursuant to ARS Section 38-511.

(B) False or Fraudulent MBE/WBE Plan. In accordance with Phoenix City Code Section 18-107, the City shall have the right at any time during the Design/Build Period, exercisable in its sole option, without penalty or further obligation, to declare this Service Agreement null and void and canceled if the City determines that the MBE/WBE Plan submitted by the Company as part of its proposal in response to the RFP is false or fraudulent.

(C) Failure to Meet Affirmative Action Requirements. In accordance with Phoenix City Code Sections 18-15(f) and 18-22(F), the City shall have the right at any time during Design/Build Period and Operation Period, exercisable in its sole option, without penalty and further obligation, to cancel, terminate or suspend this Service Agreement if the City determines that the Company has failed to meet its obligations under Section 15.10.

SECTION 12.5. CITY TERMINATION AND SUSPENSION OPTIONS DURING THE DEVELOPMENT PERIOD. (A) City Termination for Cause. The City shall have the right during the Development Period to terminate this Service Agreement for cause and to pursue all remedies available pursuant to this Article, without cost or liability to the City, based upon the occurrence of any Event of Default by the Company during the Development Period. Such remedies shall include reimbursement to the City for all Cost-Substantiated costs incurred by the City from the Contract Date until the date of termination in accordance with this subsection to the extent such costs and expenses were incurred in connection with the City's performance of its activities related to this Service Agreement.

(B) City Convenience Termination Option Prior to the Construction Date.

The City shall have the right at any time during the Development Period, exercisable in its sole discretion, for its convenience and without cause, to terminate this Service Agreement upon 30 days' written notice to the Company. Upon any such termination the City, subject to Cost Substantiation, shall reimburse the Company for 100% of the reasonable costs incurred directly by the Company and any reasonable expenses paid or incurred to third parties from the Contract Date to the Termination Date hereunder less any amounts already paid to the Company, which are directly related to the performance of its Development Period obligations, and which are necessary to be performed prior to the Construction Date ("Reimbursable Development Expenses"), provided that such Reimbursable Development Expenses shall not exceed 10% of the Fixed Design/Build Price.

(C) City Convenience Termination Option for Delay in Commencement of Construction. The City shall have the right to terminate this Service Agreement for its convenience due to a failure of the Company to commence construction of the Facilities as and upon the terms and conditions provided in Section 4.11.

(D) City Suspension Option. The City shall have the right at any time during the Development Period, exercisable in its sole discretion for any reason by written notice to the Company and without terminating this Service Agreement, to suspend the obligations of the Company to seek to achieve the Construction Date. Upon any such suspension, the City shall reimburse the Company, subject to Cost Substantiation and a maximum reimbursement limitation of 8% of the Fixed Design/Build Price, for 100% of its Reimbursable Development Expenses. The Company shall not be further obligated during the suspension to seek to achieve the Construction Date. The City may in its sole discretion at any time thereafter, upon written notice to the Company, reinstate the obligations of the Company to seek to achieve the Construction Date, and thereupon an amount equal to all Reimbursable Development Expenses previously reimbursed to the Company shall be deducted from the Fixed Design/Build Price and the obligations of the Company as to the Construction Date shall resume. Upon resumption of the Service Agreement, the Company shall only be entitled to additional payment for its Development Period activities pursuant to Section 6.4 to the extent the Reimbursable Development Expenses did not equal the maximum reimbursement limitation therefor. If the City suspends the Company's obligations during the Development Period, the Scheduled Acceptance Date shall be extended by the number of days that such suspension was in effect. The Company shall not otherwise be entitled to price or performance relief as a result of such suspension. If the City does not reinstate the obligation of the

Company to seek to achieve the Construction Date within 180 days following the suspension, the Company may at any time thereafter terminate this Service Agreement upon written notice to the City.

(E) Cost Records and Reporting. During the Development Period, the Company shall prepare and maintain proper, accurate and complete books and records of the cost and description of the permitting and other work which the Company has performed since the Contract Date which is directly and solely related to the Company's obligations during the Development Period under this Service Agreement, the cost of which would be the responsibility of the City if the City were to elect to suspend or terminate this Service Agreement pursuant to this Section. All financial records of the Company and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards. The Company shall submit all books and records or a reasonably detailed summary thereof acceptable to the City, together with a summary statement of monthly and aggregate Reimbursable Development Expenses incurred, to the City at any time after the Contract Date at its request. If the Company fails to provide such monthly reports to the City within 60 days from the last business day of any such month, the Company waives its right to claim and receive any Reimbursable Development Expenses incurred for that month. Specific requests by the Company for the payment of Reimbursable Development Expenses shall be supported by Cost Substantiation. In addition, on the Contract Date and on the first day of each month thereafter the Company shall provide to the City an itemized list of all Development Period work expected to be undertaken in the following two months, and the expected costs thereof. The City shall have the right to question the Company's decision to undertake such activities and to provide notice to the Company that such costs will not be Reimbursable Development Expenses.

(F) Delivery of Development Period Work Product to the City. Concurrently with payment by the City to the Company of the amount due upon any termination or suspension of this Service Agreement under this Section or upon a termination of this Service Agreement pursuant to subsection (C) of this Section, the Company shall deliver to the City all of its Development Period work product produced during the period commencing on the Contract Date to the Termination Date hereunder, which work product immediately shall become the property of the City. The City's use of any such work product for any purpose other than the Facilities shall be at its own risk and the Company shall have no liability therefor.

SECTION 12.6. CITY TERMINATION OPTIONS DURING THE CONSTRUCTION PERIOD. (A) City Termination for Cause. The City shall have the right during the Construction Period to terminate this Service Agreement for cause and to pursue all remedies available pursuant to this Article, without cost or liability to the City, based upon the occurrence of any other Event of Default by the Company during the Construction Period.

(B) City Convenience Termination Option Prior to the Provisional Acceptance Date. The City shall have the right at any time prior to the Provisional Acceptance Date, exercisable in its sole discretion, for its convenience and without cause, to terminate this Service Agreement upon 30 days' written notice to the Company. Upon any such termination the City, subject to Cost Substantiation, shall reimburse the Company an amount equal to the sum of 1% of the unbilled and unpaid Design/Build Price, subject to settlement of payments owing the Company as of the Termination Date under subsection (C) of this Section (the "Reimbursable Construction Expenses"), plus \$1,000,000.

(C) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Design/Build Work to be paid as part of the Design/Build Price but not yet paid as of the date of termination.

(D) Cost Records and Reporting. During the Construction Period, the Company shall prepare and maintain proper, accurate and complete books and records of the cost and description of the permitting and other work which the Company has performed since the Construction Date which is directly and solely related to the Company's obligations during the Construction Period under this Service Agreement, the cost of which would be the responsibility of the City if the City were to elect to suspend or terminate this Service Agreement pursuant to this Section. All financial records of the Company and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and auditing standards. The Company shall submit all books and records or a reasonably detailed summary thereof acceptable to the City, together with a summary statement of monthly and aggregate Reimbursable Construction Expenses incurred, to the City at any time after the Construction Date at its request. If the Company fails to provide such monthly reports to the City within 60 days from the last business day of any such month, the Company waives its right to claim and receive any Reimbursable Construction Expenses incurred for that month. Specific requests by the Company for the payment of Reimbursable Construction Expenses shall be supported by Cost Substantiation. In addition, on the

Construction Date and on the first day of each month thereafter the Company shall provide to the City an itemized list of all Construction Period work expected to be undertaken in the following two months, and the expected costs thereof. The City shall have the right to question the Company's decision to undertake such activities and to provide notice to the Company that such costs will not be Reimbursable Construction Expenses.

(E) Delivery of Design/Build Period Work Product to the City. Concurrently with payment by the City to the Company of the amount due upon any termination of this Service Agreement under this Section, the Company shall deliver to the City all of its Design/Build Period work product produced during the period commencing on the Contract Date to the Termination Date hereunder, which work product immediately shall become the property of the City. The City's use of any such work product for any purpose other than the Facilities shall be at its own risk and the Company shall have no liability therefor.

SECTION 12.7. CITY CONVENIENCE TERMINATION DURING THE OPERATION PERIOD. (A) Termination Right and Fee. The City shall have the right at any time following the Provisional Acceptance Date, exercisable in its sole discretion, for its convenience and without cause, to terminate this Service Agreement upon 60 days' written notice to the Company. If the City exercises its right to terminate the Service Agreement pursuant to this Section, the City shall pay the Company a convenience termination fee equal to \$2,000,000, reduced by 1/180 of such amount for each month which has elapsed following the Provisional Acceptance Date to and including the month in which the Termination Date occurs. If this Service Agreement is renewed pursuant to Section 3.2, then the convenience termination fee payable during the Renewal Term shall be zero.

(B) Uncontrollable Circumstances. In the event an Uncontrollable Circumstance causes a total constructive loss of the Facilities, or in the event an Uncontrollable Circumstance causes an extraordinary increase in City costs, and thereupon the City elects to exercise its right of convenience termination under this Section, the amount specified in subsection (A) of this Section shall be excluded from the termination fee payable by the City. A "total constructive loss" for this purpose shall be deemed to have occurred: (1) if so determined by the casualty insurance carrier; or (2) if the Facilities are substantially inoperable for a period of at least six months following the occurrence of the Uncontrollable Circumstance. "An extraordinary increase" in City costs shall be deemed to have occurred for this purpose if costs proposed to be paid to the Company resulting from the Uncontrollable Circumstance would cause an increase of more than 20% from the prior Contract Year in the total Service Fee

payable under this Service Agreement (excluding the amortization of any debt incurred by the Company for Capital Modifications resulting from Uncontrollable Circumstances) when compared to such amounts that would have been payable during the comparable periods had no Uncontrollable Circumstances occurred.

(C) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Company shall also be paid all amounts due for the Operation Services to be paid as part of the Service Fee but not yet paid as of the date of termination.

SECTION 12.8. GENERAL PROVISIONS REGARDING CONVENIENCE TERMINATION. (A) Termination Fee Payment Contingent Upon Surrender of Possession. The City shall have no obligation to pay the applicable termination fee provided for in Sections 12.5, 12.6 and 12.7, except concurrently with the surrender of possession and control by the Company of the Facilities to the City.

(B) Adequacy of Termination Payment. The Company agrees that the applicable termination fee provided in Sections 12.5, 12.6 and 12.7 shall fully and adequately compensate the Company and all Subcontractors for all costs of undertaking their obligations under Section 12.9(A), foregone potential profits, Loss-and-Expense, and charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination of the Company's right to perform this Service Agreement.

(C) Consideration for Convenience Termination Payment. The right of the City to terminate this Service Agreement for its convenience and in its sole discretion in accordance with this Article constitutes an essential part of the overall consideration for this Service Agreement, and the Company hereby waives any right it may have under Applicable Law to assert that the City owes the Company a duty of good faith dealing in the exercise of such right.

(D) Completion or Continuance by City. After the date of any termination under this Article, the City may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including, without limitation, entering into contracts with other operators and contractors.

SECTION 12.9. OBLIGATIONS OF THE COMPANY UPON TERMINATION OR EXPIRATION. (A) Company Obligations. Upon a termination of the Company's right to perform this Service Agreement under Sections 12.2, 12.3, 12.4, 12.5, 12.6 or 12.7, or upon the expiration of this Service Agreement under Section 3.1, the Company shall, as applicable:

- (1) stop the Contract Services on the date and to the extent specified by the City;
- (2) promptly deliver to the City all Design Documents and "as-built" construction record drawings prepared by the Company on carrying out the Design/Build Work which have not previously been delivered to the City;
- (3) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property including all of the items described in item (8) below;
- (4) promptly remove from the Facilities all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including, but not limited to sheds, trailers, workshops and toilets), and repair any damage caused by such removal;
- (5) clean the Facilities and the Sites and leave them in a neat and orderly condition;
- (6) subject to subsection (B) of this Section, promptly remove all employees of the Company and any Subcontractors and vacate the Facilities;
- (7) promptly deliver to the City a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Facilities;
- (8) provide the City with a 30-day supply of chemicals and other Consumables and a reasonable supply of spare parts in light of the nature and condition of the Facilities as of the Termination Date;
- (9) deliver to the City the On-Line Electronic Operation and Maintenance Manual and all computer programs used at the Facilities in the performance of the Contract Services, including all revisions and updates thereto;
- (10) deliver to the City a copy of all books and records in its possession relating to the performance of the Contract Services;

(11) provide the City with a list of all files, and access and security codes with instructions and demonstrations which show how to open and change such codes;

(12) advise the City promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(13) promptly deliver to the City copies of all Subcontracts, together with a statement of:

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

(14) assign to the City any Subcontract that the City elects in writing, at its sole election and without obligation, to have assigned to it. The City shall assume, and the Company shall be relieved of its obligations under, any Subcontract so assigned;

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

(16) provide the City with a list of all Facilities Equipment subject to patents, licenses, franchises, trademarks or copyrights and the associated royalties and license fees associated therewith which the City will be responsible for paying on or after the Termination Date;

(17) as directed by the City, transfer to the City by appropriate instruments of title, and deliver to the Facilities (or such other place as the City may specify), all special order items pursuant to this Service Agreement for which the City has made or is obligated to make payments;

(18) promptly transfer to the City all warranties given by any manufacturer or Subcontractor with respect to particular components of the Design/Build Work or the Operation Services;

(19) notify the City promptly in writing of any Legal Proceedings against the Company by any Subcontractor or other third parties relating to the termination of the Design/Build Work or the Operation Services (or any Subcontracts);

(20) give written notice of termination, effective as of date of termination of this Service Agreement, promptly under each policy of Required Insurance (with a copy

of each such notice to the City), but permit the City to continue such policies thereafter at its own expense, if possible;

(21) arrange its dealings with employees such that no “successor clause” or accrued benefit liability will bind the City in the event the City determines to offer employment to the Company’s employees at the Facilities following the Termination Date; and

(22) take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the City’s costs, and take no action which shall increase any amount payable by the City under this Service Agreement.

(B) Hiring of Company Personnel. Upon the termination or expiration of this Service Agreement under any provision hereof, the City or any successor operator of the Facilities designated by the City shall have the right to offer employment on any terms it may choose to any Company employee employed full time at the Facilities. No Company employment agreement, job offer, letter or similar document may contravene this right. The City or its designated successor operator shall extend any such job offer within 30 days of the expiration or termination of this Service Agreement. The Company shall assist and cooperate with any such employee transition in the manner reasonably requested by the City.

(C) Continuity of Service and Technical Support. Upon the termination of the Company’s right to perform this Service Agreement under Sections 12.2, 12.3, 12.4, 12.5, 12.6 or 12.7 or upon the expiration of this Service Agreement under Section 3.1, the Company, at the request and direction of the City, shall provide for an effective continuity of service and the smooth and orderly transition of management to the City or any replacement operator designated by the City. Such service shall be for a period of up to 90 days and shall include providing technological and design advice and support and delivering any plans, drawings, renderings, bluelines, operating manuals, computer programs, spare parts or other information useful or necessary for the City or any replacement operator designated by the City to carry out and complete the Design/Build Work and to perform the Operation Services. In addition, the Company shall provide the City and any replacement operator with a one-time training program relating to the operation of the Facilities, including any Capital Modifications thereto.

(D) Company Payment of Certain Costs. If termination is pursuant to Section 12.2 or 12.4, the Company shall be obligated to pay the costs and expenses of

undertaking its obligations under subsection (C) of this Section. If the Company fails to comply with any obligation under this Section, the City may perform such obligation and the Company shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

(E) City Payment of Certain Costs. If termination is for the convenience of the City under Section 12.5, 12.6 or 12.7 or due to a City Event of Default pursuant to Section 12.3, or upon the expiration of this Service Agreement under Section 3.1, the City shall pay to the Company within 60 days of the date of the Company's invoice supported by Cost Substantiation all reasonable cost and expenses incurred by the Company in satisfying its obligations under subsection (C) of this Section.

(F) Exit Test. Not later than 12 months prior to the Termination Date resulting from the expiration of this Service Agreement or concurrently with the termination resulting from an early termination of this Service Agreement, the Company shall prepare and submit to the City for its approval a plan for exit testing of the Facilities, which shall conform to the requirements of Appendix 16 in all respects. The City shall submit its comments on the exit testing plan to the Company within 30 days of receipt thereof, and the Company thereafter shall prepare a final exit testing plan, incorporating the City's comments, for submission to the City within 30 days. The Company (or a third party at the City's option), at the request of the City and after reasonable notice to the Company, shall perform the exit test of the Facilities for compliance with the Performance Guarantees and the other Exit Test Procedures and Standards in the first three months of the 12-month period preceding the end of the Term hereof. If such test shows that the Facilities are operating out of compliance with the Performance Guarantees and the other Exit Test Procedures and Standards, then within 30 days of such test results, the Company shall submit to the City a plan for remediation and retesting. The City shall have 30 days to approve such plan, which approval shall not be unreasonably withheld. The Company shall make all repairs, replacements, renewals and operating changes and take all other actions (including making all Capital Modifications) which may be necessary to enable the Facilities to meet the Performance Guarantees and the other Exit Test Procedures and Standards. The Facilities shall then be re-tested to demonstrate that the necessary corrective action has been taken and the Facilities are in compliance with the Performance Guarantees and the other Exit Test Procedures and Standards. No such testing or retesting shall relieve the Company of its obligations under this Service Agreement during the performance of the test or retest.

SECTION 12.10. SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION.

All representations and warranties of the parties hereto contained in Article II, each of the party's indemnity obligations in this Service Agreement with respect to events that occurred prior to the Termination Date or during the Company's provision of the transition services under Section 12.9(C), the rights and obligations of the parties hereto pursuant to Sections 1.2(I), 4.1(I), 4.21, 5.8, 6.6(F), 7.10(D), 7.13(D), 8.8(A), 8.11(C), 9.8, 13.2, 13.3, 13.4, 14.2, 14.3, 15.2(D), 15.4, 15.5 and 15.6 and Article XII (except for this Section 12.10), and all other provisions of this Service Agreement that so provide shall survive the termination of this Service Agreement. No termination of this Service Agreement shall (1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or (2) preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term of this Service Agreement.

SECTION 12.11. NO WAIVERS. No action of the City or Company pursuant to this Service Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Service Agreement. No course of dealing or delay by the City or Company in exercising any right, power or remedy under this Service Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Company under this Service Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 12.12. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Service Agreement, or the material falseness or inaccuracy of any representation made in this Service Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory. The waiver of the foregoing damages under this Section is intended to apply to only disputes and claims as between the City and the Company, and specifically is not intended to limit the scope of the indemnity provisions in Section 13.3, which indemnity includes all claims by third parties irrespective of the nature thereof or the relief sought thereby.

SECTION 12.13. FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all Legal Proceedings related to this Service Agreement or to the Facilities or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Maricopa County, Arizona. The Company and the City each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

SECTION 12.14. NON-BINDING MEDIATION. (A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Service Agreement, whether technical or otherwise. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such Non-Binding Mediation shall be divided equally between the City and the Company.

(B) Procedure. The Mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Service Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Service Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

ARTICLE XIII

INSURANCE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

SECTION 13.1. INSURANCE. (A) Company Insurance. At all times during the Term of this Service Agreement, the Company shall obtain and maintain the Required Insurance in accordance with Appendix 11 and shall pay all premiums with respect thereto as the same become due and payable. The Required Design/Build Period Insurance shall be provided concurrently with the execution and delivery of this Service Agreement or otherwise as provided by Applicable Law and remain in effect during the Design/Build Period in annually (or other) renewable periods. The Required Operation Period Insurance shall be provided as a condition precedent to Provisional Acceptance as required by Section 5.6 and remain in effect for the Operation Period in annually (or other) renewable periods.

(B) Insurers, Deductibles and City Rights. All insurance required by this Section shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the qualifications set forth in Appendix 11. The insurers shall be selected by the Company with the consent of the City, which consent shall not be unreasonably withheld, and authorized to write such insurance in the State. The insurance coverage may be written with deductible amounts within the limits approved by the City as provided in Appendix 11, and the Company shall be responsible for any deductible amounts. The Company shall also be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the Company hereunder. All policies evidencing such insurance shall provide for: (1) payment of the losses to the City, and to the Company as their respective interests may appear; and (2) at least 30 days' prior written notice of the cancellation thereof to the Company and the City. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the City. The City shall have the right to fully participate in all insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld.

(C) Certificates, Policies and Notice. The Required Insurance, including any renewals thereof, shall be evidenced by certificates of insurance as provided herein and in Appendix 11. No later than the 30 days prior to the issuance date of each policy of Required Insurance, including any renewals thereof, the Company shall provide the City with a draft certificate of insurance for review and approval, and shall deliver the final, approved certificate of insurance to the City promptly following its issuance. The Company shall also supply the City, upon request, with certified copies of such policies promptly following issuance by the

insurers. Not later than 60 days prior to the beginning of each Contract Year throughout the Term, the Company shall furnish certificates of insurance to the City to confirm the continued effectiveness of the Required Insurance. Whenever a Subcontractor is utilized, the Company shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Appendix 11.

(D) Maintenance of Insurance Coverage. If the Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the City's election (but without any obligation to do so), the City, following notice to the Company, may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by the City the amount thereof shall be immediately reimbursable to the City by the Company. The Company shall not perform Design/Build Work during any period when any policy of Required Design/Build Period Insurance is not in effect. The Company shall comply with all applicable Required Insurance and take all steps necessary to assure the Facilities remain continuously insured in accordance with the requirements during the Term hereof. The failure of the Company to obtain and maintain any Required Insurance shall not relieve the Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Company shall indemnify and hold harmless the City in the manner provided in Section 13.3, from and against any and all Loss-and-Expense arising out of such failure. The purchase of the Required Insurance to satisfy the Company's obligations under this Section shall not be a satisfaction of any Company liability under this Service Agreement or in any way limit, modify or satisfy the Company's indemnity obligations hereunder.

SECTION 13.2. UNCONTROLLABLE CIRCUMSTANCES. (A) Relief from Obligations. Except as expressly provided under the terms of this Service Agreement, neither party to this Service Agreement shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The parties agree that the relief for an Uncontrollable Circumstance described in this Section shall apply to all obligations in this Service Agreement, except to the extent specifically provided otherwise, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Service Agreement but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Service Agreement, or

to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance. The City shall pay the Service Fee during the continuance of any Uncontrollable Circumstance, adjusted to account for any cost reductions achieved through Company mitigation measures required by subsection (B) of this Section, as well as for any cost increases to which the Company is entitled under subsection (C) of this Section.

(B) Notice and Mitigation. The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other party by telephone or facsimile, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the occurrence thereof, followed within 15 days by a written description of: (1) the Uncontrollable Circumstance and the cause thereof (to the extent known); and (2) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of an Uncontrollable Circumstance, the affected party shall also provide the other party with a description of: (i) the amount, if any, by which the Design/Build Price or the Service Fee is proposed to be adjusted as a result of such Uncontrollable Circumstance; (ii) any areas where costs might be reduced and the approximate amount of such cost reductions; and (iii) its estimated impact on the other obligations of such party under this Service Agreement. The affected party shall also provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as practicable, use all reasonable efforts to eliminate the cause therefor, reduce costs and resume performance under this Service Agreement. While the Uncontrollable Circumstance continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by an Uncontrollable Circumstance shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party.

(C) Conditions to Performance, Schedule and Design/Build Price or Service Fee Relief. If and to the extent that an Uncontrollable Circumstance materially expands the scope of the Company's obligations hereunder, materially interferes with, materially delays or materially increases the cost of the Company's performing its obligations hereunder, the Company shall be entitled to relief from the performance of its obligations hereunder, an extension of schedule or an increase in the Design/Build Price or the Service Fee, or any combination thereof, which properly reflects the interference with performance, the time lost or

the amount of the increased cost, in each case as a result thereof, but only to the minimum extent reasonably forced on the Company by the event, and the Company shall perform all other Contract Services. The proceeds of any Required Insurance available to meet any such increased cost, and the payment by the Company of any deductible, shall be applied to such purpose prior to any determination of cost increase payable by the City under this Section. Any cost reduction achieved through the mitigating measures undertaken by the Company pursuant to subsection (B) of this Section upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Design/Build Price or the Service Fee would have otherwise been increased or shall serve to reduce the Design/Build Price or the Service Fee to reflect such mitigation measures, as applicable. In the event that the Company believes it is entitled to any relief on account of an Uncontrollable Circumstance, it shall furnish the City written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection (B) of this Section, or if the specific relief cannot reasonably be ascertained and such event detailed within such 30-day period, then within such longer period within which it is reasonably possible to detail the event and ascertain such relief. Within 30 days after receipt of such a timely submission from the Company the City shall issue a written determination as to the extent, if any, it concurs with the Company claim for performance, price or schedule relief, and the reasons therefor. The Company acknowledges that its failure to give timely notice pertaining to an Uncontrollable Circumstance as required under this Section may adversely affect the City. To the extent the City asserts that any such adverse effect has occurred and that the relief to the Company or the additional cost to be borne by the City under this subsection should be reduced to account for such adverse effect, the Company shall have the affirmative burden of refuting the City's assertion. Absent such refutation, the reduction in relief to the Company and the reduction in additional cost to the City asserted by the City in such circumstances shall be effective. The agreement of the parties as to the specific relief to be given the Company hereunder on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum.

(D) Capital Modifications. Before proposing any adjustment to the Service Fee in its notice of requested relief under this Section, the Company shall determine whether any increased costs of operation and maintenance of the Facilities resulting from an Uncontrollable Circumstance can reasonably and prudently be reduced by the undertaking of a Capital Modification. In the event that the Company makes such a determination, the Company shall so advise the City in accordance with Sections 10.3 and 10.5. The City shall

thereupon determine, in its sole discretion, whether such a Capital Modification shall be undertaken and shall so advise the Company within 60 days of receipt of such notice by the Company. In no event shall the Company undertake such Capital Modification except at the express written direction of the City.

(E) Share of Costs of Uncontrollable Circumstances. The Company shall bear the costs which result from the occurrence of an uninsured Uncontrollable Circumstance (except any Change in Law made by the City) to the extent of the first 5% of such costs necessitated by Uncontrollable Circumstances up to an aggregate of \$50,000 per Contract Year, as adjusted annually from the Contract Date by the CPI. The Company's share of such net costs shall be reflected in a decrease in the amount by which the Design/Build Price or the Service Fee, as the case may be, would have otherwise been increased on account of such occurrence, unless otherwise agreed to by the parties. The Company's obligation under subsection 13.1(B) to bear the expense of any deductibles applicable on claims made with respect to any Required Insurance provided by the Company hereunder is an independent obligation, and the amount of any such expense shall not be taken into account in determining costs borne by the Company under this subsection.

(F) Acceptance of Relief Constitutes Release. Either party's acceptance of any performance, price or schedule relief under this Section shall be construed as a release of the other party for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed.

SECTION 13.3. INDEMNIFICATION BY THE COMPANY. The Company shall indemnify, defend and hold harmless the City, and its elected officials, appointed officers, employees, representatives, agents and contractors (each, a "City Indemnitee"), from and against (and pay the full amount of) any and all Loss-and-Expense incurred by a City Indemnitee to third parties arising from or in connection with (or alleged to arise from or in connection with): (1) any failure by the Company to perform its obligations under this Service Agreement; or (2) the negligence or willful misconduct of the Company or any of its officers, directors, employees, agents, representatives or Subcontractors in connection this Service Agreement. The Company shall also indemnify the City as and to the extent provided elsewhere in this Service Agreement. The Company's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the Company which is intended to respond to such events. The Company shall not, however, be required to reimburse or indemnify any City Indemnitee for any Loss-and-

Expense to the extent caused by the negligence or willful misconduct of any City Indemnitee or to the extent attributable to any Uncontrollable Circumstance. A City Indemnitee shall promptly notify the Company of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the Company shall have the right to assume the defense of the claim in any Legal Proceeding and to approve any settlement of the claim. These indemnification provisions are for the protection of the City Indemnitee only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Service Agreement.

SECTION 13.4. PRE-EXISTING ENVIRONMENTAL CONDITIONS. (A) Company Obligations. In the performance of the Design/Build Work and the operation and management of the Facilities, the Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating the nature or areal extent of any Pre-Existing Environmental Condition after the location and existence of such Pre-Existing Environmental Condition has been disclosed to, or through physical observation (including any such observation made during excavations) becomes actually known to, the Company during the Term of this Service Agreement. Except for the Company's failure to exercise due care with respect to such disclosed or known Pre-Existing Environmental Condition, the Company shall not be responsible for any Pre-Existing Environmental Condition including any Loss-and-Expense relating to any Pre-Existing Environmental Condition.

(B) City Obligations. If at any time a Pre-Existing Environmental Condition is determined to exist which (1) reasonably requires a Response Action or other action in order to comply with Applicable Law, (2) interferes with the performance of the Contract Services, or (3) increases the cost to the Company of performing the Contract Services, then the City shall promptly after written notice from any Governmental Body or the Company of the presence or existence thereof, commence and diligently prosecute Response Actions or other actions as may be necessary to dispose of, remediate or otherwise correct the Pre-Existing Environmental Condition or otherwise make the Pre-Existing Environmental Condition comply with Applicable Law. The City shall have the right to contest any determination of a Pre-Existing Environmental Condition and shall not be required to take any action under this subsection so long as: (1) the City is contesting any determination of a Pre-Existing Environmental Condition in good faith by appropriate proceedings conducted with due diligence; and (2) Applicable Law permits continued design, construction or operation of the Facilities pending resolution of the contest, so that the Company shall have no liability as a result of the failure of the City to

dispose of, remediate or otherwise correct such Pre-Existing Environmental Condition during the period of contest.

ARTICLE XIV

SECURITY FOR PERFORMANCE

SECTION 14.1. GUARANTOR. (A) Guaranty Agreement. The Company shall cause the Guaranty Agreement to be provided and maintained by the Guarantor during the Term hereof in the form attached hereto as a Transaction Form.

(B) Material Decline in Guarantor's Credit Standing Defined. For purposes of this Section, a "Material Decline in Guarantor's Credit Standing" shall be deemed to have occurred if: (1) in the event that the Guarantor has long-term senior debt outstanding which has a credit rating by either Rating Service, such rating by either Rating Service on the Contract Date is reduced below investment grade level or after the Contract Date is reduced below investment grade; or (2) in the event that the Guarantor does not have long-term senior debt outstanding or such debt is not rated by either Rating Service, the credit standing of the Guarantor on the Contract Date is below a level which is insufficient to support a "shadow" investment grade credit rating by either Rating Service on long-term senior debt of the Guarantor or thereafter is reduced below such a level, whether or not any such debt is outstanding. The Company shall immediately notify the City of any Material Decline in the Guarantor's Credit Standing.

(C) Credit Enhancement Upon a Material Decline in Guarantor's Credit Standing. Section 14.3 obligates the Company to cause the Guarantor to provide a Letter of Credit on the Contract Date as security for the performance of its obligations under this Service Agreement. If, on the Contract Date, a Material Decline in Guarantor's Credit Standing exists, the Stated Amount of the Letter Credit required by subsection 14.3(B)(1) shall be increased by \$40,000,000. If, at any time after the Contract Date and prior to Final Completion, a Material Decline in Guarantor's Credit Standing occurs, the Stated Amount of the Letter of Credit required by either subsection 14.3(B)(1) or (2), as applicable, shall be increased by \$40,000,000. If, at any time after Final Completion, a Material Decline in Guarantor's Credit Standing occurs, the Stated Amount of the Letter of Credit required by subsection 14.3(B)(3) shall be increased to an amount equal to the aggregate Fixed Component of the Service Fee reasonably projected by the City for the three Contract Years following the Contract Year in which such event occurs.

(D) Restoration of Credit Standing. If, at any time following the occurrence of a Material Decline in Guarantor's Credit Standing, (1) the credit rating or "shadow" credit rating of the Guarantor is raised to investment grade by both of the Rating Services, or (2) an additional Guaranty in a form substantially identical to the form of the Guaranty is provided by another company acceptable to the City whose credit rating would have avoided this

occurrence of a Material Decline in Guarantor's Credit Standing, the required increase in the Stated Amount of the Letter of Credit provided for in subsection (C) of this Section shall no longer be applicable, and such required Stated Amount shall thereafter be the applicable Stated Amount provided for Section 14.3. To evidence the authorized reduction of the Stated Amount hereunder, the City, at the request of the Company, shall deliver to the Qualified Commercial Bank the certificate for reduction in Stated Amount provided for in the Transaction Forms.

(E) Guarantor Annual Reports. The Company shall furnish the City, within 120 days after the end of the Guarantor's fiscal year, consolidated balance sheets and income statements for the Guarantor attached to the audited year-end financial statements reported upon by the Guarantor's independent public accountant. If applicable, the Company shall also furnish the City with copies of the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission or comparable foreign regulatory body, as applicable.

SECTION 14.2. BONDS. (A) Performance and Payment Bonds. On or before the Contract Date, the Company shall provide the Performance Bond and the Payment Bond, each in an amount equal to the construction portion of the Fixed Design/Build Price (plus a reasonable amount to be determined by the parties for any estimated Fixed Design/Build Price Adjustments), as financial security for the faithful performance and payment of its construction obligations hereunder. The Performance Bond and the Payment Bond shall be substantially in the form set forth in the Transaction Forms and shall be issued by a surety company: (1) approved by the City having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) holding a certificate of authority to transact surety business in the State issued by the Director of the Department of Insurance pursuant to ARS Title 20, Chapter 2, Article 1. The Performance Bond and the Payment Bond shall remain open until Final Completion and shall otherwise comply with the requirements of ARS §34-608. Prior to the Company's undertaking any Capital Modification under this Service Agreement and to the extent required by Applicable Law, the Company shall provide a Performance Bond and a Payment Bond, each in an amount equal to the construction costs of such Capital Modification, and such bonds shall otherwise comply with the requirements of this Section.

(B) Monitoring of Sureties. The Company shall be responsible throughout this Service Agreement for monitoring the financial condition of any surety company issuing

bonds under this Service Agreement and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing surety company falls below such minimum level, the Company shall promptly notify the City of such event and shall promptly furnish or arrange for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the City agrees to accept the surety company or agrees to an alternative method of assurance. Upon such notice by the Company of such an event, the City shall not unreasonably withhold its approval of such assurance.

SECTION 14.3. LETTER OF CREDIT. (A) Qualified Commercial Bank. A “Qualified Commercial Bank” for the purposes of this Service Agreement shall mean a domestic or foreign commercial bank whose long-term debt is rated “A2” or higher by Moody’s and whose long-term debt is rated “A” or higher by Standard & Poor’s, and if there is a split rating, then the lower of the two shall apply. The Qualified Commercial Bank shall maintain a banking office in either Phoenix, Arizona, Los Angeles or San Francisco, California, or New York, New York. The Qualified Commercial Bank shall be subject to the approval of the City, which shall not unreasonably be withheld or delayed.

(B) Letter of Credit Requirements. On or before the Contract Date, the Company shall cause the Guarantor to provide further security for the performance of its obligations hereunder through an irrevocable direct pay letter of credit issued by a Qualified Commercial Bank (the “Letter of Credit”). The Letter of Credit shall be for a term of one year, shall be continuously renewed, extended or replaced so that it remains in effect until 180 days after the Termination Date, and shall be issued substantially in the form set forth in the Transaction Forms. The Letter of Credit shall be in a stated amount (the “Stated Amount”) equal to: (1) \$20,000,000 for the period from the Contract Date through the date on which a final determination is reached as to when the Acceptance Date in fact occurred, either through the City’s concurrence pursuant to Section 5.9 or, if the City disagrees, through mediated or judicial dispute resolution; (2) \$10,000,000 for the period from such final determination date through the date of Final Completion; and (3) \$5,000,000 thereafter (adjusted annually from the Contract Date by the CPI). In the event of a Material Decline in Guarantor’s Credit Standing, the applicable Stated Amounts of the Letter of Credit in the preceding sentence shall be increased by the respective amounts set forth in subsection 14.3(C). The required Stated Amount shall, upon each renewal, extension or replacement thereof, be reduced by the aggregate amount of all amounts drawn on all previous Letters of Credit provided under this

subsection. The Stated Amount of the Letter of Credit and the City's estimate of damages for purposes of its drawing rights under this Section shall in no way limit the amount of damages to which the City may be entitled for any material breach or Company Event of Default hereunder. In order to evidence the authorized reduction of the Stated Amount hereunder, the City, at the request of the Company, shall deliver to the Qualified Commercial Bank the certificate for reduction in Stated Amount provided for in the Transaction Forms.

(C) Drawings for Non-Renewal or Bankruptcy. The City shall have the unconditional right to immediately draw upon the Letter of Credit for the full Stated Amount thereof upon the following conditions: (1) in the event that any required renewal, extension or replacement thereof is not made earlier than the date which is 30 days prior to its expiration date; (2) the Company or the Guarantor (i) has filed a petition of voluntary bankruptcy under the Bankruptcy Code, (ii) has consented to the filing of any bankruptcy or reorganization petition against the Company or the Guarantor, or (iii) has filed a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code; or (3) a court of competent jurisdiction has issued an order appointing a receiver, liquidator, custodian or trustee of the Company or the Guarantor or of a major part of the Company's or the Guarantor's property, respectively, or a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code has been filed against the Company or the Guarantor, and such order has not been discharged or such filing has not been dismissed within 90 days after such issuance or filing. The proceeds of any such drawing shall be held by the City as cash collateral to secure the performance of the Contract Services and, in the event of a material breach of this Service Agreement following any such drawing, may be retained by the City as payment or partial payment of damages resulting therefrom.

(D) Drawings for Termination. The City shall have the unconditional right to immediately draw upon the Letter of Credit an amount estimated by the City as representing the damages it has suffered as a result of the termination of this Service Agreement by the City pursuant to Section 12.2.

(E) Drawings for Material Breach. The City shall have the right to draw upon the Letter of Credit an amount estimated by the City as representing the damages it has suffered as a result of a material breach of this Service Agreement by the Company. It shall be a condition to the right of the City to draw on the Letter of Credit under this subsection that: (1) the WSD Director has given the Company written notice of a material breach of this Service Agreement, whether or not such breach constitutes an Event of Default, and attached a copy of his or her good faith assessment of the damages the City has suffered as a result of such

breach; and (2) the Company has had an opportunity at a meeting scheduled by the WSD Director to be held not earlier than 15 days nor later than 30 days following delivery of such notice, to present to the WSD Director evidence disputing the City's assertion of breach or assessment of damages. Notice to the Company of a material breach hereof shall be given concurrently with notice to the Guarantor, except that following any event of voluntary bankruptcy or involuntary bankruptcy by the Company as described in Section 12.2 or a termination of this Service Agreement pursuant to Section 12.2, no such notice shall be required to be given to the Company, nor shall the giving of such notice be a condition to the City's drawing rights under the Letter of Credit pursuant to this subsection.

(F) Effect of Final Determination of Damages. In the event that subsequent to any drawing on the Letter of Credit it is determined by any court of competent jurisdiction in a final non-appealable decision that such drawing to any extent was not permitted hereunder, the City shall pay the amount wrongfully drawn to the Company together with interest thereon of the Overdue Rate calculated from the date of drawing to the date of payment to the Company.

SECTION 14.4. COSTS OF PROVIDING SECURITY FOR PERFORMANCE. (A) Inclusion in Service Fee. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Company's obligations hereunder shall be borne by the Company without reimbursement from the City.

(B) Release of Security. The City shall have the right at any time to release or suspend the Company from its obligation to provide the Letter of Credit required under this Article. Upon any such release and during any such suspension, the Company shall credit the City an amount reasonably determined to be the actual cost savings to the Company as a result of the release or suspension of the Letter of Credit obligations hereunder for each Contract Year the Letter of Credit has been released or suspended. Notwithstanding the City's having elected to release the Letter of Credit hereunder, the City may direct the Company at any time thereafter to reinstate such Letter of Credit and, upon such reinstatement, the Fixed Component of the Service Fee shall be restored to the amount it would have been had the Letter of Credit never been released or suspended. In such event, the Company shall within 15 days following such notice of reinstatement furnish the City with the reinstated Letter of Credit.

ARTICLE XV

MISCELLANEOUS PROVISIONS

SECTION 15.1. RELATIONSHIP OF THE PARTIES. The Company is an independent contractor of the City and the relationship between the parties shall be limited to performance of this Service Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Service Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Service Agreement or the performance thereof.

SECTION 15.2. CONTRACT ADMINISTRATION. (A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term of this Service Agreement. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Service Agreement.

(B) Contract Administration Memoranda. The principal formal tool for the administration of matters arising under this Service Agreement between the parties shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the City and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) the determination of the specific relief to be given the Company under Section 13.2 on account of an Uncontrollable Circumstance; (2) the determination of the specific amount of any increase or decrease of the Design/Build Price or the Service Fee to which the Company is entitled under any provision of this Service Agreement; (3) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (4) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (5) other similar contract administration matters.

(C) Procedures. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the City reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Contract Representative of each party, and co-signed by a Senior Supervisor for the Company and by the WSD Director or the Director's designee. The City and the Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Service Agreement.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms of this Service Agreement. Any material change, alteration, revision or modification of this Service Agreement, however, shall be effectuated only through a formal Service Agreement amendment authorized, approved or ratified by resolution of the governing body of the City and properly authorized by the Company.

SECTION 15.3. CONTRACT REPRESENTATIVES. (A) Company's Senior Supervisors. The Company shall appoint and inform the City from time to time of the identity of the corporate officials of the Company and the Guarantor with senior supervisory responsibility for the Facilities and the performance of this Service Agreement (the "Senior Supervisors"). The Company shall promptly notify in writing to the City of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the City in any reviews of the performance of the Company Construction Superintendent and the Service Manager which the City may undertake from time to time, and shall give full consideration to any issues raised by the City in conducting such performance reviews.

(B) City's Contract Administrator. The City shall designate an individual or firm to administer this Service Agreement and act as the City's liaison with the Company in connection with the Contract Services (the "Contract Administrator"). The Company understands and agrees that the Contract Administrator has only limited authority with respect to the implementation of this Service Agreement, and cannot bind the City with respect to any Service Agreement amendment or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Company shall be entitled to rely on the written directions of the Contract Administrator. The Contract Administrator shall have the right at any time to issue the Company a written request for information relating to this Service

Agreement. Any written request designated as a “priority request” shall be responded to by the Company within three business days.

(C) City Approvals and Consents. When this Service Agreement requires any approval or consent by the City to a Company submission, request or report, the approval or consent shall, within the limits of the authority of subsection (B) of this Section, be given by the Contract Administrator in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the City with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Service Agreement, and except for requests, reports and submittals made by the Company that do not, by their terms or the terms of this Service Agreement, require a response or action, if the City does not find a request, report or submittal acceptable, it shall provide written response to the Company describing its objections and the reasons therefor within 30 days of the City’s receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the City’s approval or consent may not be unreasonably delayed by the express terms hereof, and the Company may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the City pursuant to some specific term of this Service Agreement shall be deemed acceptable to the City if the City shall not have objected thereto within 30 days of the receipt thereof.

SECTION 15.4. LIMITED RECOURSE TO CITY. No recourse shall be had to the general fund or general credit of the City for the payment of any amount due the Company hereunder, whether on account of the Design/Build Price, the Service Fee or for any Loss-and-Expense or payment or claim of any nature arising from the performance or non-performance of the City’s obligations hereunder. The sole recourse of the Company for all such amounts shall be to the revenues of the Water System (including the Facilities). All such revenues shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the Company.

SECTION 15.5. PROPERTY RIGHTS. (A) Protection from Infringement. The Company shall pay all royalties and license fees in connection with the Design/Build Work and the Operation Services, including all royalties, license fees or other charges that may be payable to the Calgon Carbon Corporation, its Affiliates or any of their successors or assigns (“Calgon”) for the Company’s use of any ultraviolet disinfection technology, processes and equipment at the Facilities that is subject to any patent claimed by Calgon. The Company shall protect, indemnify, defend and hold harmless the City, and any of the City Indemnities, in the manner provided in Section 13.3, from and against any and all Loss-and-Expense arising

out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Design/Build Work and the Operation Services, or at its option, shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe. The provisions of this Section shall survive termination of this Service Agreement.

(B) Intellectual Property Developed by the Company. All intellectual property developed by the Company at or through the use of the Facilities or otherwise in connection with the performance of the Contract Services shall be owned by the Company subject to the terms and conditions of this Section, and is hereby licensed to the City on a non-exclusive cost free, perpetual basis for use by the City and any successor operator of the Facilities (but, with respect to any successor operator, only in connection with the operation of the Facilities). Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. The City shall have an irrevocable, perpetual and unrestricted right to use such intellectual property for any City purpose, whether before or following the Termination Date. Neither the City nor the Company shall license, transfer or otherwise make available such intellectual property to any third-party for remuneration except with the consent of the other, which consent may be conditioned upon mutual agreement as to the sharing of any such remuneration. The City's use of any such intellectual property shall be at its own risk and the Company shall have no liability therefor.

SECTION 15.6. INTEREST ON OVERDUE OBLIGATIONS. Except for overdue payments of approved Applications for Payment as provided in subsection 6.5(C), for retainage holdbacks on approved payments of the Fixed Design/Build Price pursuant to subsection 6.5(H) and for disputed amounts withheld and later determined to be proper under subsection 6.5(I), all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

SECTION 15.7. NEGOTIATED FIXED PRICE WORK. (A) Fixed Component of the Service Fee and Fixed Design/Build Price. The Fixed Component of the Service Fee and the Fixed Design/Build Price have been fixed and agreed to by the parties based on the Company's proposal submitted in response to the RFP, and are not subject to Cost Substantiation.

Notwithstanding the foregoing sentence, the Company shall furnish the City with all cost information required by the City for the payment of the Fixed Design/Build Price under Article VI.

(B) Negotiated Lump Sum Pricing of Work for Which the City is Financially Responsible. This Service Agreement obligates the City to pay for certain costs resulting from Uncontrollable Circumstances, City Fault and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that the City will pay for such costs on a negotiated, lump sum basis, and that the lump sum price will be negotiated in advance of the Company's performance of the work. For example, if a Change in Law occurs, as required under Section 13.2 the parties will assess the impact of the Change in Law, take all appropriate mitigation steps, determine any necessary Capital Modifications and operating changes, and agree upon lump sum pricing therefor. To facilitate such negotiations, the Company shall furnish the City with all information reasonably required by the City regarding the Company's expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Company's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Company's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 15.8. COST SUBSTANTIATION OF WORK ALREADY PERFORMED.

(A) Cost Substantiation Generally. The Company shall provide Cost Substantiation for the costs for which the City is financially responsible hereunder, other than the Fixed Component of the Service Fee, the Fixed Design/Build Price, and the costs for which the parties have negotiated a lump sum price, all as and to the extent provided in Section 15.7. In incurring costs which are or may be subject to Cost Substantiation, the Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable and except with respect to costs of the Company to which the Service Fee and the Fixed Design/Build Price apply, obtaining three competing quotes or estimates for costs expected to be in excess of \$50,000), and shall enter into subcontracts on commercially reasonable terms and prices in light of the work to be performed and the City's potential obligation to pay for it.

(B) Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as a reasonably practicable after the costs which require substantiation have been incurred by the Company. Examples of costs which require substantiation include (1) work done on an emergency basis to respond to an Uncontrollable Circumstance, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work; and (2) work done by the Company under subsection 12.9(C) upon the expiration or

termination of this Service Agreement, to the extent such costs are the responsibility of the City under subsection 12.9(E). Cost Substantiation shall also be required where the parties agree that the Company shall perform work on a cost-plus basis, subject to the limitations set forth in subsection (E) of this Section.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Service Agreement under which such cost is chargeable to the City, shall describe the competitive or other process utilized by the Company to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required pursuant to this Service Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the City and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work, (1) the amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes; (2) a statement of the equipment used and any rental payable therefor; (3) employee hours, duties, wages, salaries, benefits and assessments; and (4) profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. The Company's entitlement to reimbursement of Cost Substantiated costs of the Company shall be subject to the limitations set forth in this Section.

(D) Technical Services. Company personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on projects of similar size and scope to the Design/Build Work or Operation Services. The Company shall use commercially reasonable efforts to use available Company personnel for additional work hereunder before using Subcontractors.

(E) Mark-Up. On all costs incurred by the Company for work performed directly by the Company or any of its Affiliates which are subject to Cost Substantiation, the Company shall be entitled to a 5% allocation for overhead plus a mark-up of 10% for risk and profit; provided, however, that for work done in response to an emergency costing up to \$50,000 per event, the Company shall be entitled to no mark-up for risk and profit. On all costs incurred by the Company for work performed by Subcontractors, the Company shall be entitled to a mark-up of 5% for risk, profit and administration, and no mark-up for allocable

overhead. The price payable to all Subcontractors, including Subcontractor overhead and mark-ups for risk and profit, shall be commercially reasonable.

(F) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs required to be Cost Substantiated, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the City with the request for reimbursement of such costs.

SECTION 15.9. SUBCONTRACTORS. (A) Use Restricted. The Company shall operate the Facilities with its own employees and in accordance with Article VII. Subcontractors may be used to perform other Contract Services, subject to the City's right of approval set forth in subsection (B) of this Section.

(B) Limited City Review and Approval of Permitted Subcontractors. Except as provided in the next sentence, the City shall have the right, based on the criteria provided below in this Section, to approve all Subcontractors which the Company is permitted to engage under subsection (A) of this Section for Contract Services valued in excess of \$50,000 annually (as adjusted annually from the Contract Date by the CPI), which approval shall not be unreasonably withheld. City approval of Subcontractors as provided in the preceding sentence shall not be required for: (1) Affiliates of the Company; (2) equipment suppliers; (3) Governmental Bodies; (4) approved Subcontractors listed on Appendix 12; and (5) Subcontractors hired by the Company for purposes of remedying an emergency situation. The Company shall furnish the City written notice of its intention to engage such Subcontractors, together with all information reasonably requested by the City pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest; (2) any record of felony criminal convictions or pending felony criminal investigations; (3) any final judicial or administrative finding or adjudication of illegal employment discrimination; (4) any unpaid federal, State, City or local Taxes; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the City or the State. The approval or withholding thereof by the City of any proposed Subcontractor shall not create any liability of the City to the Company, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State or City contracting for any services similar in scope to the Operation Services or the Design/Build Work.

(C) Subcontract Terms and Subcontractor Actions. The Company shall retain full responsibility to the City under this Service Agreement for all matters related to the Contract Services notwithstanding the execution or terms and conditions of any Subcontract.

No failure of any Subcontractor used by the Company in connection with the provision of the Contract Services shall relieve the Company from its obligations hereunder to perform the Contract Services. The Company shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the Company or inflicted on the Company or a Subcontractor by the actions of another Subcontractor.

(D) Indemnity for Subcontractor Claims. The Company shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against the City for labor, services, materials or equipment furnished for the Contract Services. The Company acknowledges that its indemnity obligations under Section 13.3 shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services.

(E) Design Subcontract. Not later than 30 days after the Contact Date, the Company shall enter into a design subcontract with _____ (the "Design Subcontract") with the Lead Design Firm. The Design Subcontract shall provide for the design of the Facilities. The Design Subcontract shall be subject to review and comment by the City for consistency with the applicable requirements of this Service Agreement, and shall not contain any provision which is material and adverse to the City. No such review or comment shall amend, alter or affect this Service Agreement or the Company's obligations hereunder in any manner, nor shall the City incur any liability or expense as a result thereof.] **[This subsection shall be used only where the Company is subcontracting for design services.]**

(F) Construction Subcontract. Not later than 30 days prior to the Construction Date, the Company shall enter into a construction subcontract (the "Construction Subcontract") with _____, or, subject to the approval of the City not to be unreasonably withheld, another general construction contractor reasonably experienced in constructing industrial and utility projects similar to the Facilities (the "Construction Subcontractor"). The Construction Subcontract shall provide for the construction, installation and equipping of the Facilities, and the performance of all Design/Build Work except work to be performed by the Company and work pertaining to Facilities design or Acceptance Testing, based upon detailed Design Documents furnished by the Company for such purpose. All such Design Documents shall be based on and consistent with the Design Requirements and the Supplemental Technical Information and all other terms and conditions of this Service Agreement. The Construction Subcontract shall be subject to review and comment by the City for consistency

with the requirements of this subsection, and shall not contain any provision which is material and adverse to the City. The provisions of the Construction Subcontract that the Company certifies are proprietary and not materially adverse to the City may be blacked out in any copy given to the City. No such review or comment by the City shall amend, alter or affect this Service Agreement or the Company's obligations hereunder in any manner, nor shall the City incur any liability or expense as a result thereof.

(G) Operation Subcontract. Not later than 30 days prior to the Acceptance Date, the Company shall enter into an operation subcontract with _____ (the "Operation Subcontract"). The Operation Subcontract shall provide for the operation, maintenance, repair and replacement of the Facilities and the performance of all the Operation Services except those to be performed by the Company. The Operation Subcontract shall be subject to review and comment by the City for consistency with the applicable requirements of this Service Agreement, and shall not contain any provision which is material and adverse to the City. No such review or comments shall amend, alter or affect this Service Agreement or the Company's obligations hereunder in any manner, nor shall the City incur any liability or expense as a result thereof.] **[This subsection shall be used only where the Company is subcontracting for the operations services.]**

(H) Notice to City of Amendments, Breaches and Defaults. The Company shall give prior written notice to the City of any proposed and final amendments to the Design Subcontract, the Construction Subcontract or the Operation Subcontract, and shall not enter into any such amendment which is material and adverse to the rights and obligations of the City hereunder without the City's prior written consent. The Company shall notify the City promptly of any material breach or event of default occurring under the Design Subcontract, the Construction Subcontract or the Operation Subcontract and the probable effect on the Design/Build Work or the Operation Services. The Company shall keep the City apprised of the course of the dispute and shall advise the City of its ultimate resolution.

(I) Assignability. All Subcontracts entered into by the Company with respect to the Facilities shall be assignable to the City, solely at the City's election and without cost or penalty, upon the expiration or termination of this Service Agreement.

SECTION 15.10. AFFIRMATIVE ACTION REQUIREMENTS. (A) Applicable Law. The Company shall comply at all times with the affirmative action requirements of Chapter 18, Articles IV and V of the Phoenix City Code, as amended.

(B) Affirmative Action Statement. The Company and any supplier, lessee, individual, firm, vendor, contractor or Subcontractor in performing under this Service

Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The Company and any supplier, lessee, individual, firm, vendor, contractor or Subcontractor will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or natural origin, age or disability. Such action shall include, but not be limited to, the following: employment; promotion; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

(C) Subcontracts. The Company further agrees that the affirmative action statement in subsection (B) of this Section shall be incorporated in all Subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Service Agreement. This Service Agreement shall also be incorporated in all Subcontracts, job-consultant agreements or subleases of this agreement entered into as a part of this Service Agreement.

SECTION 15.11. ACTIONS OF THE CITY IN ITS GOVERNMENTAL CAPACITY.

(A) Rights as Government Not Limited. Nothing in this Service Agreement shall be interpreted as limiting the rights and obligations of the City under Applicable Law in its governmental or regulatory capacity (including police power actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the Company to bring any action against the City, not based on this Service Agreement, arising out of any act or omission of the City in its governmental or regulatory capacity.

(B) No City Obligation to Issue Governmental Approvals. The City retains all issuance and approval rights it has under Applicable Law with respect to any Governmental Approval required with respect to the Facilities, the Design/Build Work or the Operation Services, and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this Service Agreement. The City shall not be deemed to be in breach of or default hereunder as a result of any delay or failure in the issuance or approval of any such Governmental Approval.

SECTION 15.12. ASSIGNMENT. (A) By the Company. The Company shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Service Agreement, its right to execute the same, or its right, title or interest in all or any part of this Service Agreement or any monies due hereunder whatsoever prior to their payment to the Company, whether legally or equitably, by power of attorney or otherwise, without the prior written

consent of the City. Any such approval given in one instance shall not relieve the Company of its obligation to obtain the prior written approval of the City to any further assignment. Any such assignment of this Service Agreement which is approved by the City, shall require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Service Agreement, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty Agreement, which shall remain in full force and effect during the Term hereof. The approval of any assignment, transfer or conveyance shall not operate to release the Company in any way from any of its obligations under this Service Agreement unless such approval specifically provides otherwise.

(B) By the City. The City may not assign its rights or obligations under this Service Agreement without the prior written consent of the Company. The City may however, assign its rights and obligations under this Service Agreement, without the consent of the Company, to another Governmental Body if such assignee assumes, and is legally capable of discharging the duties and obligations of the City hereunder.

SECTION 15.13. COMPANY BUSINESS. The Company agrees that its business will be limited to that contemplated by this Service Agreement and it will not engage in activities or incur liabilities other than in connection with the Company's performance of this Service Agreement and the transactions contemplated hereby. **[This Section shall only apply where the Company is a newly-formed single-purpose entity for this Service Agreement.]**

SECTION 15.14. TRANSACTION DOCUMENTS. The Company agrees to administer and perform the City's obligations under, or comply with any conditions or requirements imposed by, the following Transaction Documents on behalf of the City, as such obligations, conditions or requirements relate to the Facilities: (1) the Water Services Contract (but only with respect to the provisions of Sections 4.3(f), 4.5 and 4.9 thereof regarding the environmental clearance of the Facilities, the design, construction, operation and maintenance of the Intake, and compliance with all applicable water and air pollution control laws, respectively); (2) the 50-Year Right-of-Way; (3) the Jurisdictional Determination; and (4) the Categorical Exclusion. The City, at the request of the Company, shall enforce performance of the obligations of the counterparties to all such Transaction Documents. If, upon any renewal or amendment of a Transaction Document, any new obligation, requirement or condition imposed on the Company under such Transaction Document materially expands the scope of the Company's obligations hereunder, materially interferes with, materially delays or materially increases the cost of the Company's performing its obligations hereunder, the Company shall

be entitled to seek relief in connection therewith as an Uncontrollable Circumstance in accordance with Section 13.2. The Company shall cooperate with the City in connection with any such renewal or amendment of a Transaction Document, including advising the City of the potential effect that a proposed new obligation, requirement or condition may have on its obligations hereunder.

SECTION 15.15. COMPLIANCE WITH MATERIAL AGREEMENTS. The Company shall comply with its obligations under agreements of the Company which are material to the performance of its obligations under this Service Agreement. The City shall comply with its obligations under agreements of the City which are material to the performance of its obligations hereunder.

SECTION 15.16. BINDING EFFECT. This Service Agreement shall inure to the benefit of and shall be binding upon the City and the Company and any assignee acquiring an interest hereunder consistent with Section 15.12.

SECTION 15.17. AMENDMENT AND WAIVER. This Service Agreement may not be amended except by a written agreement signed by the parties. Any of the terms, covenants, and conditions of this Service Agreement may be waived at any time by the party entitled to the benefit of such term, covenant or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

SECTION 15.18. NOTICES. (A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Service Agreement shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States Mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) City Notice Address. Notices required to be given to the City shall be addressed as follows:

City of Phoenix Water Services Department
200 West Washington Street, 9th Floor
Phoenix, Arizona 85003
Attention: Water Services Director

With a copy to:

City of Phoenix Law Department
200 West Washington Street
Suite 1300
Phoenix, Arizona 85003
Attn: City Attorney

(C) Company Notice Address. Notices required to be given to the Company shall be addressed as follows:

[Company Name/Address]

Attention:

With a copy to:

SECTION 15.19. NOTICE OF LITIGATION. In the event the Company or City receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Facilities, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, "timely notice" shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 15.20. FURTHER ASSURANCES. The City and Company each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Service Agreement. The City and the Company, in order to carry out this Service Agreement, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Service Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

[SIGNATURE PAGE FOLLOWS]

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

CITY OF PHOENIX, a municipal corporation, Frank A. Fairbanks, City Manager

[COMPANY]

By: _____

By _____

Name: _____

Name: _____

Printed

[City Seal]

[Company Seal]

ATTEST:

ATTEST

City Clerk

Printed Name: _____

Approved as to form:

City Attorney

Attorney - City Council:

Date

TRANSACTIONS FORMS
TO THE
SERVICE AGREEMENT FOR THE
DESIGN, CONSTRUCTION AND OPERATION
OF THE
LAKE PLEASANT WATER TREATMENT PLANT PROJECT
(PROJECT NO. WS85350004)

between

THE CITY OF PHOENIX, ARIZONA

and

[PROJECT COMPANY]

Dated

_____, 2003

TRANSACTION FORM A
FORM OF GUARANTY AGREEMENT

GUARANTY AGREEMENT

from

[GUARANTOR]

to

THE CITY OF PHOENIX, ARIZONA

Dated

_____, 2003

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of _____, 2003, between [GUARANTOR], a [corporation] organized and existing under the laws of [the State of _____] (together with any permitted successors and assigns hereunder, the "Guarantor"), and the City of Phoenix, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona (the "City").

RECITALS

The City and the _____, a [company] organized and existing under the laws of the State of _____ (the "Company"), have entered into a Service Agreement for the Design, Construction and Operation of the Lake Pleasant Water Treatment Plant Project, Project No. WS85350004, dated _____, 2003, as amended from time to time (the "Service Agreement"), whereby the Company has agreed to obtain governmental approvals for, design, construct, start up, acceptance test, operate, maintain, repair, replace and manage a water treatment plant, a raw water intake and pumping station and a raw water transmission line, all as more particularly described therein.

The Company is a [direct or indirect] subsidiary of the Guarantor.

The City will enter into the Service Agreement only if the Guarantor guarantees the performance by the Company of all of the Company's responsibilities and obligations under the Service Agreement as set forth in this Guaranty Agreement (the "Guaranty").

In order to induce the execution and delivery of the Service Agreement by the City and in consideration thereof, the Guarantor agrees as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Service Agreement.

“Obligations” means the amounts payable by, and the covenants and agreements of, the Company pursuant to the terms of the Service Agreement.

“Transaction Agreement” means any agreement entered into by the Company or the City in connection with the transactions contemplated by the Service Agreement, including the Service Agreement, and any supplements thereto.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty.

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

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

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement; Authority. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

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

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of Arizona.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provisions, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.

The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is a [corporation] duly organized, validly existing and in good standing under the laws of the [State of _____] , with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

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

(3) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(5) No Litigation. [Except as disclosed in the Guarantor's filings with the Securities and Exchange Commission pursuant to the requirements of the Securities Exchange Act of 1934, as amended,] [Except as disclosed in writing to the City,] there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against

the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder. **[Note: Exception to be determined based on Guarantor's corporate structure.]**

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of the terms and conditions of the Service Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE CITY. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the City for the benefit of the City (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the Service Agreement (including all amendments and supplements thereto) to, or for the account of, the City, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF CITY TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City: (1) file suit or proceed to obtain a personal judgment against the Company or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Service Agreement or required to be given to the Company under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Service Agreement. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the City's right to proceed directly against the Guarantor, the City (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms and conditions, and, except as provided in Section 3.4, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the City or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor):

(1) the extension or renewal of this Guaranty or the Service Agreement up to the specified Terms of each agreement;

(2) any exercise or failure, omission or delay by the City in the exercise of any right, power or remedy conferred on the City with respect to this Guaranty or the Service Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(3) any permitted transfer or assignment of rights or obligations under the Service Agreement or under any other Transaction Agreement by any party thereto (other than a permitted assignment to a replacement constructor or operator in the event of a termination of the Company pursuant to Article XII of the Service Agreement), or any permitted assignment, conveyance or other transfer of any of their respective interests in the Facilities or in, to or under any of the Transaction Agreements;

(4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the City or any other person in any Transaction Agreement or in the Facilities;

(5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;

(6) any failure of title with respect to all or any part of the respective interests of any person in the Sites or the Facilities;

(7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or

any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);

(8) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;

(9) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;

(10) the failure on the part of the City to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Company as a condition to the enforcement of Obligations pursuant to the Service Agreement;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Company or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Service Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding

anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Service Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Company's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS.

Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Service Agreement or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Service Agreement or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the Service Agreement, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from the City of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of the Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Service Agreement or Applicable Law as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Company;
- (6) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Company) or security;

(7) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

(8) the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of the Company; and

(9) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the City on demand all Fees and Costs, incurred by or on behalf of the City in successfully enforcing by Legal Proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that the City incurs in performing any of its obligations under the Service Agreement, or other applicable Transaction Agreement where such obligations are a condition to performance by the Company of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Company is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Service Agreement, or any applicable Transaction Agreement or the Company's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE. (A)

Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if: (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of Arizona, and (b) delivers to the City an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (2) any such transaction does not result in a Material Decline in Guarantor's Credit Standing, as defined in Section 14.1 of the Service Agreement or if such transaction results in a Material Decline in Guarantor's Credit Standing, as defined in Section 14.1 of the Service Agreement, the successor Guarantor provides credit enhancement as required by Section 14.1 of the Service Agreement.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section, and if such transaction results in a Material Decline in Guarantor's Credit Standing, as defined in Section 14.1 of the Service Agreement, the successor Guarantor shall provide credit enhancement as required by Section 14.1 of the Service Agreement.

SECTION 4.2. ASSIGNMENT. Except as provided in Section 4.1, this Guaranty may not be assigned by the Guarantor without the prior written consent of the City.

SECTION 4.3. QUALIFICATION IN ARIZONA. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of Arizona.

SECTION 4.4. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship

between the parties arising therefrom shall be solely and exclusively initiated and maintained in the State or federal courts located in Maricopa County, Arizona, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and the Guarantor.

SECTION 4.7. LIABILITY. It is understood and agreed to by the City that nothing contained herein shall create any obligation of, or right to look, to any director, officer, employee or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES. (A) Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by facsimile transmission, if a signed original is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) City Notice Address. Notices required to be given to the City shall be addressed as follows:

City of Phoenix Water Services Department
200 West Washington Street, 9th Floor
Phoenix, Arizona 85003
Attention: Water Services Director

With a copy to:

City of Phoenix Law Department
200 West Washington Street
Suite 1300
Phoenix, Arizona 85003
Attn: City Attorney

(C) Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

[Guarantor's Name/Address]

Attention:

With a copy to:

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

[GUARANTOR],
as Guarantor

By _____
Printed Name
Title

SEAL
(IMPRESSED ON
EXECUTION COPIES)

Accepted and Agreed to by:

THE CITY OF PHOENIX, ARIZONA, a municipal,
corporation, Frank A. Fairbanks, City Manager

By: _____
Printed Name:
Title:

TRANSACTION FORM B
FORM OF PERFORMANCE BOND

TRANSACTION FORM B

**FORM OF PERFORMANCE BOND
PURSUANT TO TITLE 34, CHAPTER 6, ARTICLE 1
OF THE ARIZONA REVISED STATUTES**
(Penalty of this bond must be 100% of the
construction portion of the Fixed Design/Build Price
under the Service Agreement)

**[Amount to be based on the Selected Proposer's proposed
Construction Period Subtotal in Proposal Form 34.]**

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter
called the "Principal"), as Principal, and
_____, a corporation organized and
existing under the laws of the State of _____, and duly licensed and
possessing a certificate of authority to transact surety business in the State of Arizona, with its
principal office in the City of _____ in the State of _____ (hereinafter
called the "Surety"), as Surety, are held and firmly bound unto the City of Phoenix, Arizona, a
municipal corporation organized and existing under and by virtue of the laws of the State of
Arizona (hereinafter called the "Obligee"), in the amount of
_____ Dollars (\$_____), for the payment
whereof, the said Principal and Surety bind themselves, and their heirs, administrators,
executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee,
dated the _____ day of _____, 2003, for the **Lake Pleasant
Water Treatment Plant Project, Project Number WS85350004**, which contract is hereby
referred to and made part hereof as fully and to the same extent as if copied at length in this
agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS THAT if the said
Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions
and agreements of the contract during the original term of the contract and any extension of
the contract, with or without notice to the Surety, and during the life of any guaranty required
under the contract, and also performs and fulfills all of the undertakings, covenants, terms,
conditions and agreements of all duly authorized modifications of the contract that may
hereafter be made, notice of which modifications to the Surety being hereby waived, the above
obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title
34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in
accordance with the provisions of Title 34, Chapter 6, Arizona Revised Statutes, to the extent
as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment
reasonable attorney fees that may be fixed by the court.

The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the contract.

Witness our hands this _____ day of _____, 200_.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

SURETY

Company: _____ (Corp. Seal)

A.M. Best Rating: _____

Signature: _____

Name and Title: _____
(Attach Certified Copy of Power of Attorney)

By: _____
(Arizona Resident Agent)

TRANSACTION FORM C
FORM OF PAYMENT BOND

TRANSACTION FORM C

**FORM OF PAYMENT BOND
PURSUANT TO TITLE 34, CHAPTER 6, ARTICLE 1
OF THE ARIZONA REVISED STATUTES**
(Penalty of this bond must be 100% of the
construction portion of the Fixed Design/Build Price
under the Service Agreement)

**[Amount to be based on the Selected Proposer's proposed
Construction Period Subtotal in Proposal Form 34.]**

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter
called the "Principal"), as Principal, and
_____, a corporation organized and
existing under the laws of the State of _____, and duly licensed and
possessing a certificate of authority to transact surety business in the State of Arizona, with its
principal office in the City of _____ in the State of _____ (hereinafter
called the "Surety"), as Surety, are held and firmly bound unto the City of Phoenix, Arizona, a
municipal corporation organized and existing under and by virtue of the laws of the State of
Arizona (hereinafter called the "Obligee"), in the amount of
_____ Dollars (\$_____), for the payment
whereof, the said Principal and Surety bind themselves, and their heirs, administrators,
executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee,
dated the ___ day of _____, 2003, for the **Lake Pleasant Water Treatment Plant
Project, Project Number WS85350004**, which contract is hereby referred to and made part
hereof as fully and to the same extent as if copied at length in this agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said
Principal promptly pays all monies due to all persons supplying labor or materials to the
Principal or the Principal's subcontractors in the prosecution of the construction provided for
in the contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title
34, Chapter 6, Arizona Revised Statutes, and all liabilities on this bond shall be determined in
accordance with the provisions, conditions and limitations of Title 34, Chapter 6, Arizona
Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment
reasonable attorney fees that may be fixed by the court.

Witness our hands this _____ day of _____, 200_.

CONTRACTOR AS PRINCIPAL

Company: _____ (Corp. Seal)

Signature: _____

Name and Title: _____

SURETY

Company: _____ (Corp. Seal)

A.M. Best Rating:

Signature: _____

Name and Title: _____
(Attach Certified Copy of Power of Attorney)

By: _____
(Arizona Resident Agent)

TRANSACTION FORM D
FORM OF LETTER OF CREDIT

TRANSACTION FORM D
FORM OF LETTER OF CREDIT

[Date]

City of Phoenix
Finance Department
251 West Washington Street, 9th Floor
Phoenix, Arizona 85003-1611
Attn: Director

Ladies and Gentlemen:

1. At the request and for the account of _____, a _____ [corporation] (the "Company"), we hereby establish in your favor, our Irrevocable Letter of Credit No.____ (the "Letter of Credit") in the amount of _____ United States Dollars (US\$_____) (as reduced from time to time in accordance with the provisions hereof, the "Stated Amount"), effective immediately and expiring at the close of business ([Insert Name of Location of Bank] time) on _____, ____ (the "Stated Termination Date"). All drawings under this Letter of Credit will be paid with our own funds.

2. This Letter of Credit is automatically renewable without amendment for an additional one year period from the Stated Termination Date, or any future Stated Termination Date, unless 60 days prior to any Stated Termination Date we notify you, by registered mail, that we elect not to consider this Letter of Credit renewed for any such additional period.

3. We hereby irrevocably authorize you to draw on us, in an aggregate amount not to exceed the Stated Amount and in accordance with the terms and conditions and subject to the reductions in amount as hereinafter set forth, in one or more drawings by one or more of your drafts in substantially the form of Annex A, payable at sight by you or your authorized agents or attorneys on a Business Day (as hereinafter defined), and accompanied by your written and completed certificate in substantially the form of Annex B attached hereto (any such draft accompanied by such certificate being your "Drawing Certificate"), an aggregate amount not exceeding the Stated Amount, representing amounts payable to you by the Company under the Service Agreement for the Design, Construction and Operation of the Lake Pleasant Water Treatment Plant Project, Project No. WS85350004, dated _____, 2003, between the Company and the City of Phoenix, Arizona (the "Service Agreement").

4. Each Drawing Certificate drawn under this Letter of Credit must be dated the date of presentation and bear on its face the clause "Drawn under Irrevocable Letter of Credit No. ____."

5. Funds under this Letter of Credit will be available to you against receipt by us of your Drawing Certificate. Presentation of any such Drawing Certificate by you or your authorized agent or attorney shall be made at our office located at:

[Bank Name and Address]

Attention: Letter of Credit Department

Telephone no. _____

Telecopy no. _____

Demand for payment hereunder may also be made in the form of facsimile transmission of the appropriate Drawing Certificate hereunder to the address and Telecopy number shown above. You must confirm our receipt of each telecopied Drawing Certificate by telephoning the number shown above. Only upon such confirmation shall the demand under such Drawing Certificate be made. As used herein, the term "Business Day" means any day, other than a Saturday or Sunday or other day on which we at our aforesaid office are authorized or required by law or executive order to close.

6. In the case of a presentation of a Drawing Certificate hereunder, if such Drawing Certificate is presented hereunder by sight or facsimile transmission as permitted hereunder, by 11:00 a.m. ([Insert Name of Location of Bank] time), on a Business Day, and provided that such Drawing Certificate strictly conforms to the terms and conditions hereof, payment shall be made to you, or to your designee, of the amount specified, in immediately available funds, not later than 3:00 p.m. ([Insert Name of Location of Bank] time) on the same day or such later Business Day as you may specify. If a Drawing Certificate is presented by you or your authorized agents or attorneys hereunder after the time specified hereinabove, on a Business Day, and provided that such Drawing Certificate strictly conforms to the terms and conditions hereof, payment shall be made to you, or to your designee, of the amount specified, in immediately available funds, not later than 1:00 p.m. ([Insert Name of Location of Bank] time), on the next Business Day thereafter or on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank of New York funds to your or your designee's account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into an account that you or your designee maintains with us.

7. Upon honoring any Drawing Certificate presented by you or your authorized agent or attorney hereunder, the Stated Amount and the amount available to be drawn hereunder by you by any subsequent Drawing Certificate shall be automatically and permanently decreased by the amount stated in each drawing hereunder.

8. The Stated Amount of this Letter of Credit shall be decreased upon our receipt of notice from you, in the form of Annex C hereto, by an amount equal to the amount stated in said notice and the amounts available to be drawn by you by any subsequent Drawing Certificate shall be automatically decreased by the amounts stated in such notice.

9. Only you or your authorized agent or attorney may make a drawing under this Letter of Credit. Upon any payment to you, your designee, your or your designee's account, of the amount demanded hereunder, we shall be fully discharged of our obligation under this Letter of Credit with respect to such demand for payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with respect to that payment to you.

10. Except as set forth in the next paragraph and the certificates referred to herein, this Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Service Agreement); and any such reference shall not be deemed to incorporate herein by reference any

document, instrument or agreement, except as set forth in next paragraph and for the certificates referred to herein.

11. This Letter of Credit is to be construed in accordance with the International Standby Practices 1998, International Chamber of Commerce Publication 590 (the "ISP98"), and any subsequent revisions thereto, as interpreted by the laws of the State of New York.

Very truly yours,

[Name of Bank]

By: _____
Authorized Officer

ANNEX A TO LETTER OF CREDIT

FORM OF SIGHT DRAFT

AT SIGHT PAY TO THE CITY OF PHOENIX, ARIZONA, as Beneficiary, [Amount in words] United States Dollars (US\$_____). Drawn under Irrevocable Letter of Credit No. ____.

THE CITY OF PHOENIX, ARIZONA,

Date of Presentation: _____

By
: _____

Title: _____

ANNEX B TO LETTER OF CREDIT

CERTIFICATE FOR DRAWING
IN CONNECTION WITH
PAYMENT OF AMOUNTS
UNDER THE SERVICE AGREEMENT

Irrevocable Letter of Credit No. ____

The undersigned, a duly authorized representative of the City of Phoenix, Arizona or its duly authorized agent or attorney (the "Beneficiary"), hereby certifies to [Name of Bank] (the "Bank"), with reference to Irrevocable Letter of Credit No. ____ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Beneficiary is a party to the Service Agreement for the Design, Construction and Operation of the Lake Pleasant Water Treatment Plant Project, Project No. WS85350004, dated _____, 2003 (the "Service Agreement") by and between the Beneficiary and _____ (the "Company").

2. The Beneficiary is making a demand for payment under the Letter of Credit in the amount of _____ United States Dollars (US\$_____) and such amount represents an amount owed to the Beneficiary with respect to an obligation of the Company under the Service Agreement and does not exceed the Stated Amount.

3. Payment of the amount described hereby shall be made by wire transfer to the following account: [wire transfer instructions].

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized representative as of this ____ day of _____, ____.

THE CITY OF PHOENIX, ARIZONA,

By

:

Title:

ANNEX C TO LETTER OF CREDIT

CERTIFICATE FOR THE REDUCTION
OF STATED AMOUNT AVAILABLE

Irrevocable Letter of Credit No. _____

The undersigned, a duly authorized representative of the City of Phoenix, Arizona (the "Beneficiary"), hereby certifies to [Name of Bank] (the "Bank"), with reference to Irrevocable Letter of Credit No. _____ (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

1. The Beneficiary is a party to the Service Agreement for the Design, Construction and Operation of the Lake Pleasant Water Treatment Plant Project, Project No. WS85350004, dated _____, 2003 (the "Service Agreement") by and between the Beneficiary and _____ (the "Company").

2. The Stated Amount of the Letter of Credit is hereby authorized to be reduced to _____ - United States Dollars (US\$ _____) upon receipt of the Bank of this certificate.

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its duly authorized representative as of this ___ day of _____, _____.

THE CITY OF PHOENIX, ARIZONA,

By

: _____

Title:
