FULTON COUNTY

Vision

People *Families* *Neighborhoods*

Mission

To serve, protect and govern in concert with local municipalities

Values

People *Customer Services*
Ethics *Resource Management*
Innovation *Equal Opportunity*

REQUEST FOR PROPOSAL NO. 09RFP01120K-DJ

Operation & Maintenance Services for Fulton County Wastewater Facilities & Pump Stations

For

DEPARTMENT OF PUBLIC WORKS

RFP DUE DATE AND TIME: Monday, May 18, 2009 at 11:00 A.M.
PRE-PROPOSAL CONFERENCE: Monday, March 30, 2009 at 11:30 A.M.
RFP ISSUANCE DATE: Friday, March 13, 2009
PURCHASING CONTACT: (404) 612 - 4213
E-MAIL: donna.jenkins@fultoncountyga.gov

LOCATION: FULTON COUNTY DEPARTMENT OF PURCHASING & CONTRACT COMPLIANCE
130 PEACHTREE STREET, S.W., SUITE 1168
ATLANTA, GA 30303

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SECTION 1
INTRODUCTION

1.1 PURPOSE

Fulton County, Georgia ("County") is soliciting proposals from qualified firms to provide complete operation and maintenance for Fulton County facilities consisting of Water Reclamation Facilities (WRF) and Pumping Stations serving North Fulton County. Services will be twenty four (24) hours per day, seven (7) days per week, and fifty two (52) weeks per year.

Through the issuance of this Request for Proposal ("RFP" and/or "Proposals"), the County is soliciting Proposals from qualified Operators for the Operations and Maintenance Services for Fulton County Wastewater Facilities & Pump Stations.

Proposals provided in response to this RFP that comply with the submittal requirements set forth in Section 5.0, including all forms and certifications, will be evaluated in accordance with the criteria and procedures described in Section 4.0. Based on the results of the evaluation, the County will award the **Operation and Maintenance Services for Fulton County Wastewater Facilities & Pump Stations Contract,** to the most advantageous Proposer based on the cost and the evaluation factors set forth in the RFP.

1.2 DESCRIPTION OF THE PROJECT

The list below provides a summary of the Managed Assets. It is not intended to describe all the elements that comprise the Managed Assets.

- Big Creek WRF
- Johns Creek WRF & Johns Creek Environmental Campus (JCEC)
- Little River WRF & Settingdown Creek (LAS)
- 30 Pump Stations & One Grinder Station – see list in Section 1.24

Managed Assets:

1.2.1 Big Creek WRF

The Big Creek WRF is located at 1030 Marietta Highway, in the City of Roswell, in North Fulton County west of the Chattahoochee River in the Big Creek Basin of Fulton County, The Big Creek WRF serves the largest service area and largest total flow of treatment facilities in North Fulton County. The service area is approximately 70 square miles and includes Roswell, Alpharetta, and areas of Cobb, Fulton, DeKalb Counties and portion of Milton. The Big Creek WRF was originally constructed at its current location in 1969 with a treatment capacity of 0.75 MGD. Several upgrades and expansions have been completed on the facility to its current permitted treatment capacity of 24 Million Gallons per Day (MGD).

The facility was upgraded in 1991 to 24MGD through the construction and addition of new headworks; influent screening and degritting; aeration chambers; secondary clarifiers; activated sludge handling and dewatering; sand filtration; and UV disinfection. The UV System was upgraded in 2006. Fulton County is proceeding with plans to upgrade and expand the Big Creek WRF from 24 to 38 MGD to meet the projected wastewater treatment demands.

Treated wastewater from the Big Creek WRF is discharged to the Chattahoochee River. The Big Creek WRF discharge is located 2.4 miles upstream from the Morgan Falls Dam. Dewatered sludge is disposed offsite to landfill by the Operator Operator.

1.2.2 Johns Creek WRF

The Johns Creek WRF is located at 8100 Riverbirch Drive in Roswell. The plant was originally constructed in 1980 with an average daily design capacity of 5 MGD. The plant was expanded in 1992 to a permitted discharged capacity of 7 MGD through the addition of two package treatment units (1MGD each). The plant currently serves approximately 33 square miles of the service area in North Fulton including City of Johns Creek and portion of Roswell, Sandy Springs and DeKalb County.

Wastewater is screened via mechanical screens prior to entering the influent wet well at Johns Creek pump station. Wastewater from the pump station wet well is pumped to the grit removal chambers. Grit is removed from the grit chamber by mechanical bucket and transported to dumpsters by a conveyor. Following the grit chamber, the wastewater flow is split between the main plant aeration basins and the two package treatment plants. Lime can be added to either flow for pH control. Flow to the package plants is controlled via a weir gate located

downstream of the grit chambers. An odor control system is provided for the grit chamber and influent bar screens areas.

Wastewater flows by gravity from the grit chamber to three aeration basins. These basins have been modified to allow flow in series between basins. All basins are provided with fine bubble membrane diffusers. The mixed liquor form the basins flow to two square secondary clarifiers, located downstream of the aeration basins. Settled sludge from secondary clarifiers is removed by Return Activated Sludge pumps & returned to the aeration basins, and wasted to aerobic digesters. Effluent from the clarifiers flows to two traveling bridge-sand filters and to chlorine contact chambers. Treated effluent from the package Plants is recombined at the chlorine contact chambers for combined disinfection. There are two effluent pumps located downstream of the re-aeration structure to pump effluent to the Chattahoochee River when the river level is high. The plant discharges to the Chattahoochee River downstream of the confluence of Johns Creek and Chattahoochee River. Chemical phosphorus removal is currently utilized at the Johns Creek WRF to ensure permit compliance. Sodium hypochlorite is used for disinfection.

Waste activated sludge from the clarifiers is pumped to coarse air bubble aerobic digesters. Digested sludge is then pumped to a 4,000-gallon sludge storage tank prior to dewatering by belt filter press. Two dissolved air floatation units are present between the aerobic digesters and the filter press; these units, however, are abandoned. A packaged polymer blending and injection system is used to condition the sludge as it is fed to the belt filter press.

Dewatered sludge is disposed offsite to landfill by the Operator Operator.

1.2.2.1 Johns Creek Environment Campus (JCEC)

The new 15 MGD Johns Creek Environment Campus (JCEC) is under construction at 8100 Holcomb Bridge Road, Alpharetta, GA 30022. This facility will use Membrane Bio Reactors (MBR) to treat wastewater to reuse standards. Once JCEC is operational, the Johns Creek WRF will begin operational decommissioning and dispose of all residuals from the facility. Fulton County anticipates acceptance of JCEC in November 2009. The successful proposer shall be required to commence services pursuant to agreement by October 1, 2009 at JCEC only. This 30 days transition period is designed to familiarize Operator with the facility to ensure smooth and uninterrupted transition from Design/Build Operator. Full O & M should then commence in late November 2009.
Proposers are required to provide cost proposals for the JCEC transition period, which is anticipated to begin November 2009 until May 31, 2010. Fulton County

anticipates awarding contract services initially for the transition period only with award of entire scope of work for the managed Assets to be awarded effective June 1, 2010. Johns Creek Environmental Campus(JCEC) has JCEC Influent Pump Station onsite and it is part of JCEC. The successful Operator needs to provide an initial transition plan to demonstrate how the Operator intends to ensure a smooth and uninterrupted transition from the Design/Build Operator to Operators' team.

1.2.3 Little River WRF

The Little River WRF is located at 1915 Cox Road in Woodstock, GA in neighboring Cherokee County. The plant serves Mountain Park and nearby communities in North Fulton and part of Cherokee County. The plant property is located at the confluence of Rocky Creek and Little River and is surrounded by a golf course, pasture land, and residential areas. The plant serves a portion of Milton and Roswell service area in North Fulton and discharges to the Little River.

Wastewater from the collection system passes through a Parshall flume and is pumped from the influent pump station to a mechanical bar screen. The pump station contains 3 pumps with a combined maximum capacity of approximately 3 MGD. Downstream of the bar screen, wastewater splits between 2 biological treatment trains. Each train consists of a fermentation zone, 2 anoxic zones and an aerobic zone arranged in series. These zones provide for BOD, phosphorus, and nitrogen removal. (A process flow diagram is enclosed in this section). After secondary clarifiers flow enters into sand filters and UV channels for disinfection. The effluent is discharged to Little River creek.

The Little River Land Application System (LAS) began operation in April 1995 and consists of effluent pumping, chlorine injection and delivery to the plant property line for use by an off-site user. The LAS is permitted to discharge up to 200,000 gallons per day (GPD). The plant is permitted for 1 MGD.

1.2.4 Pump Stations

There are 30 existing North Fulton Pump Stations and one Channel Grinder Station. The locations of these pump stations are as follows:

NORTH FULTON MANAGED ASSESTS PUMP STATIONS

1	**Amersee Lakes Pump Station**	**9100 Etching Overlook, Duluth**
2	**Ball Mill Creek**	**1500 Riverside Road, Roswell**
3	**Blessed Trinity**	**11340 Woodstock Road, Roswell**

4	Cameron Glenn	5775 Northside Drive, Atlanta
5	Chattahoochee III	6000 State Bridge Road, Duluth
6	Cobb Willeo	1030 Marietta Highway, Roswell
7	Crooked Creek	14212 Morning Mountain Way
8	Game Creek	6600 Powers Ferry Road, Atlanta
9	Hopewell Road Pump Stations (4)	13215 Hopewell Road, Alpharetta
10	Johns Creek PS & Diversion Station	8100 Riverbirch Drive, Roswell
11	Johnson Ferry Parks	1125 Johnson Ferry Road, Atlanta
12	Lake Charles	Ramsdale Drive, Roswell
13	Little River INF Pump Station	2415 Cox Road, Woodstock, Georgia 30188
14	Long Island	4434 Whitewater Creek Road, Atlanta
15	Marsh Creek	6500 Old Riverside Drive, Atlanta
16	Morgan Falls	0 Morgan Falls Road, Dunwoody, Georgia 30350
17	Northeast Creek	0 Nesbitt Ferry Road, Dunwoody, Georgia 30338
18	Old Alabama Road	4185 Old Alabama Road, Alpharetta, GA
19	Pine Bloom	770 Vista Bluff Drive, Duluth, Georgia 30096
20	River Bluff	7200 Chattahoochee Bluff Drive, Dunwoody, GA
21	River Chase	0 Ferry Landing, Atlanta, Georgia 30326
22	Riverside Drive	140 River North Lane, Atlanta, GA
23	Riverside Road Pump Station	575 Riverside Road, Roswell, GA 30075
24	Sullivan Creek # 1	0 Grogran Ferry Road, NE, Dunwoody, GA 30350
25	Sullivan Creek # 2	147 Grogan's Landing, Dunwoody, Georgia 30350
26	Sullivan Creek # 3	2700 Harbor Pointe Parkway, Dunwoody, GA
27	Sullivan Creek # 4	2300 Spring Creek Lane, Dunwoody, GA 30350
28	Willeo Road	9000 Willeo Road, Roswell, GA
29	Windward Village	2738 Webb Road, Alpharetta, GA
30	JCEC Influent Pump Station	8100 Holcomb Bridge Road, Roswell, GA
*31	Hospital Grinder Station	920 West Kingston Court, Alpharetta, GA

*** This is a Grinder Station that has 1 channel grinder.**

1.2.5 Operator shall be required to assume full responsibility for the safe and efficient operation and maintenance of the facilities in compliance with all applicable Federal and State Laws and County rules and regulations. Accordingly, the Operator shall assume all responsibilities and liabilities associated with operating and maintaining the facilities, to ensure reliability of operations, and to maintain the value of the County's investment in facilities and equipment. The Operator shall provide all labor, materials, supplies, utilities, chemicals, fuel, vehicles, services, administration, reporting, monitoring, and other necessary items or services.

1.2.6 Copies of all facilities' National Pollutant Discharge Elimination System (NPDES) permits, 3 years plant data and one year Power Consumption data are included in **CD Attached in Exhibit 13 – NPDES Permits, Storm Water Permits, Sewer Use Ordinance, Fulton County Business plan, Last 12 months energy consumptions, Minimum Equipment standards.**

1.2.7 Fulton County will retain responsibility for the operation and maintenance of the wastewater collection system except pump stations and force main from JCEC Pump Station to headwork

1.3 COUNTY OBJECTIVES

Fulton County will select the Operator that it believes is best qualified to further the County's objective and to meet the County's procurement requirements. In issuing this RFP, the County seeks to accomplish certain operational and managerial objectives. Generally, the objective of this procurement is to provide the County with cost effective and reliable wastewater system operations and maintenance management services.

1.3.1 Operation Objectives

The Operator shall be required to provide reliable uninterrupted, economical operation of the managed assets to ensure the continuous operations of facilities and systems meeting all applicable Federal & State Laws and County Performance Standards pursuant to Exhibit 3-Operation and Maintenance Standards.

<u>Regulatory Requirements</u>- The Operator shall meet the following regulatory requirements and any subsequent modifications:

1. NPDES permit for each wastewater treatment facility.
2. Storm Water Permits and Pollution Prevention Plans for each facility.
3. Sludge Disposal Regulations (State and Federal).
4. Georgia EPD's policy of zero tolerance for Sanitary Sewer Overflows.

Pump Stations- The Operator shall operate and maintain the specified collection system pump stations so as to avoid hydraulic overloads which may cause discharges from the collection system.

1.3.2 Maintenance Objectives

The Operator shall be required to maintain the plants, equipment and pump stations in a manner that preserves the managed assets and ensures the reliability and efficiency of the facilities and systems. All building, structures, property, and equipment shall be maintained in accordance with standards pursuant to Maintenance Requirements identified in Exhibit 3. Existing levels of redundancy must be maintained for each facility. The Operator will undertake upgrading, repair and replacement projects as recommended by the Operator and authorized by the County.

The Operator shall implement DataStream, 7i or County approved version of upgrade computerized maintenance management system (CMMS) for the treatment plants, pump stations and the managed assets which at minimum provides:

1. Predictive, preventive and corrective maintenance scheduling and tracking;
2. Accounting system for all managed assets activities;
3. Identification of potential problem areas;
4. Information to support facility and operational planning;
5. Equipment performance monitoring;
6. Status reports for management and contract compliance monitoring including equipment availability; and
7. Track cost, life cycle and forecast repair v/s replacement.

1.3.3 Planning Objectives

Fulton County will maintain responsibility for long and short term planning. The Operator shall be required to provide information to the County on a regular basis to support both long and short term planning in the areas noted below. The County retains sole discretion on whether to implement any recommendation made by the Operator, as may be required below.

1. **Capital Improvements.** The Operator shall be required to provide information and recommendation for capital improvements to increase operating efficiency, improve quality of service and extend the useful life of assets. The Operator shall also be required to provide operating information to support updates and revisions to the County's planning

efforts. Submission of recommendations for capital improvements must be made by July 1 for the subsequent calendar year, unless directed otherwise by the County.

2. **Maintenance.** The Operator shall be required to provide information and make recommendations to support the development of a long-term maintenance plan for the wastewater treatment facilities and pump stations. This will include the identification of cost-effective maintenance projects over a long-term (greater than five years) time horizon, preventive maintenance program scheduling recommendations and cost estimates to support capital improvement financing plans. The Operator shall submit a long-term maintenance plan within 1 year of Contract and on July 1 for subsequent years.

3. **Policy/Regulatory Issues.** The Operator shall be required to evaluate proposed or actual regulatory changes from an operation standpoint to determine their effect on treatment plant operations and on the County's policies and procedures. Based upon operational experience, the Operator shall be required to provide informational analysis to support County efforts to establish or challenge the appropriateness of permit limitations.

1.3.4 Training Objectives

The Operator shall be required to develop and implement a program for employee training to improve their operation and maintenance skills. Skills must be upgraded as necessary to allow employees to participate fully in the implementation of new technologies, cost containment programs and efficiency initiatives. Operators are required to include a discussion of their proposed training program, including implementation schedule as part of their submittal. The County desires that training courses which have been certified by the State Board of Examiners for recertification points be provided by the Operator on a regular basis.

1.3.5 Safety Objectives

The Operator shall be required to develop a safety and security plan with in 30 days after the commencement date. Any and all persons entering the Managed Assets shall be identified and provide appropriate documentation of authorization for access to the Managed Assets. The Operator shall be responsible for providing the appropriate procedures to maintain a log of all persons accessing the Managed Assets.

The Operator shall address in the following items:

- Safety goals, standards, and guidelines;
- Operator's approach to securing the Plants and Pumping Stations; Safety training program; and Safety Procedures.

Safety: The Operator shall maintain the safety of the Managed Assets at a level consistent with the Contract Standards. Without limiting the foregoing, the Operator 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 Managed Assets to, (a) all employees working at the Managed Assets and all other persons who may be involved with the operation, maintenance, repair and replacement of the Managed Assets, (b) all visitors to the Managed Assets, (c) all materials and equipment under the care, custody or control of the Operator on the Site, (d) other property constituting part of the Managed Assets, and (e) County Property; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Law 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 Managed Assets whose duty shall be the supervision of plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with Federal, State and County 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 carry out a Site-specific safety program, including employee training and periodic inspections, designed to implement the requirements of this Section.

OSHA: The Operator shall maintain the Managed Assets in compliance with the Occupational Safety and Health Act as in effect on the Contract Date at the cost and expense of the Operator.

Security: The Operator shall be responsible for the security of the Managed Assets. The Operator shall guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism, theft or malicious mischief of third parties, and shall provide for safe and orderly vehicular movement.

The Operator shall give immediate notice of losses, take timely steps to mitigate extent of damages, i.e. preserve undamaged property, emergency measures; and present to Fulton County an estimated damage repair costs within 30 days.

1.3.6 Community Relations

The Operator shall develop and submit a community outreach program within 90 days of contract commencement date. The principal components of the public education and community outreach efforts shall include:

- **Communications Tools.** A variety of public information and education tools will be developed including existing neighborhood newsletters, fact sheets, press releases, brochures, Fulton County web-site link, and the Fulton County Cable access.

- **School Program.** The Operator will present information to local schools on wastewater. Programs such as this have been implemented at other projects and are rewarding for both the Operator and the students involved.

- **Public Information Display.** The Operator will install a public information display at the facility. The displays will be filled with educational & environmental materials and plant-specific information such as brochures, fact sheets, site maps, and process schematics.

- **Plant Tours.** Tours will be offered for school, community, and professional groups. The tours are designed to increase awareness of the value and importance of water and wastewater treatment by allowing these groups to witness the process first-hand.

- **Speakers Bureau.** A Speaker's bureau for public meetings or school career days will be established. Presentations will be tailored to suit the individual interests of each group.

- **Media Relations Program.** A media relations package will include strategic announcements positioned to effectively communicate in a proactive, open and responsible manner. All levels of media will be included in the plan, particularly those at the community level. All media announcements will be pre-qualified with Fulton County.

1.4 PURCHASING THE RFP

This document and supporting documents can be downloaded at the Fulton County Website, http://www.fultoncountyga.gov under "Bid Opportunities".

All other questions should be addressed to contact person identified in section 1.9 of this RFP.

1.5 PRE-PROPOSAL CONFERENCE

The County will hold a Pre-Proposal Conference, on **Monday, March 30, 2009 at 11:30 A.M.** in the Bid Conference Room of the Department of Purchasing and Contract Compliance, Fulton County Public Safety Building, Suite 1168, 130 Peachtree Street, S.W., Atlanta, Georgia 30303. Attendance at the Pre-Proposal Conference is voluntary for responding to this RFP; however Operators are encouraged to attend. The purpose of the Pre-Proposal Conference is to provide information regarding the project and to address any questions and concerns regarding the services sought by the County through this RFP.

1.6 FACILITIES TOUR

A non-mandatory tour of the Water Reclamation Facilities will be held on Tuesday, April 7, 2009 and Wednesday, April 8, 2009 between the hours of 10:00am – 4:00pm and tours of the Pump Stations will be held Thursday, April 9, 2009 and Friday, April 10, 2009 between the hours of 10:00am - 4:00pm. All site visits will be scheduled through the Public Works Department, contact person:

OP Shukla
Direct: 404-245-9699
Main: 404-612-0225
Email: op.shukla@fultoncountyga.gov

1.7 PROPOSAL DUE DATE

All proposals are due in the Department of Purchasing and Contract Compliance of Fulton County located in the Public Safety Building, Suite 1168, and 130 Peachtree St, S.W., Atlanta Georgia 30303 on or before **Monday, May 18, 2009 at 11:00 A.M.,** legal prevailing time. All submitted proposals will be time and date stamped according to the clock at the front desk of the Fulton County Department of Purchasing and Contract Compliance. Any proposals received after this appointed schedule will be considered late and subject to be returned unopened to the Operator. The proposal due date can be changed only by addendum.

1.8 DELIVERY REQUIREMENTS

Any proposal received after the above stipulated due date and time will not be considered and will be rejected and returned. It shall be the sole responsibility of the Operator to have his/her proposal delivered to the Fulton County Department of Purchasing and Contract Compliance for receipt on or before the above stipulated due date and time. If a proposal is sent by U.S. Mail, the Operator

shall be responsible for its timely delivery to the Department of Purchasing and Contract Compliance.

1.9 CONTACT PERSON AND INQUIRIES

Any questions or suggestions regarding this RFP should be submitted in writing to the Purchasing Department contact person

Donna Jenkins, CPPO
Interim Contracts Administrator

130 Peachtree St.,S.W., Suite 1168
Atlanta, Georgia 30303-3459

Direct: (404) 612- 4213
Main: (404) 612-5800
Fax: (404) 335- 5807
Email: donna.jenkins@fultoncountyga.gov

Any response made by the County will be provided in writing to all Operators by addendum. No verbal responses shall be authoritative.

2.1 PROCUREMENT PROCESS

The procurement will be on a formally advertised basis. All technical requirements, unless otherwise specified, must be met, or be capable of being met by the Operator or their proposal will be disqualified as being non-responsive.

2.2 CONTRACT DEFINITIONS

In addition to any other terms that may be defined in this solicitation, the following terms have the following meaning:

Acceptable Septage" means Septage that (1) does not contain grease trap material, and (2) has a pH not lower than 4 and not higher than 12.

Addendum - Revision to the RFP Documents issued by the County prior to the receipt of Proposals.

Adjustment Factor – Defined in **Contract,** Section 62.2 (F).

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

Agreement - refers to the executed contract between County and Operator.

Appendix - any of the Appendices attached to this Request For Proposals (RFP).

Applicable Law - (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 Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or other similar agreement between the County and the EPD or EPA, in each case having the force of law and applicable from time to time: (a) to the construction, equipping, financing, ownership, possession, start up, testing,

operation, maintenance, repair, replacement or management of municipal wastewater treatment systems, including the Managed Assets; (b) to the conveyance, treatment, storage or discharge of the Influent thereto or the Effluent thereof; (c) to the air and odor emissions therefrom; or (d) to the transfer, handling, processing, transportation or disposal of sludge and other residuals produced thereby. Applicable Law shall be deemed not to include the Excluded Conditions.

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 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.
"Billing Period" means each calendar month, except that (1) the first Billing Period shall begin on the Commencement Date and shall continue to the last day of the month in which the Commencement Date occurs and (2) the last Billing Period shall end on the last day of the Term of this Service Contract. 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.

Billing Period - each calendar month, except that (1) the first Billing Period shall begin on the Commencement Date and shall continue to the last day of the month in which the Commencement Date occurs and (2) the last Billing Period shall end on the last day of the Term of this Service Contract. 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.

BOC - The Board of Commissioners legislates and administers County government within the limits of its authority granted. Fulton County Government consists of six members of Board of Commissioners and a Chairman.

Capital Modification - any material change, alteration, improvement, upgrade or modification of any of the Managed Assets, or any installation of new equipment or systems, including any of the foregoing that results from a replacement of any of the Managed Assets or the installation of new equipment, machinery, systems or other property at the Managed Assets.

CERCLA - the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq., and the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

Change in Law - any of the following acts, events or circumstances to the extent that compliance therewith materially increases the cost of performing, or materially increases the scope, of a party's obligations 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 Contract Date, unless such Applicable Law was on or prior to the Contract Date duly proposed and published in the Federal Register or was 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 Contract Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Contract Date) to the extent such order or judgment is not the result of willful or negligent action, breach of this Service Contract, violation of law, illegal act, error or omission or lack of reasonable diligence of the Operator or of the County, 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;

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 effective as of the Contract Date;

(ii) all matters directly relating to obtaining and maintaining EPA, EPD or local Governmental Approvals of the design, construction and operation of the Design/Build Improvements, including any delay, non-issuance or imposition of terms and conditions upon the issuance or renewal of any Governmental Approval necessary in connection therewith, or the entry of an amended or replacement administrative order relating thereto;

(iii) any Non-Georgia Sludge Disposal-Related Change in Law;

(iv) any action by a Governmental Body or any other event that affects generally applicable working conditions or standards that is not specific to the wastewater treatment industry or to the Managed Assets, and that does not require a Capital Modification in order to effectuate compliance therewith; and

(v) any action by a Governmental Body relating to sales or use taxes including the imposition or increase in any such taxes.

In addition, any change in Applicable Law regarding the frequency or timing of testing of Influent or Effluent may constitute a Change in Law for purposes of the recovery of increased costs of such testing, but shall not constitute a Change in Law with respect to the Operator's obligations to comply with Applicable Law or to meet any obligation under this Agreement.

Change Order - a written order approved by the County and signed by the County's Contract Representative authorizing and approving a Capital Modification or any other change to the Contract Services which the Operator is permitted to undertake pursuant to Applicable Law.

Contract Administrator has the meaning specified in Section 50.15.

Clean Water Act - the Clean Water Act (formally referred to as the Federal Water Pollution Control Act), 33 U.S.C. §1251 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

Commencement Date - the first date on which all of the Commencement Date Conditions shall be satisfied or waived, as agreed to in writing by the parties.

Contact Person – Purchasing staff designated by the Fulton County Department of Purchasing and Contract Compliance to submit any questions and suggestions to.

Contract Date - the date this Service Contract is executed and delivered by the parties hereto.

Contract Representative - in the case of the Operator, the individual specified in writing from time to time by the Operator as the representative of the Operator for all purposes of this Service Contract and, in the case of the County, the Assistant Director of Public Works or such other representative as shall be designated in writing from time to time by the County.

Contract Services - the Management Services.

Contract Standards - the terms, conditions, methods, techniques, requirements, practices and standards imposed or required during the Term by: (1) Applicable Law; (2) the NPDES Permits; (3) the Minimum Technical Requirements; (4) the Performance Guarantees; (5) Good Engineering and Construction Practice; (6) Good Industry Practice; (7) the Operation and Maintenance Manual; (8) applicable equipment manufacturers specifications; (9) applicable Insurance Requirements; and (10) any other standard, term, condition, method, technique, practice or requirement specifically provided in this Service Contract to be observed by the Operator.

Contract Year - the County's fiscal year commencing on January 1 in any year and ending on December 31 of that year; provided, however, that the first Contract Year shall commence on the Commencement Date and shall end on the following December 31, and the last Contract Year shall commence on January 1 prior to the date this Service Contract expires or is terminated, whichever is applicable, and shall end on the last day of the Term of this Service Contract or the effective date of any termination, whichever is applicable. 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 365/366 days.

Operator - Any firm, partnership, corporation, joint venture, LLC or any combination thereof that enters into a contractual Agreement with the County. This excludes SubContractors/Sub-consultants. It is same as **Operator**.

Operator Fault - any breach (including the untruth or breach of any Operator representation or warranty herein set forth), failure, nonperformance or noncompliance by the Operator with respect to its obligations under this Service Contract to the extent not directly attributable to any Uncontrollable Circumstance or County Fault, and which materially and adversely affects the County's rights, obligations or ability to perform under this Service Contract.

Consumables - fuel oil, diesel fuel, liquid chlorine, liquid sulfur dioxide, liquid de-foamer, quick lime, lubricants, polymers, office supplies and other chemicals, fuels, materials, supplies and similar consumables used in connection with the operation of the Managed Assets.

Consumer Price Index or "CPI" - the final reported non-seasonably adjusted Consumer Price Index as reported by the U.S. Department of Labor, Bureau of Labor Statistics, for All Urban Consumers, for the Atlanta, Georgia Metropolitan Area.

County - the County of Fulton, Georgia, a political subdivision of the State.

County Fault - any breach (including the untruth or breach of any County representation or warranty herein set forth), failure, nonperformance or noncompliance by the County with respect to its obligations under this Service Contract to the extent not directly attributable to any Uncontrollable Circumstance or Operator Fault, and which materially and adversely affects the Operator's rights, obligations or ability or costs to perform under this Service Contract.

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

Day(s) - Calendar Day (twenty-four hours)

Designated Disposal Site - the site or sites designated from time to time as a Designated Disposal Site for the disposal of Residuals.

DOP - Department of Purchasing, Fulton County

Drawings - The part of the Agreement or Work Authorization or Notice to Proceed that shows the outlines, characteristics related to the Scope of Services to be performed. The term is used interchangeably with the work “Plans” and includes Standard Details and Drawings.

Effluent - wastewater discharged from the Plants.

Effluent Requirement - the most stringent of the requirements pertaining to the discharge of Effluent established by the Contract Standards.

Encumbrance means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Managed Assets.

EPA - the United States Environmental Protection Agency and any successor agency.

EPD- the Environmental Protection Division of the State of Georgia Department of Natural Resources or any predecessor or successor agency.

Excessive Influent - (1) Toxic Substances, (2) Hazardous Material, (3) Influent in excess of the applicable Plant Capacity, and (4) Unacceptable Septage.

Exit Transition Plan - the transition services, including plans for temporary, short-term, operational procedures and activities relating to and after contract termination, to be undertaken by the Operator when and as more fully specified in Exhibit 6.

Fees and Costs means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, Operators, 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.

Guarantor, a corporation organized and existing under the laws of, and its permitted successors and assigns.

Guaranty Agreement or "Guaranty" means the Guaranty Agreement entered into concurrently with this Service Contract from the Guarantor to the County in the form provided in the Transaction Agreement Forms, as the same may be amended from time to time in accordance therewith.

Good Engineering and Construction Practice - 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 design, engineering, equipping, installation, construction and commissioning practices for the design, construction and improvement of capital assets in the municipal wastewater treatment industry as followed in the Southeast region of the United States. Good Engineering and Construction Practice shall include, without limitation, adherence to the following:

(a) Reliability criteria as defined in "Design Criteria for Mechanical, Electrical and Fluid System and Component Reliability", published by the EPA in 1974, for the appropriate class of system;
(b) Performance standards listed in an applicable Regional Water Commission Guide; and
(c) Performance standards listed in the latest edition of "Design of Municipal Wastewater Treatment Plants", published jointly by the Water Environment Federation and the American Society of Civil Engineers.

Good Industry Practice - 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 operation, maintenance, repair, replacement and management practices in the municipal wastewater treatment industry as observed in the Southeast region of the United States.

Governmental Approvals - all approvals, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services, including the NPDES Permits and the Consent Order.

Governmental Body - 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.

Hazardous Material - any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation "hazardous substance" as defined in CERCLA and "hazardous waste" as defined in RCRA.

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Industrial Pretreatment Program or "IPP" - the municipal/industrial pretreatment program of sampling, inspecting, analyzing and keeping records with respect to compliance by industrial and certain commercial users with the County's sewer use ordinance and technically based local limits,

Influent - all wastewater, storm water, infiltration and inflows entering the Managed Assets, including Sewer Influent and Septage.

Insurance Requirement means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance Operator which has issued a policy of Required Management Period Insurance or Required Construction Period Insurance under this Service Contract, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

JCEC- Johns Creek Environmental Campus

Legal Proceeding - every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Service Contract or the Managed Assets, and all appeals therefrom.

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

Managed Asset Equipment means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, other than Managed Asset Structures, constituting part of the Managed Assets, including, without limitation, above-ground pipes, pumps, bar screens, grit handling

equipment, sludge handling equipment, chemical feed storage equipment, tank covers and traveling bridges etc.

Major Equipment - any equipment valuing $ 5,000 and life expectancy of 5 years or more.

Managed Assets - all or any portion of the Plants, Plant Realty, Pump Stations, and Pump Station Realty.

Managed Assets Realty - the parcels of real property upon which the Managed Assets, or any portion thereof, are located, including the Sites.

Managed Asset Structures - all structures, buildings underground pipes and concrete tanks, other than Managed Asset Equipment, constituting part of the Managed Assets.

Management Period - the period from and including the Commencement Date to and including the last day of the Term of this Service Contract.

Management Services - everything required to be furnished and done for and relating to the Managed Assets by the Operator pursuant to this Service Contract during the Term hereof. Management Services include the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, disposal, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the full performance of the Operator's operation, maintenance, repair, replacement, management and related obligations under this Service Contract, and all of the Operator's administrative, accounting, recordkeeping, reporting, notification and similar responsibilities of every kind whatsoever under this Service Contract pertaining to such obligations.

MGD – Million Gallons per Day.

Non-Georgia Sludge Disposal-Related Change in Law - a Change-in-Law by a Governmental Body other than the Federal Government, regarding the disposal, land application or processing of Plant Sludge outside of the State.

Notice to Proceed ("NTP") - Written communication issued by the County to the Operator authorizing it to proceed with Scope of Work.

NPDES Permits - National Pollutant Discharge Elimination System Permits respectively, as issued by the EPD for the Plants and listed in Exhibit 13 - as Reference Documents.

Odor Citation - has the meaning specified in Exhibit 2-Performance Guarantees.

Odor Incident - has the meaning specified in Exhibit 2- Performance Guarantees

Odor Guarantee - has the standards described in Exhibit 2- Performance Guarantees

Odor Termination - has the meaning specified in Exhibit 2- Performance Guarantees.

Offeror – the entity of individual submitting a proposal in response to this RFP.

Operator – Any firm, partnership, corporation, joint venture, LLC or any combination thereof that enters into a contractual Agreement with the County. This excludes SubContractors/Sub-consultants. It is same as **Operator.**

Operation and Maintenance Manual - the manual and related computer programs prepared by the Operator containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Management Services.

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

Owner – Fulton County Government

Participating Community - those communities with whom the County has entered or enters into contracts for the treatment of Effluent or Septage.

Performance Guarantees - the guarantees of performance set forth in Exhibit 2-Performance Guarantees .

Plant Realty - the parcels of real property upon which the Plants or any portions thereof, are located.

Plants means the real property on which they are located, consisting of buildings, structures, fixtures and equipment, and the roads, grounds, fences and landscaping appurtenant thereto, utilized for preliminary treatment, primary treatment, secondary treatment and advanced biological treatment (nitrification) of Influent, Effluent disinfection and de-chlorination, Plant Sludge treatment, laboratory functions and administration and management of the Managed Assets, including any Capital Modifications made thereto from time to time.

Plant Operator - Any person who performs operational duties and wastewater treatment plant laboratory testing for reporting purposes for operator classifications 1 as defined by the board at wastewater treatment plants. The person responsible for the daily operation of the facility must be a Class 1 Certified Operator in compliance with the Georgia State Board of Examiners for Certification of Water and Wastewater Plant Operators and Laboratory Analysts Act, as amended, and as specified by Subparagraph 391-3-6-12 of the Rules and Regulations for Water Quality Control.

Plant Sludge – bio-solids generated by the treatment of Influent at the Managed Assets.

POTW – Publically Owned Treatment Works

Pre-Existing Environmental Condition - and is limited to, (1) the presence anywhere in, on or under the Managed Assets on the Contract Date, if not disclosed to the Operator as of the Contract Date, of underground storage tanks (for the storage of chemicals, fuel oil or diesel fuel) that are not then in use in connection with operation of the Managed Assets; and (2) the presence anywhere in, on or under the Managed Assets, as of the Contract Date, of Hazardous Materials, Contaminated Soil or other Contaminated Materials (but expressly excluding for purposes of this definition (i) any matters disclosed to the Operator by the County as of the Contract Date; (ii) any matters of which the Operator has actual knowledge as of the Contract Date; and (iii) asbestos and lead which is uncovered as a result of demolition activities, and any such excluded matters shall not constitute a Pre-Existing Environmental Condition for which the Operator could be afforded relief from its obligations hereunder or additional compensation).

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

Private Management Approvals means all approvals, authorizations, consents or clearances, if any, necessary to be obtained by the County from the EPA, the EPD or any other Governmental Body in connection with the Management Services to be performed under this Service Contract.

Project Manager has the meaning specified in Section 50.5 (A).

Proposal Bond or Guaranty The security furnished with a proposal guaranty that the proposer will enter into a contract if his/her proposal is accepted by the County.

Public Education and Community Outreach Plan means the plan to be developed by the Operator based upon the outline contained in Exhibit 14.

Proposer - Any firm, partnership, corporation, joint venture, LLC or any combination thereof that enters into a contractual Agreement with the County. This excludes SubContractors/Sub-consultants.

Pump Station Realty - the parcels of real property upon which the Pump Stations or any portions thereof, are located.

Pump Stations - those pump stations and related meters which pump and meter Influent to the Plants, together with all improvements thereto acquired, installed, constructed or reconstructed from time to time.

Rating Service means Moody's Investors Service, Inc. or Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any of their respective successors and assigns and, if such corporations shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Rating Service" shall be deemed to refer to any other nationally recognized securities rating agency designated by the County.

RCRA - 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.

Reference Document - any of the documents attached to this Service Contract identified as such as the same may be amended from time to time in accordance with the terms hereof.

Repair and Replacement Standards - the standards for repairing and replacing the Managed Assets set forth in Exhibit 3-Operation and Maintenance Standards.

Required Insurance means the Required Management Period Insurance.

RFP - Request for Proposals

Residuals - Plant Sludge and Side Streams.

Scope of Work – All the services specified, indicated, shown, or contemplated by the Contract, and furnishing by the Operator of all materials, equipment, labor, methods, processes, construction and manufacturing materials and equipment, tools, plants, supplies, power, water, transportation and other things necessary to complete such services in accordance with the Contract.

SCADA - in the context of data gathering and telemetry systems, "Supervisory Control and Data Acquisition".

Security Instruments means the Guaranty Agreement, the Letter of Credit.

Senior Supervisors has the meaning specified in Section 50.5 (B).

Septage means the liquid and solid material pumped from a septic tank, cesspool or similar domestic sewage treatment system, or a holding tank, during cleaning located within the County and municipalities under contract with the County for the processing of Septage at the Plant and which is normally characterized by large quantities of grit and grease, great capacity to foam upon agitation, poor settling and dewatering characteristics, and high solids and organic content.

Service Contract means this Service Contract for the Operation and Maintenance of Water Reclamation Assets between the Operator and the County, including the Exhibits, Transaction Agreement Forms and the Transaction Documents, as the same may be amended or modified from time to time in accordance herewith.

Service Fee has the meaning set forth in Article 62.

Service Territory means the portion of the County and all other territories in which customers are served by the Managed Assets.

Septage - the liquid and solid material pumped from a septic tank, cesspool or similar domestic sewage treatment system, or a holding tank, during cleaning located within the County and municipalities under contract with the County for the processing of Septage at the Plant and which is normally characterized by large quantities of grit and grease, a highly offensive odor, great capacity to foam upon
agitation, poor settling and dewatering characteristics, and high solids and organic content.

Sewer Influent - all flows reaching the Plants from all connected sources, including residential, commercial, municipal and industrial sources. Sewer Influent includes all wastewater and infiltration and inflows.

Sewer Use Ordinance - the municipal legislative enactment which (1) is enforceable in federal, State, or local courts, and (2) authorizes or enables the County to apply and enforce the IPP and the other requirements of the Clean Water Act, and any requirements created by or pursuant to this Service Contract. The Sewer Use Ordinance is included in Exhibit 13 on CD.

Side Streams - any material other than Plant Sludge which is, or at any time has been, a part of the Sewer Influent or Septage and that ultimately is required to be disposed of in a manner other than that approved for Effluent including, but not limited to, grit (detritus), screenings, scum, grease and liquid byproducts and waste streams from intermediate treatment processing.

Significant Industrial User or "SIU" – A significant industrial user as defined in 40 CFR 403.8 (f).

(1) A user subject to categorical pretreatment standards; or

(2) A user that"

a. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blow down wastewater);

b. Contributes a process waste-stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

c. Is designated as such by the County on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(3) Upon a finding that a user meeting the criteria in (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the County may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f) (6), determine that such user should not be considered a significant industrial user.

Site - the real property on which the Plants are located.

Specifications - The portion of the Agreement Documents describing in words the technical requirements governing the completion of the various portion of the Scope of Services.

Staffing Plan - the staffing plan for the Management Services meeting the requirements set forth in Exhibit 4- Facilities Plans.

State - the State of Georgia.

Subcontract - an agreement or purchase order by the Operator or a SubContractor to the Operator, as applicable.

SubContractor - every person (other than employees of the Operator) employed or engaged by the Operator or any person directly or indirectly in private with the Operator (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.

Supplier - Any individual, firm, or corporation who supplies material or equipment for the Scope of Work (including that fabricated to a special design) but who does not perform labor at the Site.

Sustained Odor Condition has the meaning specified in Exhibit 2- Performance Guarantees .

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 8.

Termination Date - the last day of the Term of this Service Contract.

Total Suspended Solids or "TSS" means solids that either float on the surface of, or are in suspension in wastewater, the analysis of which shall conform to 40 C.F.R. 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants."

Toxic Substance - any toxic, hazardous, chemical, industrial, explosive, flammable, volatile, reactive, corrosive or radioactive waste, material or substance which, alone or in combination with other substances, is contained in sufficiently high concentrations or volumes in Influent received at the Managed Assets, and while the Managed Assets are being operated and maintained in accordance with the provisions of this Service Contract so as:

(1) to interfere with the biological processes necessary for the removal of the organic and chemical contents of the Influent required to meet the Effluent Requirements;

(2) to endanger human health or safety; or

(3) to cause Effluent or Residuals to become a Hazardous Material, if any such result could not reasonably have been provided by the management of the Managed Assets in accordance with the Contract Standards.

A waste, material or substance which is contained in Influent and which is tested under the IPP shall not be considered to be a Toxic Substance for the purpose of this definition unless such waste, material or substance is present in Influent in levels, with characteristics or for durations which are outside the range of levels, characteristics or durations established as representative by IPP data compiled from the date which is [two] years prior to the Contract Date to the month preceding the date on which such substance is alleged to constitute a Toxic Substance.

Transaction Agreement Form means any of the Transaction Agreement Forms appended to this Service Contract.

Transaction Document means any of the Transaction Documents appended to this Service Contract.

Transition Period - that period between the Contract Date and the Commencement Date during which the County will secure any necessary Private Management Approvals and execute the Transition Plan.

Transition Plan - the plan for the transition of operating responsibility for the Managed Assets.

TRC - total residual chlorine.

Trucked-In Material means materials which are delivered to the Plant other than through the collection system and which are permitted under Section 50.15 and Exhibit 7 septage Handling Protocol to be accepted for treatment.

TSS Loading Adjustment has the meaning specified in Section 62.4.

Unacceptable Septage means Septage other than Acceptable Septage.

Uncontrollable Circumstances – "Uncontrollable Circumstance" means any act, event or condition that is beyond the reasonable control of, and is not also the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Service Contract on the part of, the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Service Contract, and that

materially interferes with or materially increases the cost of performing its obligations hereunder (other than payment obligations).

(1) **Inclusions**. Subject to the foregoing, Uncontrollable Circumstances may include, but shall not be limited to, the following:

(a) A Change in Law;
(b) The receipt of Excessive Influent at the Plants, subject to the terms of Section 52.6;
(c) The occurrence of an Upset subject to the terms of Section 52.6;
(d) The existence of a Pre-Existing Environmental Condition;
(e) The existence of Specified Subsurface Conditions;
(f) Naturally occurring events (except weather conditions normal for the Service Territory) such as landslides, underground movement, earthquakes, lightning, fires, tornadoes, hurricanes, floods (but only to the extent the hydraulic capacity of the Managed Assets is exceeded), epidemics, and other acts of God;
(g) Explosion, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
(h) Labor disputes, except labor disputes involving the employees of the Operator, its Affiliates, or SubContractors which affect the performance of the Contract Services;
(i) The failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Managed Assets are located to provide and maintain Utilities to the Managed Assets which are required for the performance of this Service Contract;
(j) Any failure of title to the Managed Assets or any enforcement of any Encumbrance on the Managed Assets not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby; and
(k) The preemption 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 Managed Assets.

(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 with respect to which the Operator has assumed the "as-is" risk under Section 50.4(B), except as specifically provided in subsection 50.4(C)
(b) Terms, conditions and prices prevailing in the market for the transportation and disposal of Residuals;

(c) Changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions;

(d) Changes in the financial condition of the County, the Operator, the Guarantor, or their Affiliates or SubContractors affecting the ability to perform their respective obligations;

(e) The consequences of error, neglect or omissions by the Operator, any SubContractor, any of their Affiliates or any other person in the performance of the Contract Services;

(f) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Managed Assets or otherwise increasing the cost to the Operator of performing the Contract Services;

(g) Any impact of prevailing wage or similar laws, customs or practices on the Operator's costs;

(h) Weather conditions normal for the Service Territory;

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

(j) Any surface, subsurface geotechnical or hydrological conditions and other Site conditions including without limitation the existence of compressible soil layers, masses, unstable soil, manmade deposits and water table fluctuations, utility lines, pipes and structures (other then Pre-Existing Environmental Conditions and Specified Subsurface Conditions);

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

(l) Power outages not caused by third party Utilities;

(m) A Change in Law pertaining to Taxes;

(n) Any failure in obtaining EPD approval for any of the Design/Build Improvements;

(o) Failure of the Operator to secure patents which it deems necessary for the performance of the Contract Services;

(p) 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 Operator than are imposed by the Contract Standards; and

(q) A Non-Georgia Sludge Disposal-Related Change in Law.

Upset - has the meaning given such term in the Clean Water Act.

Utilities - any and all utility services and installations whatsoever (including gas, water, electricity, telephone, and telecommunications), and all piping, wiring,

conduits, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

Waste Water Collection System – system of sewer lines excluding pump stations**.**

WRF – Water Reclamation Facility.

Written Notice - A written statement transmitted from one party to an authorized representative of another party in accordance with the RFP.

2.3 NO CONTACT DURING PROCUREMENT PROCESS

It is the policy of Fulton County that the evaluation and award process for County contracts shall be free from both actual and perceived impropriety, and that contacts between potential vendors and County officials, elected officials and staff regarding pending awards of County contracts shall be prohibited.

A. No person, firm, Operator or business entity, however situated or composed, obtaining a copy of or responding to this solicitation, shall initiate or continue any verbal or written communication regarding this solicitation with any County officer, elected official, employee, or designated County representative, between the date of the issuance of this solicitation and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, except as may otherwise be specifically authorized and permitted by the terms and conditions of this solicitation.

B. All verbal and written communications initiated by such person, firm, Operator or entity regarding this solicitation, if same are authorized and permitted by the terms and conditions of this solicitation, shall be directed to the Purchasing Agent.

C. Any violation of this prohibition of the initiation or continuation of verbal or written communications with County officers, elected officials, employees, or designated County representatives shall result in a written finding by the Purchasing Agent that the submitted bid or proposal of the person, firm, or entity in violation is "non-responsive", and same shall not be considered for award.

2.4 CLARIFICATION & ADDENDA

Operators may submit requests for clarifications or interpretations regarding this RFP and the Contract. Operators must prepare such requests in writing for the

County's consideration as set forth in this section of this RFP. While the County has not placed an initial limitation on the number of requests which can be submitted, Operators are cautioned that if Operators do not request meaningful clarifications or interpretations in an organized manner (e.g., limited frequency of requests), the County will set restrictions on the frequency and number of requests permitted. The County will not respond to requests, oral or written, received after **Monday, May 4, 2009 at 4:00 PM,** local prevailing time. Operators are advised that this section places no obligation on the part of the County to respond to any or all requests for clarification or interpretation, and that the County's failure to respond to any such request will not relieve the Operator of any obligations or conditions required by this RFP.

Requests for clarification or interpretation regarding this RFP shall only be submitted in writing (letter, fax or email) to:

Fulton County Department of Purchasing and Contract Compliance
Attn: Donna Jenkins, CPPO
130 Peachtree Street S.W. Suite 1168
Atlanta GA 30303
Email: donna.jenkins@fultoncountyga.gov
Direct: 404- 612- 4213
Main: 404- 612- 5800
Fax: 404- 335- 5807

RE: RFP # 09RFP01120K-DJ, Operation & Maintenance Services for Fulton County Wastewater Facilities and Pump Stations

All responses to written requests for clarification, interpretation, or additional information will be distributed as addenda to this RFP and posted on the Fulton County website www.fultoncountyga.gov.

No oral interpretation, instruction, or information concerning this RFP given by any employee or agent of the County shall be binding on the County. Operators who submit a Proposal in reliance on any such oral information risk having their response to this RFP deemed non-responsive by the County. Only written responses issued by addendum to this RFP should be considered by the Operators.

During the period provided for the preparation of Proposals, the County may issue addenda to this RFP. These addenda will be numbered consecutively and will be posted on the Fulton County website, www.fultoncountyga.gov. These addenda will be issued by, or on behalf of, the County and will constitute a part of this RFP. Each Operator is required to acknowledge receipt of each addendum by submitting an executed acknowledgment form. This acknowledgment shall

include all addenda distributed prior to the Proposal Submission Date. All responses to this RFP shall be prepared with full consideration of the addenda issued prior to the Proposal Submission Date.

2.5 TERM OF CONTRACT

The initial term of the O&M Contract will be five (5) years ending May 31, 2015, with two (2), two (2) years renewal options on Board approval; unless earlier terminated as provided for in the O&M Agreement. The O&M Agreement may be renewed by the County, at its sole discretion, under the same terms and conditions for up to two (2) separate consecutive two (2) year terms. The County may exercise any option to renew the O&M Agreement by delivering written notice of the intent to renew to the Operator one hundred eighty (180) days prior to the expiration date of the initial five (5) year term of the Agreement and the subsequent renewal term, if renewed.

2.6 REQUIRED SUBMITTALS

See **Exhibit 1** for the Required Submittal Checklist. This checklist will assist you to ensure that all required submittals are submitted. Failure to submit all required submittals may deem your proposal non-responsive.

2.7 PROPOSAL EVALUATION

All proposals will be evaluated using the criteria specified in **Section 4** of this RFP. Selection will include an analysis of proposals by a selection committee composed of three/two members from Water Services, Department of Public Works and one/two Purchasing Staff who will review the proposal submittals in accordance with the submittal requirements and the evaluation criteria set forth in Section 4 of this RFP. The committee may request oral interviews and/or site visits.

2.8 DISQUALIFICATION OF OPERATORS

The submission of more than one (1) proposal to the County as the primary Operator or member of a joint venture for the same work by and individual firm, partnership or corporation under the same or different names may be considered as sufficient for disqualification of a Operator and the rejection of the proposal.

2.9 RESERVED RIGHTS

The County reserves the right to accept or reject any and/or all proposals, to waive irregularities and technicalities, and to request resubmission. Any sole response that is received may or may not be rejected by the County depending on available competition and timely needs of the County. There is no obligation

on the part of the County to award the contract to the lowest Operator and the County reserves the right to award the contract to the responsible Operators submitting responsive proposals with resulting agreements most advantageous and in the best interest of the County. The County shall be the sole judge of the proposals and the resulting agreements that are in its best interest and its decision shall be final. Also, the County reserves the right to make such investigation as it deems necessary to determine the ability of any Operator to perform the work or service requested. Information the County deems necessary to make this determination shall be provided by the Operator. Such information may include, but shall not be limited to, current financial statements by an independent CPA; verification of availability of personnel; and past performance records.

2.10 APPLICABLE LAWS

All applicable laws and regulations of the State of Georgia and ordinances and regulations of Fulton County shall apply. Protestors shall seek resolution of their complaints in the manner provided in the Fulton County Code of Laws §2-324 which is incorporated by reference herein.

2.11 PROPOSAL SECURITY

Each proposal shall include, in a separate sealed envelope, a proposal bond or guaranty in the form of a cashier's check in an amount of $100,000 (One Hundred Thousand Dollars). The proposal bond, if any, must be issued by a surety company whose name appears on the United States Department of Treasury's list of approved bond sureties. Each proposal shall contain a certification stating that the Proposer has submitted the Proposal Security and an acknowledgement and is in agreement that the Proposal Security is subject to forfeiture in the event the Proposer withdraws its proposal prior to award of the contract. See Exhibit # 16

2.12 INSURANCE AND RISK MANAGEMENT PROVISIONS/LETTER OF CREDIT

Insurance and Risk Management provisions and Indemnification and Hold Harmless provisions are outlined in Section 7 of this RFP.

2.12.1 Letter Of Credit Requirements

2.12.1.1 Terms and Purpose. On or before the Commencement Date, the Operator shall provide further security for the performance of its obligations hereunder during the Management Period through an irrevocable direct pay letter of credit presentable in Atlanta, Georgia, issued by a United States bank whose

long-term debt is rated "A" or better by either Rating Service and which maintains a banking office in the State **(the "Letter of Credit").** The Letter of Credit shall be in the amount of equal to **One Year of Service Fee** which amount shall be escalated each Contract Year based on the Adjustment Factor, 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. The County shall be authorized under the Letter of Credit to make one or more sight drawings thereon upon certification to the issuing bank that the drawing conditions described in subsection (B) of this Section have occurred. The Letter of Credit shall permit a drawing thereon in the full stated amount thereof in the event that any required renewal, extension or replacement thereof is not made prior to 30 days of its expiration. The Letter of Credit shall serve as security for the performance of the Operator's obligations hereunder, and the stated amount thereof shall in no way limit the amount of damages to which the County may be entitled for any Operator Event of Default hereunder.

2.12.1.2 <u>Conditions to Drawing</u>. It shall be a condition to the right of the County to draw on the Letter of Credit, other than a draw based on a failure to renew, extend or replace the Letter of Credit or based on an Event of Default set forth in Section 6.2(A)(6) or (8) that: (1) the County (a) has given the Operator written notice of a breach of this Service Contract, whether or not such breach constitutes an Event of Default, and attached a copy of its good faith assessment of the damages the County has suffered or the liquidated damages provided for herein, as a result of such breach, in which case the County shall have a right to draw the amount of the damages so assessed, or (b) has given the Operator a notice of termination based on an Event of Default, in which case the County shall have the right to draw the entire stated amount of the Letter of Credit. Notice to the Guarantor of a breach hereof shall not be a condition to the County's drawing rights under the Letter of Credit. In the event that the County draws on the full amount of the Letter of Credit on account of an occurrence of an Event of Default as set forth in Section 6.2(A)(6) or (8), the County shall use such moneys to cover any damages suffered as a result of such event and to pay itself any other amounts owed by the Operator under the provisions of the Service Contract, and the County shall hold the balance of such amount as security for the Operator's obligations hereunder, until the final resolution of such bankruptcy, when any remaining funds shall revert to the Operator, provided the Service Contract is in full force and effect and the Letter of Credit has been reinstated.

2.13 ACCURACY OF RFP AND RELATED DOCUMENTS

The County assumes no responsibility that the specified technical and background information presented in this RFP, or otherwise distributed or made available during this procurement process, is complete or accurate. Without limiting the generality of the foregoing, the County will not be bound by or be

responsible for any explanation or interpretation of the Proposal documents other than those given in writing as an addendum to this RFP.

Should a recipient of this RFP find discrepancies in or omissions from this RFP and related documents, the recipient of this RFP shall immediately notify the Purchasing Contact Person identified in Section 1.9 in writing at the following address: Fulton County Department of Purchasing and Contract Compliance, Public Safety Bldg, 130 Peachtree Street S.E., Suite 1168 Atlanta, GA 30303. A written addendum, if necessary, then will be made available to each recipient of this RFP.

2.14 RESPONSIBILITY OF OPERATOR

Each Operator is encouraged to conduct all necessary investigations and review all available and relevant data and information, which are necessary in its judgment in order to assume this responsibility prior to the submittal of its Proposal. Operators are reminded of Fulton County's **"No Contact During Procurement"** policy and may only contact the person designated by the RFP.

2.15 CONFIDENTIAL INFORMATION

If any Proposal contains technical, financial, or other confidential information that the Operator believes is exempt from disclosure, the Operator must clearly label the specific portions sought to be kept confidential and specify on what the exemption is based. The County, at its sole discretion and subject to applicable law, will determine whether such exemption applies. The County has sole discretion to make such determination regarding the disclosure of information, and by responding to this RFP, Operators waive any challenge to the County's decisions in this regard. Marking all or substantially all of a Proposal as confidential may result in the Operator being deemed non-responsive to this RFP.

Notwithstanding the foregoing, Operators recognize and agree that the County, its staff, and its Consultants will not be responsible or liable in any way for any losses that the Operator may suffer from the disclosure of information or materials to third parties.

2.16 COUNTY RIGHTS AND OPTIONS

This RFP constitutes an invitation to submit Proposals to the County. Without limitation or penalty, the County reserves and holds at its sole discretion, the following rights and options:

- This RFP does not obligate the County to select, procure or contract for any services whatsoever

- The County reserves the right to change or alter the schedule for any events associated with this procurement and, if required, notify the Operators. A Operator, by submitting a Proposal, agrees to be bound by any modifications made by the County

- All costs incurred by a Operator in connection with responding to this RFP, the evaluation and selection process undertaken in connection with this procurement, and any negotiations with the County will be borne by the Operator.

- The County reserves the right to reject all Proposals and components thereof to eliminate all Operators responding to this RFP from further consideration for this procurement, and to notify such Operators of the County's determination.

- The County may cancel this RFP without the substitution of another RFP and terminate this procurement at any time without any liability whatsoever.

- The County reserves the right to waive any technicalities or irregularities in the Proposals.

- The County reserves the right to eliminate any Operator who submits incomplete or inadequate responses or is not responsive to the requirements of this RFP.

- The County may request Operators to send representatives to the County for interviews and presentations.

- To the extent deemed appropriate by the County, the County may select and enter into discussion and negotiations with the Operator(s) submitting Proposal(s), which are found to be reasonably susceptible for award.

- The County reserves the right to discontinue negotiations with any selected Operator.

- The County reserves the right, without prior notice, to supplement, amend, or otherwise modify this RFP.

- All Proposals (other than portions thereof subject to patent or copyright protection) become the property of the County and will not be returned, and the County reserves the right to utilize all such information contained in the Proposals without further cost to the County

- The County may add to or delete from the Project Scope of Work set forth in this RFP.

- Any and all Proposals not received by the Proposal Submission Date shall be rejected and returned unopened.

- Neither the County, its staff, its representatives, nor any of its consultants or attorneys will be liable for any claims or damages resulting from the solicitation, collection, review, or evaluation of responses to this RFP.

- The County, including its representatives and consultants, reserves the right to visit and examine any of the facilities referenced in any Proposal and to observe and investigate the operations of such facilities.

- The County reserves the right to conduct investigations of the Operators and their responses to this RFP and to request additional evidence to support the information included in any such response.

By responding to this RFP, Operators acknowledge and consent to the rights and conditions set forth in this RFP.

2.17 COST OF PROPOSAL PREPARATION AND SELECTION PROCESS

Each Proposal, including preparation of all information required to be included in a Proposal pursuant to this RFP, shall be prepared at the sole cost and expense (including, but not limited to, engineering and legal costs) of the Operator. In addition, the Operator shall be solely responsible for all costs (including engineering and legal costs) incurred by such Operator in connection with this selection process, including any costs incurred by the Operator in any subsequent negotiations entered into in connection with developing the Proposal. There shall be no claims whatsoever against the County, its staff, or its consultants for reimbursement for the costs or expenses (including, but not limited to, engineering and legal costs) incurred during the preparation of the Proposal or other information required by this RFP or procurement process or in connection with the selection process or any negotiations.

2.18 TERMINATION OF NEGOTIATIONS

The County at its sole discretion may, at any time, to the extent permitted by Applicable Law, exclude a Operator from further participation in any negotiation process if the County determines that such Operator is failing to progress in the negotiations or if the terms of its Proposal are less advantageous than those of other Operators and such Operator is deemed to be no longer susceptible of

selection. The County will give written notice of its decision to the Operator, which shall be sent in writing, signed by the County.

2.19 WAGE CLAUSE

Pursuant to 102-391, Each Operator shall agree that in the performance of the Contract he will comply with all lawful agreements, if any, which the Operator had made with any association, union, or other entity, with respect to wages, salaries, and working conditions, so as not to cause inconvenience, picketing, or work stoppage.

2.20 ADDITIONAL OR SUPPLEMENTAL INFORMATION

After receipt of the submittals, the County will evaluate the responses, including the references, financial statements, experience and other data relating to the Respondent's qualifications. If requested by the Fulton County Department of Purchasing and Contract Compliance, Respondent's may required to submit additional or supplemental information to determine whether the Respondent meets all of the qualification requirements.

2.21 CONTRACT INTERPRETATION

All questions concerning interpretation or clarification of this Request for Proposal "RFP" or applicable standards and codes, including the discovery of conflicts, discrepancies, errors or omissions, of the acceptable performance of this RFP by the successful Proposer, must be submitted in writing to the County for resolution at the time the Proposer submits its proposal. No oral interpretation, instruction, or information concerning this RFP given by any employee or agent of the County shall be binding on the County. Proposers who submit a Proposal in reliance on any such oral information risk having their response to this RFP deemed non-responsive by the County. Only written responses issued by addendum to this RFP should be considered by the Proposers.

All determinations, instructions, and clarifications of the County will be in accordance with sound professional standards and will be final and conclusive unless determined to be arbitrary and capricious or fraudulent or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence; provided however neither party waives any of its rights to seek remedies hereof. At all times, the successful Proposer must proceed with the Services in accordance with the determinations, instructions, and clarifications of the County. The successful Proposer will be solely responsible for requesting instructions or interpretations and will be solely liable for any costs or expenses from its failure to do so.

Unless questions or concerns are raised as provided above, the successful Proposer and the County will be bound by the provisions contained within this RFP upon approval and execution of this contract by the Board of Commissioners.

2.22 MINIMUM PARTICIPATION REQUIREMENTS FOR PRIME OPERATORS

Pursuant to Fulton County Code 102-357, Prime Bidders on the project must perform no less than 51% of the scope of work required under the project.

2.23 REPORTING RESPONSIBILITIES

The successful Operator will report directly to the Assistant Director, Water Services, Public Works, 141 Pryor Street, Atlanta, GA 30303 , or designated representative of the department.

2.24 GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT

(1) Effective as of July 1, 2007, and pursuant to O.C.G.A. 13-10-91, every public employer, every Operator of a public employer, and every SubContractor of a public employer's Operator must register and participate in a federal work authorization program as follows:

(a) No public employer shall enter into a contract for the physical performance of services within this state unless the Operator registers and participates in a federal work authorization program to verify the work eligibility information all new employees.

(b) No Operator or SubContractor who enters into a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless such Operator or SubContractor registers and participates in a federal work authorization program to verify the work eligibility information of all new employees.

(2) In accordance with O.C.G.A. 13-10-91, the requirements of paragraphs (a) and (b) of paragraph (1) shall apply to public employers, their Operators and SubContractors, as follows:

(a) On or after July 1, 2007, to public employers, Operators, or SubContractors of 500 or more employees;

(b) On or after July 1, 2008, to public employers, Operators or SubContractors of 100 or more employees; and

(c) On or after July 1, 2009, to all other public employers, their Operators, or SubContractors.

See Section 5, Proposal Forms for declarations and affidavits.

FULTON COUNTY DEPARTMENT OF PURCHASING AND CONTRACT COMPLIANCE

REQUEST FOR PROPOSAL (RFP) GENERAL REQUIREMENTS

Proposal # 09RFP01120K-DJ
Operations and Maintenance Services
For Fulton County Water Reclamation Facilities & Pump Stations

The following information pertains to the submission of a proposal to Fulton County ("County"), and contains instructions on how proposals must be presented in order to be considered. If specific conditions or instructions in the text of the Request for Proposal ("RFP") conflict with the General Requirements as listed here, those conditions or instructions in the RFP shall prevail.

1. Proposals submitted in response to the attached RFP must be formatted as specified in the RFP. Additional sheets, literature, etc., should be clearly identified.

2. The original and the required number of copies of the proposal must be returned to:

   Fulton County Purchasing Agent
   Fulton County Department of Purchasing and Contract Compliance
   130 Peachtree Street, S.W., Suite 1168
   Atlanta, Georgia 30303

3. The envelope in which the proposal is submitted must be sealed and clearly labeled with the RFP project name and number, due date and time, and the name of the company or individual submitting the proposal. Proposals must be received by the opening date and time shown on this RFP in order to be considered. The Purchasing Agent has no obligation to consider proposals which are not in properly marked envelopes. The Technical Proposal, Cost Proposal and Contract Compliance submittals shall be submitted in separate sealed envelopes. The inclusion of any cost information in the Technical Proposal may result in such proposal being rejected by the County.

4. Proposals received after the time and date specified will not be opened or considered.

5. By submitting a signed proposal, Offeror agrees to accept an award made as a result of the submission of the prices and terms contained in that proposal. Prices proposed must be audited by the Offeror to insure correctness before

the proposal is submitted. Person signing the proposal is responsible for the accuracy of information in it. The specifications, provisions, and the terms and conditions of the RFP and proposal shall become a valid contract between Fulton County and the Offeror upon notice of award of contract in writing and/or issuance of a purchase order.

6. Any contract awarded as a result of this proposal, shall comply fully with all Local, State, and Federal laws and regulations.
7. Absolutely no fax proposals or reproduction proposals will be accepted, except that if multiple copies of the proposal are required, photocopies of the original may be submitted as the additional copies, provided that they are clearly marked as such.

8. Type or neatly print company name, as well as the full legal name and title of the person signing the proposal, in all appropriate places. The Offeror's signature must be executed by a Principal of the company duly authorized to make contracts and bind the company to all terms being proposed.

9. Proposals may be withdrawn upon receipt of a written request prior to the stated due date and time. If a firm seeks to withdraw a proposal after the due date and time, the firm must present a notarized statement indicating that an error was made, with an explanation of how it occurred. The withdrawal request must be accompanied by documentation supporting the claim. Prior to approving or disapproving the request, an opinion will be obtained from Fulton County's Legal Counsel indicating whether the firm is bound by its proposal.

   Proposals for projects that are solicited pursuant to the Georgia Local Government Public Works Construction Law (O.C.G.A. § 36-91-1 et seq.) may be withdrawn as follows:

   The County must advise Offerors in the request for proposals of the number of days that Offerors will be required to honor their proposals. If an Offeror is not selected within 60 days of opening the proposals, any Offeror that is determined by the governmental entity to be unlikely of being selected for contract award will be released from the proposal.

10. Show information and prices in the format requested. Prices are to be quoted F.O.B. destination, and must include all costs chargeable to the Offeror in executing the contract, including taxes. Unless otherwise provided in the Contract, Fulton County shall have no liability for any cost not included in the price. The Offeror shall provide Fulton County the benefit through a reduction in price of any decrease in the Offeror's costs by reason of tax exemptions based upon Fulton County's status as a tax-exempt entity.

11. Propose all items specified or indicate under each item what alternative is being proposed and why it should be considered in lieu of the original specification. Failures to indicate any exceptions shall be interpreted as the Offeror's intent to fully comply with the specifications as written. Conditional or qualified proposals (except as specifically allowed in the specifications) are subject to rejection in whole or in par
12. Fulton County shall be the sole judge of the quality and the applicability of all proposals. Design, features, overall quality, local facilities, terms and other pertinent considerations will be taken into account in determining acceptability.

13. The successful Offeror must assume full responsibility for delivery of all goods and services proposed and agree to relieve Fulton County of all responsibility and costs for prosecuting claims.

14. The successful Offeror must assume full responsibility for replacement of all defective or damaged goods and/or performance of contracted services within thirty (30) days notice by the County of such defect, damage or deficiency.

15. The successful Offeror must assume full responsibility for providing warranty service on all goods, materials, or equipment provided to the County with warranty coverage. Should a vendor be other than the manufacturer, the vendor and not the County is responsible for contacting the manufacturer. The Offeror is solely responsible for arranging for the service to be performed.

16. The successful Offeror shall be responsible for the proper training and certification of personnel used in the performance of the services proposed.

17. The successful Offeror shall not assign, transfer, convey, sublet, or otherwise dispose of any contract resulting from the RFP or of any of all of its rights, title or interest therein without prior written consent of the Fulton County Board of Commissioners.

18. Proposals must contain references which reflect successful completion of contracts for the types of goods, materials, equipment, or services for which the vendor is submitting a proposal to the County. In instances where that does not apply, the proposal must contain a statement and supporting documentation demonstrating such expertise, knowledge, or experience to establish the vendor submitting the proposal as capable of meeting the demands of the proposal should an award be made to them.

19. Offerors submitting proposals may be required to furnish evidence that they maintain permanent places of business of a type and nature compatible with

their proposal, and are in all respects competent and eligible vendors, able to fulfill the terms of the specifications. Fulton County may make such investigations as it deems necessary to determine the ability of the Offeror to perform such work, and reserves the right to reject any proposal if evidence fails to indicate that the proposed vendor is qualified to carry out the obligation of the contract and to complete the work satisfactorily.

20. By submitting a signed proposal, Offeror certifies that there has been no collusion with any other Offeror. Reasonable grounds for believing Offeror has an interest in more than one proposal will result in rejection of all proposals in which the Offeror has an interest. Any party to collusion may not be considered in future proposals for the same or similar work.
21. Upon notice of selection, the Offeror submitting the proposal is obligated to perform. Should a successful Offeror refuse to enter into a contract subsequent to an award, a penalty may be assessed and/or the Offeror may be found to be “non-responsible” in the future.

22. In case of default by the successful Offeror, Fulton County may procure the articles or services from another source and hold the successful Vendor responsible for any resultant excess cost.

23. Successful Offerors contract directly with the County and are the party or parties obligated to perform. Contracts may not be assigned and any failure to perform the Contract in accordance with the specifications will constitute a breach of contract and may result in an Offeror being found to be “non-responsible” in the future.

24. Invoice(s) must list each item separately and must show Fulton County’s purchase order number as well as the proper department and address to whom the service or product was provided.

25. Fulton County reserves the right to accept or reject any or all proposals, or any part thereof, and to waive any technicalities. Fulton County reserves the right to award a contract based on this RFP and the proposal(s) received (in whole or in part) to one or several Vendors.

26. Awards will not necessarily be based on cost alone. Other factors, as detailed in the RFP, will be considered in determining what proposal will be deemed to best meet the needs of Fulton County.

27. All proposals and bids submitted to Fulton County are subject to the Georgia “Open Records Act”, Official Code of Georgia, Annotated (O.C.G.A.) § 50-18-70 et seq.

28. All proposals and bids submitted to Fulton County involving Utility Contracting are subject to the Georgia law governing licensing of Utility Operators, O.C.G.A. §43-14-8.2(h). The Utility Operator License number of the person who will perform the utility work shall be written on the face of the bid envelope.

29. Prior to beginning any work, the successful Offeror shall furnish to Fulton County (for the contracting firm and for any SubContractors) a certificate from an insurance company showing issuance of Workers' compensation coverage for the State of Georgia or a certificated from the Georgia Workers' Compensation Board showing proof of ability to pay compensation directly.

30. It is the policy of Fulton County that the evaluation and award process for County contracts shall be free from both actual and perceived impropriety, and that contacts between potential vendors and County officials, elected officials and staff regarding pending awards of County contracts shall be prohibited.

    A. No person, firm, or business entity, however situated or composed, obtaining a copy of or responding to this solicitation, shall initiate or continue any verbal or written communication regarding this solicitation with any County officer, elected official, employee, or designated County representative, between the date of the issuance of this solicitation and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, except as may otherwise be specifically authorized and permitted by the terms and conditions of this solicitation.

    B. All verbal and written communications initiated by such person, firm, or entity regarding this solicitation, if same are authorized and permitted by the terms and conditions of this solicitation, shall be directed to the Purchasing Agent.

    C. Any violation of this prohibition of the initiation or continuation of verbal or written communications with County officers, elected officials, employees, or designated County representatives shall result in a written finding by the Purchasing Agent that the submitted bid or proposal of the person, firm, or entity in violation is "non-responsive", and same shall not be considered for award.

31. Any Offeror intending to respond to this solicitation as a Joint Venture must submit an executed Joint Venture Agreement with this offer. This agreement must designate those persons or entities authorized to execute documents or

otherwise bind the Joint Venture in all transactions with Fulton County, or be accompanied by a document, binding upon the Joint Venture and its constituent members, making such designation. Offers from Joint Ventures that do not include these documents will be rejected as being "non-responsive".

32. Any Offeror intending to respond to this solicitation must complete all of the Procurement Affidavit Forms provided in Section 5. Proposals that do not include these completed documents will be rejected as being "non-responsive".

SECTION 3
PROPOSAL REQUIREMENTS

3.1 SUBMISSION REQUIREMENTS

3.1.1 Proposal Submission Date and Submittal Format

All Proposals, including all attachments, must be received by the County in a sealed package no later than **Monday, May 18, 2009** at **11:00 A.M.** and must be addressed to:

REQUEST FOR PROPOSALS RFP # 09RFP01120K-DJ
Fulton County Department of Purchasing & Contract Compliance
Public Safety Building
130 Peachtree Street S.E., Suite 1168
Atlanta, GA 30303

The Proposal shall consist of a Technical Proposal, a Cost Proposal and all documents listed on the Required Submittal Checklist (Exhibit 1). The Technical Proposal shall include proposer information, technical information, business-related information, and any Technical Proposal forms requested. The Cost Proposal shall include the Cost Proposal Forms and any information describing the basis for pricing and must be separately, sealed, marked and packaged.

The required content of the Technical Proposal and Cost Proposal is further specified in this section of the RFP. The Proposal must be signed and acknowledged by the Proposer, including certain information to be provided under oath as required under applicable law, in accordance with the instructions herein and the various proposal forms.

THE TECHNICAL PROPOSAL, THE COST PROPOSAL AND CONTRACT COMPLIANCE EXHIBITS SHALL BE SUBMITTED IN SEPARATE, SEALED ENVELOPES OR PACKAGES. THE INCLUSION OF ANY COST INFORMATION IN THE TECHNICAL PROPOSAL MAY RESULT IN SUCH PROPOSAL BEING REJECTED BY THE COUNTY.

Each envelope or package shall be clearly marked as follows:

REQUEST FOR PROPOSALS RFP #09RFP011209K-DJ
Project # and Title
[Technical or Cost Proposal]
Proposer's Name and Address

3.1.2 Number of Copies

Proposers shall submit one (1) original of the Technical Proposal and five (5) copies on CD media in PDF format. Proposers shall submit one (1) original of Contract Compliance Exhibit with the Technical Proposal marked 'Original" and one (1) copy in separate sealed envelope. Proposers shall submit one (1) original of the Financial Information with the Technical Proposal marked "Original" and one (1) copy in a separate sealed envelope.

Proposers shall submit one (1) original and one (1) copy of the cost Proposal in separate sealed envelope.

All Proposals must be complete with all requested information.

3.2 OVERVIEW OF PROPOSAL REQUIREMENTS

Proposers shall submit Proposals in accordance with the content and format requirements set forth in this RFP. Proposals should be clearly organized and structured in a manner that allows materials included in the document to be located easily.

Each of the instructions set forth in this section must be followed for a Proposal to be deemed responsive to this RFP. In all cases, the County reserves the right to determine, at its sole discretion, whether any aspect of the Proposal meets the requirements set forth in this section. The County reserves the right to reject any Proposal, which in its judgment, does not comply with these Proposal submission requirements.

3.3 SCOPE OF WORK

3.3.1 Background

Fulton County government consists of Chairman and six members of Board of Commissioners. The Public Works Department comprise of a Director, an Assistant Director and Deputy Director of Water Services, who are responsible for operations and maintenance of wastewater treatment facilities and pump stations. The Contract Operations Administrator and core group supervise the day-to-day operations of the facilities.

3.3.2 Scope of Services

This section describes the scope of services and business structure the County is seeking in this RFP and is intended to provide an overview of the desired arrangements and division of responsibilities between the County and the Operator. The Operator should carefully review the RFP, including the

Exhibits and all addenda to this RFP, to fully understand the scope of services desired by the County to determine the best approach to meet the County's objectives.
At a minimum the Operator must perform the following services:

1. Provide all personnel and other resources to operate and maintain the Facilities in best interests of Fulton County.
2. Provide and/or pay all the benefits and salaries pursuant to approved staffing plan to operate and maintain the Facilities.
3. Provide/ Pay all utilities and consumables, materials/supplies necessary and proper to operate the facilities in accordance with regulatory permit requirements, and maintain the related equipment/facilities pursuant to service levels established in Exhibit 3-Operation and Maintenance Standards.
4. Provide and pay all SubContractors pursuant to Contract.
5. Perform all necessary sampling to ensure that Facilities' performance is in compliance with State, Federal and other Government Regulations. Daily testing/analysis for the purpose of process control are the sole responsibility of the Operator.
6. Provide local area network administration and CMMS & Process Software. This shall include server(s), individual workstation and printer integration as well as, LAN system preventative maintenance program. The Operator shall be responsible for maintaining backup copies of all electronic records and work products. All hardware, software, data collect and stored will remain property of Fulton County. All software will be licensed to Fulton County. The County CMMS standard is DataStream version7i or more recent approved versions and process software is OPSWin for all Fulton County Wastewater Facilities. The Operator will be responsible for software and hardware upgrades. Upgrades shall be installed as necessary or as desired by the County to ensure proper levels of service.
7. Provide SCADA system administration. This shall include server(s), individual workstation and printer integration as well as, overall SCADA system preventative maintenance program. The Operator shall be responsible for maintaining backup copies of all electronic record work products. Remote monitoring of SCADA must be accessible to the authorized County/Operator personnel. All software will be licensed to Fulton County.

   The Operator shall develop and maintain a Document Repository and Delivery System (DRDS) on a server which can be accessed remotely by

authorized County and Operator's staff. All the drawings, design, Manuals, records and reports shall be maintained on DRDS.

8. Provide four laptops with the software loaded to remotely access, via any County data port, SCADA, Security System, CMMS and OPSWin to authorized County personnel and upgrade it when it requires.

9. Provide staffing of sufficient, qualified employees to operate and maintain the Facilities 24-hours per day, 365/366 days year pursuant to the contract. A staffing plan is attached in Exhibit 4.2 Table 4.2.

   Other than the Project Manager, Maintenance Manage and Plant Manager, vacant positions must be filled within 60 days by qualified personnel. Project Manager, Plant Manger and Maintenance Manager Positions must be filled temporarily immediately and permanently with in ninety (90) days. All personnel classified as Operator In Training (OIT) must work with certified personnel and be licensed by the State of Georgia within twelve (12) months from date of hire. OITs do not count toward the satisfaction of minimum staffing levels. No employee should work more than 16 hrs/ day. Operator shall provide a monthly staffing summary to the County. The Operator must provide staffing dedicated solely to the operation and maintenance of each Wastewater Reclamation Facility.

10. Conduct routine and normal maintenance of plant equipment, buildings and grounds. Operator shall provide all parts and materials necessary for maintenance /repair. Operator shall be responsible for plant tools, equipment and process lab supplies must be inventoried and replacements provided by the Operator.

11. Perform all corrective, predictive, preventive and routine maintenance and repair of the system including: the grounds, facilities, buildings and other structures pursuant to Exhibit 3-Operation and Maintenance Standards.

12. Provide, in forms acceptable to Fulton County, monthly accounting, quarterly projections and an end-of-year forecast submitted by August 1st every year as to the status of the Maintenance account. Non-routine Maintenance and Repair items shall be funded via maintenance allowance.

13. The Operator must specifically maintain and operate equipment at all the facilities in such a manner so as not to void any warranties that may be applicable to existing equipment or that may arise with equipment procured by the Operator/County during the term of the O&M Contract. If the Operator's actions are such that any warranty during the term of the

O&M Contract is voided, the Operator shall be required, at its own expense to re-procure a conforming warranty equal to or greater than the applicable voided warranty subject to Fulton County approval.

14. Generate and sign as Operator and provide to the County and Georgia EPD information, notices and reports, including monthly EPD DMR, sampling and testing results, as necessary to enable the County to comply with all reporting requirements imposed upon the County by applicable Law. Assist the County in responding to various external requests including but not limited to:

    A. State and Federal grant audits and information request

    B. State and Local government audits

    C. Audit by independent public accountants

    D. Information requests by users or groups of plant system

    E. Information required for the annual financial audits of Fulton County and financial representation letter

    F. Georgia Open Records Act requests

    G. Report, data and information required by EPA, GA EPD, ARC and other agencies.

    H. Provide County Representative reports and data, hard and electronic copy.

15. Provide an annual list of recommended capital improvements, costs and plans for implementation to the County Representative by July 1st of each year.

16. Disposal of dewatered sludge pursuant to Exhibit 3-Operation and Maintenance Standards.

17. Immediately notify the Contract Operations Administrator or duly appointed Fulton County representative of any activity, problem or circumstance that threatens or affects the facilities or health, safety or welfare of citizens. This notification must be made via telephone to the Contract Operations Administrator or duly appointed Fulton County representative immediately, and must be followed up with a detailed written report to the Contract Operations Administrator or duly appointed representative within 24 hours of the occurrence. Voice mail/Email are not acceptable.

18. Coordinate with engineers and construction managers on capital improvement projects and operate the facility to accommodate capital improvement work without any delay.

3.3.3 Details of Scope of Work

The Scope of Work includes the complete management, operations, maintenance and repair of the wastewater treatment facilities and pump stations. The selected Operator shall provide the following:

A. All qualified operation, maintenance and management personnel (on-site, technical support, administrative, corporate, corporate support, professional services etc)
B. All associated salaries and benefits

C. All materials and consumables, including, but not limited to:

1. Chemicals
2. Fuel
3. Lubricants
4. Spare parts
5. Process laboratory supplies, reagents, and associated materials
6. Tools and maintenance equipments
7. Office supplies
8. Office equipment and furniture
9. Computer hardware and software
10. All vehicles and all rolling stock required for the project
11. All safety equipments

D. Services required for the management, operation and maintenance of the treatment facilities and pump stations. These services will include, but are not limited to:

1. Management
2. Process laboratory control sampling and testing
3. Sampling for permit required analyses
4. Computer system operation, maintenance and document management
5. Janitorial and custodial services
6. Upkeep and maintenance of all facility buildings
7. Purchasing
8. Site security
9. Grounds maintenance and landscaping services
10. Calibration and maintenance of all the flow meters
11. Sludge dewatering and disposal

12. Pump Station cleaning and sediment/grease disposal
13. Grit/ refuse disposal.

E. Methods/processes to achieve the effluent quality required under the Performance Guarantees in Exhibit 2- Performance Guarantees.

F. Maintenance of all structures of Managed Assets pursuant to Exhibit 3- Operation and Maintenance standards which includes:

1. Piping and equipment at the treatment facilities pump stations and managed assets.
2. Mechanical systems at the treatment facilities pump stations and managed assets.
3. Electrical systems at the treatment facilities pump stations and managed assets.
4. HVAC systems at the treatment facilities pump stations
5. All buildings and structures at the treatment facilities and pump stations.
6. All communication, computer and security systems at the treatment facilities pump stations.

G. Provision of utilities, including, but not limited to:

1. Telephone systems and Telephone service including local and distance services
2. Water
3. Energy
4. Natural Gas
5. Cable and Satellite

3.3.4 Operational Standards

The Operator will be required to provide uninterrupted, economical sanitary sewage treatment; to prevent bypass or overflow of sanitary sewage from the transmission system or Water Reclamation Facilities; to handle and treat the sanitary sewage in accordance with the requirements of the Permit to Discharge and any and Pump Stations to optimize life cycle time and service life.

All proposals must include standards for Water Reclamation Facilities (WRF) Quality Control services sufficient to meet all criteria set forth in this proposal. The Operator shall provide all services necessary to meet the requirements of the Permit to Discharge; Georgia Department of Natural Resources, Environmental Protection Division (GDNR-EPD); current Consent Orders from the EPD and the U.S. Environmental Protection Agency (EPA), and any other

applicable Local, State or Federal guidelines, rules, regulations, code and/or laws.

3.3.5 Protocol, Policies and Standard Operating Procedures

The Operator shall keep the County informed at all times of the status of major projects; non-routine tasks/activities, and major decisions as they are made, and as they relate to the execution of contracted services.

The Operator shall establish and implement written protocol, policies and procedures that comply with all standards and requirements of the contract, and shall conduct an annual review of its protocol, policies and procedures. All such protocol, policies and procedures shall address the Water Reclamation Facilities and Pump Stations; the management staff, the technical staff and the administrative staff.

A draft of the protocol, policies and procedures shall be submitted to the County for review and approval within sixty (60) days after Notice of the Award and must be implemented within 30 days after the County's approval.

A yearly revision shall be due on 31st of January.

3.3.6 Continued Educational Training

The Operator must provide continued education in modern wastewater treatment plant operation, maintenance and safety standards as described in Exhibit 4-Facilities Plans.

3.3.7 Emergency Services

The Operator will be responsible for developing Emergency Response and Disaster Preparedness Plan for the Water Reclamation Facilities and Pump Stations pursuant to Exhibit 4 Facilities Plans -.

All emergencies will be reported verbally as per Section 3.2.17 of this section, with particular attention to minimize the elapsed time between the call for assistance and the arrival of trained personnel and the need for corrective action. A written report of any emergency situations shall be submitted to the County Contract Operations Administrator or duly appointed representative within five (5) working days of the incident.

In the event of any personal injury accident in connection with the contract, the Operator must verbally notify the County immediately and provide all known facts

regarding the accident. A written report of any personal injury will be submitted to County Contract Operations Administrator within five (5) working days of the incident per Section 3.2.17 of this section.

The Operator shall notify Fulton County and all other required Authorities when the quality of the discharge exceeds the discharge limitations as stated in the NPDES Authorization to Discharge or when a sewage spill occurs, and will be responsible for all notifications and all related cost including subsequent monitoring cost. Notification of violation of discharge limitations or sewage spills shall be within one (1) hour of knowledge by the Operator. Operator shall review all current permits and consent orders for current monitoring requirements.

3.3.8 Job Safety

Operator shall develop a safety plan and initiate a program to comply with all provisions applicable to the Occupational Safety and Health Act, as enforced by the U.S. Department of Labor and to require all employees to comply with the law and all regulatory State and/or local laws affecting job safety.

3.3.9 Waste

The Operator shall be responsible for transporting excess bio-solid from the Little River WRF to the Big Creek WRF for dewatering; and transporting dewatered and/or non-dewatered bio-solids from the Big Creek WRF, Johns Creek WRF and Johns Creek Environment Campus (JCEC) for disposal in accordance with applicable regulations and requirements.

The Operator shall be responsible for transporting refuse, grit, screenings, surplus equipments and other non hazardous wastes from all the WRFs and the pump stations for disposal in accordance with Federal, State and local applicable regulations and requirements.

The Operator shall be responsible for the proper storage, removal and disposal of all hazardous waste generated during the treatment and /or operation and maintenance of the facilities. Such removal and disposal shall be in accordance with all applicable local, State and Federal rules, regulations and code. The Operator shall maintain records on all hazardous materials, chemicals and waste products. The records shall contain the material's origins, use, transportation and ultimate distribution and disposal. The Operator shall provide training and management in accordance with laws and EPA regulations for employees in contact with and/or handling hazardous materials.

The Operator shall hold the County free of liability for any and all actions relating to waste disposal.

3.3.10 Laboratory Analyses

The Operator shall be responsible for daily analyses performed for the purpose of process control. The County will be responsible for laboratory analysis to determine if WRFs are operating in compliance with NPDES Permits. The Operator will collect all samples for NPDES permit compliance monitoring.

The Operator shall be responsible for Storm Water sampling and testing pursuant to General Storm Water permit, MS4 plan and /or any regulatory requirements.

3.3.11 Fines

Operator is responsible for any penalties, fines, suits, etc. as a result of the non compliance of permits, spills and applicable government regulations except to the extent as defined as an Uncontrollable Circumstance.

3.3.12 Professional/Public Relations

The Contactor shall be required to develop a Public Relations Plan within 45 days of commencement date.
The Operator must maintain professional, responsible and responsive working relationship with the staff of Fulton County, State and Federal regulatory authorities; suppliers of materials, utilities and services; the media and the public. The Operator is required to participate in Public Meetings as required by the County.

The Operator shall be required to be a Corporate Member of the Georgia Association of Water professionals to foster professional relationships within the industry.

3.3.13 Sludge Hauling and Dewatering Operations

The Operator will be responsible for management and payment of the solids dewatering, transportation and disposal operation at all treatment facilities in accordance with applicable regulations and requirements. The Operator will be required to develop reports regarding solids removal pursuant to all regulatory permits/regulations.

3.3.14 Security

The Operator shall be responsible for security for all facilities and maintain security systems including system hardware and software. Upgrades to the system shall be installed as necessary or as desired by the County to ensure

proper levels of service. The Operator shall be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism, theft, or malicious mischief of third parties.

The Operator shall give immediate notice of losses, take timely steps to mitigate extent of damages, i.e. preserve undamaged property, emergency measures; and present to Fulton County an estimated damage repair costs within 30 days.

3.3.15 Maintenance

The Operator shall preserve the Managed Assets and insure long-term reliability and efficiency of the facilities pursuant to Exhibit 3- Operation and Maintenance standards.

The County has allocated a significant maintenance allowance for each year of the Agreement. Repair and replacement expenditures will be funded by the Operator for all expenses for a single asset per occurrence totaling less than $25,000 dollars. The County through the annual maintenance allowance will fund repair and replacement expenses of more than $25,000 dollars for a single asset per occurrence after $25,000 deductible.

Operator should take into account the level of commitment envisioned by the County to undertake such repair and replacements. Operators shall address in their proposals how they intend to apply these budgeted amounts and how such budgets will be used to improve the Facilities.

All maintenance shall be in accordance with the proposed O&M plan and must reflect the provisions for maintenance set forth in Exhibit 3-Operation and Maintenance standards & Exhibit 4- Facilities Plans.

3.3.16 Odor Control

The Operator shall operate and maintain the Managed Assets in a manner that minimizes odors at Managed Assets boundaries and so that odors carried off-site do not prompt public complaints. The Operator's goal shall be to achieve zero odor complaints for the Managed Assets. The Operator shall comply with standards listed in Exhibit 3 -Operation and Maintenance Standards and guarantees pursuant to Exhibit 2-Performance Guarantees.

3.3.17 Agreement

Upon award and formal execution of an Agreement, the Operator(s) will be bound to the terms and conditions and will perform the Services described in the Agreement. Operator should understand throughout the duration of the term of

agreement, adjustments to the Scope of Services may be necessary.

3.3.18 Independent Operator, SubContractor/Sub-Consultant

1. Operator will perform under an awarded Agreement as an independent entity and not as an agent or employee of the County.
2. Operator must secure written authorization from the County before awarding any contract in excess of $50,000 to any SubContractor/Sub-consultant. Operator will be responsible for all aspects of performance under the Agreement and shall exercise the appropriate degree of control of, and accepts responsibility for, the performance of all of its SubContractors/Sub-consultants and Suppliers.
3. If Operator deems any SubContractors/Sub-consultants, e.g. sludge hauling, process chemicals, pump stations/plant maintenance, essential to the execution of the Services requested by this RFP, Operator must: [i] specifically identify those SubContractors/Sub-consultants in its response to this RFP by name, address, telephone and facsimile number and individual contact; [ii] provide a detailed description of the portion of the Services each SubContractor/Sub-consultant will perform; and [iii] provide a detailed explanation as to why each particular SubContractor/Sub-consultant is essential to this Services.
4. Even if an award of contract is authorized by County, Operator will be fully responsible for the performance of that SubContractor/Sub-consultant in every respect. In the event of a default or defective performance by any SubContractor/Sub-consultant, Operator is obligated to manage the Services, cure any defects and replace that SubContractor/Sub-consultant if necessary, at no additional cost to the County.
5. No contractual relationship between the County and any Operator's SubContractor/Sub-consultant is created by an authorization of award of the County for use under the Agreement

3.3.19 Transition of Service

Proposal shall include a transition plan describing how the Operator intends to assume the O&M of the facilities. Fulton County anticipates acceptance of JCEC in November 2009. The successful proposer shall be required to commence services pursuant to agreement by October 1, 2009 at JCEC only. This thirty (30) days transition period is designed to familiarize Operator with the facility to ensure smooth and uninterrupted transition from Design/Build Operator. Full

O & M should then commence in November 2009.

The successful Operator shall provide staff onsite to all other Managed assets on April 1, 2010 for two months transition and familiarize with facilities for complete transition on June 1, 2010.

Proposers are required to provide cost proposals for the Johns Creek Environmental Campus (JCEC) transition period, which is anticipated to begin November 2009 until May 31, 2010. Fulton County anticipates awarding contract services initially for the transition period only with award of entire scope of work for the managed Assets to be awarded effective June 1, 2010. Johns Creek Environmental Campus (JCEC) has JCEC Influent Pump Station onsite and it is part of JCEC. The successful Operator needs to provide an initial transition plan to demonstrate how the Operator intends to ensure a smooth and uninterrupted transition from the Design/Build Operator to Operators' team.

The Transition Plan shall also include an Exit Plan in the event of non-renewal or termination of the contract. See Exhibit 6- Exit Transition Plan.

3.3.20 Licenses, Permits, Taxes.

The price or prices for the Services requested by this RFP shall include full compensation for all licenses, permits and taxes that the Operator is or may be required to pay to complete this Service. The County is a tax-exempt entity.

3.3.21 Termination Of Agreement

The County shall have the right to terminate any Agreement to be made hereunder for its convenience by giving the Operator 120 days prior Written Notice of its election to do so and by specifying the effective date of such termination. Further, provided an Agreement is awarded, if the Operator fails to fulfill any of its obligations, the Operator may, by giving Written Notice to the Operator, terminate the Agreement with said Operator for such default. If this Agreement is so terminated, the Operator will be paid for Services satisfactorily completed.

3.3.22 Termination for Default

Reason for Default:

A. Performs Services that fails to conform to the technical requirements of the Agreement;

B. Fails to make progress so as to endanger performance of the Agreement;

C. Abandons or refuses to proceed with any of the Services, including any changes to the Services made according to Agreement;

D. Fails to comply with any term of the Agreement;

E. Fails to comply with the social programs of the County, including, but not limited to, its Equal Employment Opportunity and Equal Business Opportunity programs;

F. Engages in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Operator's obligations under the Agreement; or reasonable grounds for insecurity arise concerning Operator's performance.

3.3.22.1 Notice of Default.

If Operator defaults, the County will notify Operator in writing of the nature of the default. If Operator does not cure that default within fifteen (15) calendar days from receipt of the notice, the County may, by Written Notice to Operator and without notice to Operator's sureties, if any, terminate in whole or in part, Operator's right to proceed with the Services and the County may prosecute the Services to completion by contract of by any other reasonable method deemed expedient by the County. The County may take possession of and utilize any data, designs, licenses, equipment, materials, plan, tools, and property of any kind furnished by the Operator and necessary to complete the Services.

3.3.22.2 Immediate Termination.

Agreement shall immediately terminate, without the requirement of any action on the County's part, if the Operator:

A. voluntarily consents to an order for relief by filing a petition for relief under the laws of the United States codified as Title 11 of the United States Code;

B. seeks, consents to or does not consent the appointment of a receiver, custodian or trustee for itself or for all or any part of its property;

C. files a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws or any State or other competent jurisdiction;

D. admits in writing that it is generally not paying its debts as those debts become due;

E. gives notice to any governmental body of insolvency or pending insolvency, or suspends operations;

F. becomes insolvent as that term is defined under applicable fraudulent transfer or conveyance laws; or

G. makes an assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

3.3.22.3 Excess Re-procurement Costs.

Operator and its sureties, if any, will be liable for all costs in excess of the Agreement price for all terminated Services reasonably and necessarily incurred by the County in the completion of the Services, including cost of administration of any contract awarded to others for completion.

3.3.22.4 Termination for Convenience

Fulton County may terminate the O&M Contract for any reason by giving 120 days prior written notice to the Operator.

3.3.22.5 Transition Period after Termination or Expiration of O&M Contract.

If the O&M Contract is terminated or not renewed, all services shall continue to be provided by the Operator during a transitional period of up to 12 months, as directed by County. During the transitional period, the terms and conditions of the O&M Contract will apply.

3.3.23 PROFESSIONAL RESPONSIBILITY

A. Operator shall secure at its own expenses, all personnel required to perform all Services to be completed under the Agreement.

B. All Services required hereunder shall be performed by the Operator or under the direct supervision of Operator. All personnel engaged in the Services by the Operator shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such Services.

C. None of the Work or Services covered by this Agreement shall be transferred, assigned, or subcontracted by Operator without the prior written consent of the County.

3.3.24 CHANGES IN SCOPE OF SERVICES.

The County may, from time to time, request changes in the Scope of Services to be performed by Operator hereunder. No such change, including any increase or decrease in the amount of the compensation, which may be mutually agreed upon by and between the County and Operator, shall be effective and enforceable until and unless a written amendment to this Agreement has been executed by both parties and attached hereto.

3.3.25 REPORTS AND DOCUMENTATION.

All reports, information, data, or other documents given to, prepared by or assembled by the Operator under this Agreement is the property of the County and shall be kept confidential and shall not be made available to any individual or organization by the Operator without prior written approval by the County's designated contract administrator. For the duration of this Agreement, all records generated by the Operator in the course of performing Services accordance with this Agreement shall be open to inspection and audit by County, or any person designated by County. Upon request of County, Operator shall provide all records and information in a format required by County within reasonable time but not later than five (5 days), except as requested under the Open Record Act as referred to in Section 3.3.26. Except as required by law, Operator's obligations hereunder with respect to confidential information shall terminate with respect to any particular portion of the confidential information if and when: (i) it is in the public domain at the time of its communication; (ii) it enters the public domain through no fault of Operator subsequent to the time of the County's communication to Operator; (iii) it is communicated by the County to a third party free of any obligation of confidence; or (iv) Operator has the County's written permission.

3.3.26 RECORDS AND AUDIT.

Operator and its SubContractors shall be responsible for maintaining accurate records of all correspondence, documents, accounting records and other relative evidence. These records shall remain on file for a minimum of five (5) years. All records shall be made available to the County for review upon request. County may examine and request copy, at all reasonable times, with advance

notification, of those records and accounts. Operator shall maintain all records in a central location on plants. County shall conduct O&M Audit as described in Exhibit 3- Operation and Maintenance standards.

3.3.27 OPEN RECORDS ACT

The Georgia Open Records Act, O,C,G.A. Section 50-18-70 et seq., applies to this Agreement. The Operator acknowledges that any documents or computerized data provided to the County by the Operator may be subject to the release to the public. The Operator also acknowledges that documents and computerized data created or held by the Operator in relation to the Agreement may be subject to release to the public, to include documents turned over to the County. The Operator shall cooperate with and provide assistance to the County in rapidly responding to Open Records Act requests. The Operator shall notify the County of any Open Records Act requests no later than 24 hours following receipt of any such requests by the Operator. The Operator shall promptly comply the instructions or requests of the County in relation to responding to Open Records Act requests.

3.3.28 COMMERCIAL ACTIVITIES.

Neither Operator nor its employees may establish any commercial activity or issue concessions or permits of any kind to third parties for establishing activities at the County**.**

3.3.29 DECREASES IN SCOPE OF SERVICES

County may decrease the Services during the term or any extension or renewal of the Agreement. In the event County decreases the scope of any Services, County will provide Operator a minimum of thirty (30) days prior written notice, describing in that notice the specific Services decreased. Upon notification of a decrease in any Services, Operator shall:

A. Immediately discontinue the decreased Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the decreased Services;

B. Inventory, maintain and turn over to County all data, information, documents, work product and property furnished by Operator or provided by County for performance of the decreased services.

C. Cooperate with the County in the transfer of data, information, documents, work product, and property and disposition of decreased Services in

progress so as to mitigate damages;

D. Comply with other reasonable requests from County regarding the decreased Services

E. Continue to perform, in accordance with all of the terms and conditions of this Agreement, that portion of the Services remaining

F. Decrease cost to the County proportionate to the decrease in scope of the service.

3.3.30 NON-CONFORMING SERVICES

A. **Corrective actions by Fulton County.** If during its performance of services under the O&M Contract, the Operator is notified by the County to correct defective or nonconforming services, and the Operator states or by its action indicates that it is unable or unwilling to proceed with corrective action in a reasonable time, Fulton County may correct the non-conforming services and back-charge the Operator for all costs incurred. Furthermore, if the County agrees to or is required to perform services for the Operator, the County may perform those services by the most expeditious means available and invoice in 30 days or deduct from subsequent invoices.

B. **Back-charge not Release.** Fulton County will separately invoice or deduct from payment otherwise due to the Operator any back-charge costs. Fulton County right to back-charge is in addition to any and all other right and remedies provided in the O&M Contract or by law. The performance of back-charge services by Fulton County will not relieve the Operator of any of its responsibilities under the O&M Contract, including, but not limited to, express or implied warranties, specified standards for quality, contractual liabilities, indemnifications or meeting of any schedules for the services required by the O&M Contract.

3.3.31 NO TOTAL FACILITIES SHUTDOWN PERMISSABLE

The Operator must ensure that the total system is not to be shut down for any period of time due to strikes, lock-outs or labor problems.

3.3.32 MAINTENANCE ALLOWANCE

The County shall fund a County held account for each contract year in the amount of $1,700,000.00, which fund shall be available to the County and

to be used by County for payment to the Operator for the work directed by the County as it determines in its sole discretion.

The Operator shall not have any right to any funds in such account.
The maintenance allowance shall be used for the repair and/or replacement exceeding $25,000.00 for the following managed assets:

MAINTENANCE ALLOWANCE

Managed Assets

- Plants O&M $1,200,000
- Pump Stations O&M $ 500,000

3.3.33 CONTINGENCY ALLOWANCE

The County shall fund a County held account for each contract year in the amount of $500,000.00 which fund shall be available to the County to pay County share of the costs of uncontrollable Circumstances and to be used by County for payment to the Operator for the work other than contract services determined by the County in its sole discretion. The Operator shall not have any right to any funds in such account under any circumstances.

3.3.34 FULTON COUNTY WILL BE RESPONSIBLE FOR THE FOLLOWING:

1. Provide all land, installed equipment, capital improvements, building, Structures, and facilities under its ownership and presently located at the facility sites and all process equipment as specified in the Vendor Information Package. All such item shall be and remain the property of the County. Any and all equipment installed and provided by Fulton County at the beginning of the agreement remains the property of Fulton County.

2. Obtain and maintain existing easements, licenses, and permits.

3. Make capital expenditures for expansion, upgrade, and replacement of Facilities. (Operator will assist in determining the necessary cost for expenditures, when required.)

4. Maintain the sewer lines to the sites and to other jurisdictions so as to provide Necessary transport of wastewater.

5. Perform all functions and retain all responsibilities and obligations related to the sites not expressly assumed by the Operator.

6. Have title to and right to inspect and copy operation, maintenance, laboratory

Records, and other related records to include any electronic records developed by the successful Operator in performance of the Contract.

3.4 TECHNICAL PROPOSAL FORMAT AND CONTENT

The Technical Proposal shall include the appropriate and requested information in sufficient detail to demonstrate Proposer understands of the Project and ability to meet the contract requirements.

Section 1 - Executive Summary

The executive summary shall include a brief statement of approach to the work, understanding of the project's goals and objectives and demonstrated understanding of the project's potential problems and concerns (Maximum 5 pages). The executive summary shall provide a concise overview of Proposer solution for Fulton County. Additionally, it should include the firm's background and qualifications, firm's financial stability and overall organization, and why firm the best value choice is for the County. Include any other information the Proposer feels relevant. Include a brief statement of approach to the work, understanding of the Project's goals and objectives and demonstrated understanding of the Project's potential problems and special concerns. The Proposer shall state any exceptions taken to any part of the RFP in a separate section titled "EXCEPTIONS." The specific portions to which exception is taken shall be identified and explained. It shall be understood that any exceptions may be used by the County as grounds for rejection of Proposal.

Section 2 – Project Plan

2.1 Technical approach

1. Name, address and telephone number of one (1) individual to whom all future correspondence and/or communications will be directed.

2. The Project Plan must address the management approach in completing the work identified in Section 3.3 Scope of Work. At a minimum, the plan must identify all major tasks and any other information that will assist in the planning and tracking this project successfully. Describe methodologies including best practices and benchmarks to be used.

3. Description of project deliverables.

4. Operator shall submit a well-developed technical approach, project plan, operation & maintenance plan, repair and replacement plan, odor mitigation

plan incorporating quality control/quality assurance measures to Fulton County Waste Water facilities to insure regulatory compliance and system reliability while managing the assets to provide maximum efficiency and to preserve lifecycle time. For each phase of that technical approach, describe how the requirements and objectives can be met. As part of this technical approach, please address all relevant subjects as you perceive them, and specifically address the following.

A. Describe how the Operator would execute and administrate the project.

B. Describe your understanding of this specific project, your approach to achieving Fulton County goals, how successful experiences at other locations may be applicable to this project, etc

C. Discuss the benefits of your approach, when compared to the current and future operations, and detail any near-term and long-term proposed process and facilities improvements projects. The project cost impacts of any proposed changes/improvements must be detailed in the Cost Proposal section.

D. Discuss how the Operator's business plan relates to compatibility with Fulton County business plan. (See Fulton County Business Plan-Exhibit 13 on CD).

E. Discuss the approach for transition from existing Johns Creek WRF to new Johns Creek environmental campus.

F. Discuss approach to satisfy Fulton County sampling standards.

G. Identify the method for equipment and material inventory.

H. Discuss the following plans per Exhibit 4-Facilities Plans
   i. Customer service
   ii. Emergency response and disaster preparedness plan
   iii. Staffing plan
   iv. Training plan
   v. Operation and maintenance plan
   vi. Safety and security plan
   vii. Odor and noise control plan
   viii. Septic handling plan
   ix. Annual equipment performance testing
   x. Public relation plan
   xi. Public education and community out reach

2.2 Alternate Project Plan

Alternate Project Plan proposals must conform to all requirements identified with in scope of work. Alternate proposal must be limited to 5 pages.

Section 3 – Project Team Qualifications/ Qualifications of Key Personnel [Required]

1. Provide resumes for each of the key personnel proposed for this project with specific emphasis on the Project Manager, Plant Manager and Maintenance Manager.

2. The Project Manager must meet the following experience requirements:

    - Current State of GA class I Waste Water Operator's certification

    - Minimum of ten (10) years experience in operation and maintenance of waste water facilities comparable in size and scope to Fulton County facilities

    - Five (5) years experience in management role in the operation and maintenance of waste water facilities

3. Each resume should be limited to no more than three (3) pages per person and be organized according to the following:
    - Name and Title
    - Professional Background
    - Current and Past Relevant Experience
    - Relevant Training
    - Courses completed during past five (5) years
    - Include two (2) references for each key personnel member on similar projects.
    - Include the role and responsibilities that each key personnel member will perform on this project.

4. A project organization chart should be prepared to illustrate the individuals with their specific project tasks. Organization chart shall name the Project, Maintenance and Plant Manager that shall be committed solely to the project, the staff and positions and structure of the O & M Team that will be responsible for day to day operation and maintenance. If the staff changes are planned after one year, changes must be clearly defined in a long term organization chart with staff and positions.

Section 4 – Relevant Project Experience

Describe the experience by individuals or the firm(s) which is relevant to this project.

Example projects should demonstrate that the Operator meet the following set of minimum experience criteria:

1. Ten (10) or more years of combine O&M experience of all firms submitting proposals, with specific experience in providing O&M for large sized municipal wastewater treatment plants and tertiary or higher level of treatment and similar sized pump stations. Each participating firm shall have a minimum of five (5) years of similar O&M experience.

2. Provide a minimum of five (5) reference project for municipal wastewater treatment plants with treatment capacity of Large Municipal Waste Water treatment Plants, greater than 10 MGD with conventional tertiary or higher treatment level. Only projects in the United States and North America will be considered to meet this requirement.

3. At least one of the reference projects must have been operated by the Operator continuously for five (5) or more years.

   For each of the 5 reference projects cited, please provide the following information.

1 Project Name and Location

2. Contract start and end dates and dates for all renewals

3. Client Name and Point of Contact (including address, phone number, fax number, and email address, where appropriate.

4. Detailed description of the facilities operated and details of municipal waste water collection system pump station maintained & operated with flow capacity exceeding one MGD.

5. Detailed description of the work of the Operator on this project

6. Accomplishment in terms of cost savings, capital or other improvements implemented and awards.

Section 5 - Environmental Compliance Record

For each of the 5 reference projects cited in **Relevant Project Experience**, please provide the following information:

1. Listing of all permit/regulatory violations including odor and Noise complaints associated with the wastewater system operations.

2. Complete listing of all incidents where contract requirements were not met. This includes odor and noise. Also include all the incidents where service fee were reduced for failure to meet contract requirements.

Section 6 – Proposer Financial Information

Proposers financial statements will be reviewed. The review will focus on the Proposer's Statement of Income, Balance Sheet and Cash Flow Statements.

The following documentation and statements are required. Failure to provide the required submittals shall result in your firm receiving a "Fail" for the 'Financial Responsibility" criteria for the Proposal Evaluation Criteria provided in Section 4.

<u>Financial Statement/Capability</u>

In order for the County to complete its financial review the following documentation is requested:

(1) Provide annual reports and financial statement for the last three (3) years, including income statements, balance sheets, and any changes in financial position.
(2) The latest quarterly financial report and a description of any material changes in financial position since the last annual report.
(3) Proposer's most recent Dun & Bradstreet, Value Line Reports or other credit ratings/report.

Section 7- Location of Firm

Local Preference is given to businesses that have a business location within the geographic boundaries of Fulton County. In order to receive the Local Preference points of ten (10) points the Proposer must provide one (1) of the following supporting documentation to the Department of Purchasing & Contract Compliance:

1. Copy of occupational tax certificate (business license);
2. Copy of a lease or rental agreement;

3. Proof of ownership interest in a location within the geographical boundaries of Fulton County.

The term business location means a physical structure, office or suite but does not include a post office box or a temporary job or project site location. If submitting as a Joint Venture or Partnership, provide a copy of the Joint Venture or Partnership agreement including the business address of all members.

Failure to provide the required supporting documentation with your proposal submittal shall result in your firm receiving a “0” (zero) for Local Preference.

3.5 COST PROPOSAL FORMAT AND CONTENT

The Cost Proposal shall be provided in a **separate sealed envelope.** The Cost Proposal shall include current information and shall be arranged and include content as described below:

Section 1 - Introduction

The Proposer shall include an introduction which outlines the contents of the Cost Proposal.

Section 2 - Completed Cost Proposal Forms

The Proposer is required to complete the Cost Proposal Forms provided in Exhibit 9 Price Proposal Form.

Alternate proposals may be submitted separately and will be considered for technical contents only. Alternate Cost Proposals shall be considered if the proposal is selected.

See Section 9- Exhibit 9 for Price Proposal Form.

Proposal shall be considered nonresponsive if Cost Proposal Form is not complete.

4.1 PROPOSAL EVALUATION – SELECTION CRITERIA

The following criteria will be used to evaluate the proposals submitted in response to this RFP:

Evaluation Criteria	Weight
Project Plan	25%
Qualifications of Key Personnel	25%
Relevant Project Experience (Past performance on previous contracts)	15%
Environmental Compliance Record	10%
Financial Responsibility	5%
Location of Firm	10%
Cost Proposal	10%
TOTAL POINTS	**100%**

SECTION 5
PROPOSAL FORMS

5.1 INTRODUCTION

To be deemed responsive to this RFP, Proposers must provide the information requested and complete in detail all Proposal Forms. The appropriate individual(s) authorized to commit the Proposer to the Project must sign the Proposal Forms. Proposers should reproduce each Proposal Form, as required, and complete the appropriate portions of the forms provided in this section.

Form A - Certification Regarding Debarment

Form B - Non-Collusion Affidavit of Bidder/Offeror

Form C - Certificate of Acceptance of Request for Proposal Requirements

Form D - Disclosure Form and Questionnaire

Form E - Declaration of Employee-Number Categories

Form F - Georgia Security and Immigration Operator Affidavit/Agreement

Form G – Georgia Security and Immigration SubContractor Affidavit

5.2 PROPOSAL FORMS DESCRIPTION

The following paragraphs present an overview of each Proposal Form required.

5.2.1 Certification Regarding Debarment

Proposer shall complete and submit Form A, which certifies that neither it nor its SubContractors are presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from doing business with any government agency.

5.2.2 Non-Collusion Affidavit of Bidder/Offeror

The Proposal shall include a copy of Proposal Form B, executed by an authorized officer of the corporation. Proposals developed by a joint venture shall be similarly executed by all joint venture participants.

5.2.3 Certificate of Acceptance of Request for Proposal Requirements

Proposer shall complete and submit Form C, which certifies that Proposer has read the solicitation including all addenda, exhibits, attachments and appendices.

5.2.4 Disclosure Form and Questionnaire
Proposer shall complete and submit Form D, which requests disclosure of business and litigation.

5.2.5 Declaration of Employee-Number Categories
Proposer shall complete and submit Form E, which requests the employee-number category applicable to your company.

5.2.6 Georgia Security and Immigration Operator Affidavit and Agreement
Proposer shall complete and submit Form F, in order to comply with the requirements of O.C.G.A. 13-10-91 and the Georgia Department of Labor Rule 300-10-01-.02.

5.2.7 Georgia Security and Immigration SubContractor Affidavit
Proposer shall ensure that any SubContractor(s) that will be utilized for this project shall complete and submit Form G, SubContractor Affidavit.

FORM A: CERTIFICATION REGARDING DEBARMENT

(1) The Offeror certifies that neither it or its SubContractors is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from doing business with any government agency. Any such exclusion may cause prohibition of your firm from participating in any procurement by the Fulton County Government.

(2) If the Offeror is unable to certify to any of the statements in this certification, such Offeror or SubContractor shall attach an explanation to this bid or proposal.

INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this certification, the Offeror is providing the certification set out below:

(1) the certification in this clause is a material representation of fact upon which reliance will be placed. If it is later determined that the prospective vendor knowingly rendered a false certification, the Purchasing Agent may purse all available remedies, including suspension and/or debarment, for withdrawal of award of termination of a contract.

(2) The prospective Offeror shall provide immediate written notice to the Purchasing Agent if at anytime the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(3) Offeror shall be under a continuing duty to immediately inform the Purchasing Agent in writing of any changes, if as a result of such changes, the Offeror certification regarding debarment is affected.

DEBARMENT ORDINANCE

The following Section 2-322 of Fulton County Code of Laws establishes the procedure for the debarment of Operators.

(a) ***Authority to suspend****.*

After reasonable notice to the entity involved and reasonable opportunity for that entity to be heard, the Purchasing Agent, after consultation with user department, the County Manager and the County Attorney shall have the authority to suspend an entity for cause from consideration for award of county contracts. As used in this section, the term entity means any business entity, individual, firm, Operator, SubContractor or business corporation, partnership, limited liability corporation, firm, Operator, SubContractor or business structured; provided, further, that any such entity shall also be subject to suspension under this section if any of its constituents, members, SubContractors at any tier of such entity's and the entity, or any constituent or member, knew or should have known of the commission of the act. The suspension shall be for a period not to exceed three (3) years unless cause is based on a felony conviction for an offense related or associated with fraudulent contracting or misappropriation of funds wherein the suspension shall not exceed seven (7) years.

(b) ***Causes for Suspension.*** **The causes for suspension include:**

1) Conviction for commission of a criminal offense as an incident to obtain or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract;

2) Conviction of state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a county Operator.

3) Conviction of state or federal anti-trust statues arising out of the solicitation and submission of bids and proposals;

4) Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension action:

a. Failure to perform in accordance with the specifications within a time limit provided in a county contract;

b. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Operator shall not be considered to be a basis for suspension;

c. Material representation of the composition of the ownership or workforce or business entity certified to the county as a minority business enterprise; or

d. Falsification of any documents.

i. For violation of the ethical standards set forth in Fulton County Code Chapter 9, Code of Ethics.

ii. Knowing misrepresentation to the county, of the use which a majority owned Operator intends to make a minority business enterprise (a business entity at least 51 percent of which is owned and controlled by minority persons, as defined in Fulton County Code Chapter 6, Article B, Minority
Business Enterprise Affirmative Action Program and certified as such by the County) as a SubContractor or a joint venture partner, in performing work under contract with the County.

Failure to fully and truthfully provide the information required, may result in the disqualification of your bid/proposal from consideration or termination of the Contract, once awarded. This document must be completed and included as a part of the bid/proposal package along with other required documents.

[SIGNATURES ON NEXT PAGE]

Under penalty of perjury, I declare that I have examined this certification and all attachments hereto, if applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this _____ day of _____, 2009

_____

(Legal Name of Proponent) (Date)

_____

(Signature of Authorized Representative) (Date)

_____

(Title)

STATE OF GEORGIA

COUNTY OF FULTON

Form B: **NON-COLLUSION AFFIDAVIT OF BIDDER/OFFEROR**

I, _____ certify that pursuant to Fulton County Code Section 2-320 (11), this bid or proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same work, labor or service to be done or the supplies, materials or equipment to be furnished and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences and civil damages awards. I agree to abide by all conditions of this bid or proposal and certify that I am authorized to sign this bid or proposal for the bidder.

Affiant further states that pursuant to O.C.G.A. Section 36-91-21 (d) and (e), _____ has not, by itself or with others, directly or indirectly, prevented or attempted to prevent competition in such bidding or proposals by any means whatsoever. Affiant further states that (s)he has not prevented or endeavored to prevent anyone from making a bid or offer on the project by any means whatever, nor has Affiant caused or induced another to withdraw a bid or offer for the work.

Affiant further states that the said offer of _____ is bona fide, and that no one has gone to any supplier and attempted to get such person or company to furnish the materials to the bidder only, or if furnished to any other bidder, that the material shall be at a higher price.

_____
(COMPANY NAME)

_____
(PRESIDENT/VICE PRESIDENT)

Sworn to and subscribed before me this _____ day of _____, 2009__.

_____
(SECRETARY/ASSISTANT SECRETARY)

(Affix corporate seal here, if a corporation)

Notary Public: _____

County: _____

Commission Expires: _____

NOTE:

IF THE OFFEROR IS A PARTNERSHIP, ALL OF THE PARTNERS AND ANY OFFICER, AGENT, OR OTHER PERSON WHO MAY HAVE REPRESENTED OR ACTED FOR THEM IN BIDDING FOR OR PROCURING THE CONTRACT SHALL ALSO MAKE THIS OATH.

IF THE OFFEROR IS A CORPORATION, ALL OFFICERS, AGENTS, OR OTHER PERSONS WHO MAY HAVE ACTED FOR OR REPRESENTED THE CORPORATION IN BIDDING FOR OR PROCURING THE CONTRACT SHALL MAKE THE OATH.

FORM C: **CERTIFICATE OF ACCEPTANCE OF REQUEST FOR PROPOSAL REQUIREMENTS**

This is to certify that on this day, offeror acknowledges that he/she has read this solicitation document, pages #_____ to #_____ inclusive, including any addenda # _____ to #_____ exhibit(s) #_____ to #_____, attachment(s) # to #_____, and/or appendices #_____ to #,_____in its entirety, and agrees that no pages or parts of the document have been omitted, that he/she understands, accepts and agrees to fully comply with the requirements therein, and that the undersigned is authorized by the offeror to submit the proposal herein and to legally obligate the offeror thereto.

Company:_____

Signature:_____

Name: _____

Title:_____ Date: _____

(Affix Corporate Seal)

Form D: **OFFEROR'S DISCLOSURE FORM AND QUESTIONNAIRE**

1. Please provide the names and business addresses of each of the Offeror's firm's officers and directors.

   For the purposes of this form, the term "Offeror" means an entity that responds to a solicitation for a County contract by either submitting a proposal in response to a Request for Proposal or a Request for Qualification or a Bid in response to an Invitation to Bid.
   Describe accurately, fully and completely, their respective relationships with said Offeror, including their ownership interests and their anticipated role in the management and operations of said Offeror.

2. Please describe the general development of said Offeror's business during the past five (5) years, or such shorter period of time that said Offeror has been in business.

3. Please state whether any employee, agent or representative of said Offeror who is or will be directly involved in the subject project has or had within the last five (5) years: (i) directly or indirectly had a business relationship with Fulton County; (ii) directly or indirectly received revenues from Fulton County; or (iii) directly or indirectly receives revenues from the result of conducting business on Fulton County property or pursuant to any contract with Fulton County. Please describe in detail any such relationship.

LITIGATION DISCLOSURE:

Failure to fully and truthfully disclose the information required, may result in the disqualification of your bid or proposal from consideration or termination of the Contract, once awarded.

1. Please state whether any of the following events have occurred in the last five (5) years with respect to said Offeror. If any answer is yes, explain fully the following:

   (a) whether a petition under the federal bankruptcy laws or state insolvency laws was filed by or against said Offeror, or a receiver fiscal agent or similar officer was appointed by a court for the business or property of said Offeror;

   (b) whether Offeror was subject of any order, judgment, or decree not subsequently reversed, suspended or vacated by any court of competent

jurisdiction, permanently enjoining said Offeror from engaging in any type of business practice, or otherwise eliminating any type of business practice; and

(c) whether said Offeror's business was the subject of any civil or criminal proceeding in which there was a final adjudication adverse to said or Offeror, which directly arose from activities conducted by the business unit or corporate division of said Offeror which submitted a bid or proposal for the subject project. If so please explain.

2. Have you or any member of your firm or team to be assigned to this engagement ever been indicted or convicted of a criminal offense within the last five (5) years?

Circle One: YES NO

3. Have you or any member of your firm or team been terminated (for cause or otherwise) from any work being performed for Fulton County or any other Federal, State or Local Government?

Circle One: YES NO

4. Have you or any member of your firm or team been involved in any claim or litigation adverse to Fulton County or any other federal, state or local government, or private entity during the last three (3) years?

Circle One: YES NO

5. Has any offeror, member of offeror's team, or officer of any of them (with respect to any matter involving the business practices or activities of his or her employer), been notified within the five (5) years preceding the date of this offer that any of them are the target of a criminal investigation, grand jury investigation, or civil enforcement proceeding?

Circle One: YES NO

If you have answered "YES" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, the name of the court and the file or reference number of the case, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

NOTE: If any response to any question set forth in this questionnaire has been disclosed in any other document, a response may be made by attaching a copy of such disclosure. (For example, said Offeror's most recent filings with the Securities and Exchange Commission ("SEC") may be provided if they are responsive to certain items within the questionnaire.) However, for purposes of clarity, Offeror should correlate its responses with the exhibits by identifying the exhibit and its relevant text.

Disclosures must specifically address, completely respond and comply with all information requested and fully answer all questions requested by Fulton County. Such disclosure must be submitted at the time of the bid or proposal submission and included as a part of the bid/proposal submitted for this project. Disclosure is required for Offerors, joint venture partners and first-tier SubContractors.

Failure to provide required disclosure, submit officially signed and notarized documents or respond to any and all information requested/required by Fulton County can result in the bid/proposal declared as non-responsive. This document must be completed and included as a part of the bid/proposal package along with other required documents.

[SIGNATURES ON NEXT PAGE]

Under penalty or\f perjury, I declare that I have examined this questionnaire and all attachments hereto, if applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this _____ day of _____, 2009

_____
(Legal Name of Proponent) (Date)

_____
(Signature of Authorized Representative) (Date)

_____
(Title)

Sworn to and subscribed before me,

this _____ day of _____, 200

_____
(Notary Public) (Seal)

Commission Expires _____
(Date)

FORM E: DECLARATION OF EMPLOYEE-NUMBER CATEGORIES

Please affirmatively indicate by checking the appropriate box the employee-number category applicable to your organization:

□ 500 or more employees

□ 100 or more employees

□ Fewer than 100 employees

Organization Name: _____

I certify that the above information is true and correct and that the classification noted is applicable for this Project.

Signed: _____

Printed: _____

Title: _____

Date: _____

FORM F: GEORGIA SECURITY AND IMMIGRATION OPERATOR AFFIDAVIT

Instructions:

Operators must attest to compliance with the requirements of O.C.G.A 13-10-91 and the Georgia Department of Labor Rule 300-10-01-.02 by executing the Operator Affidavit. The affidavit should be executed by Operators with 500 or more employees.

STATE OF GEORGIA

COUNTY OF FULTON

FORM F: GEORGIA SECURITY AND IMMIGRATION OPERATOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned Operator verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **[insert name of prime Operator]** _____ on behalf of **Fulton County Government** has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any SubContractor(s) in connection with the physical performance of services to this contract with **Fulton County Government**, Operator will secure from such SubContractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the SubContractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Operator further agrees to maintain records of such compliance and provide a copy of each such verification to the **Fulton County Government** at the time the SubContractor(s) is retained to perform such service.

_____
EEV/Basic Pilot Program* User Identification Number

_____
BY: Authorized Officer of Agent
(Insert Subcontract Name)

_____

Title of Authorized Officer or Agent of SubContractor

_____

Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this _____ day of _____, 200__.

Notary Public: _____

County: _____

Commission Expires: _____

NOTE:

*** As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).**

FORM G: GEORGIA SECURITY AND IMMIGRATION SUBCONTRACTOR AFFIDAVIT

Instructions:

In the event that your company is awarded the contract for this project, and will be utilizing the services of any SubContractor(s) in connection with the physical performance of services pursuant to this contract, the following affidavit must be completed by such SubContractor(s). Your company must provide a copy of each such affidavit to Fulton County Government, Department of Purchasing & Contract Compliance with the proposal submittal.

All SubContractor affidavit(s) shall become a part of the contract and all SubContractor(s) affidavits shall be maintained by your company and available for inspection by Fulton County Government at any time during the term of the contract. All SubContractor(s) affidavit(s) shall become a part of any Operator/SubContractor agreement(s) entered into by your company.

STATE OF GEORGIA

COUNTY OF FULTON

FORM G: GEORGIA SECURITY AND IMMIGRATION SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned SubContractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **[insert name of prime Operator]** _____behalf of **Fulton County Government** has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

_____
EEV/Basic Pilot Program* User Identification Number

_____
BY: Authorized Officer of Agent
(Insert Subcontract Name)

_____
Title of Authorized Officer or Agent of SubContractor

_____
Printed Name of Authorized Officer or Agent

Sworn to and subscribed before me this _____ day of _____, 200__.

Notary Public: _____

County: _____

Commission Expires: _____

NOTE:

*** As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).**

SECTION 6
CONTRACT COMPLIANCE REQUIREMENTS

6.1 NON-DISCRIMINATION IN CONTRACTING AND PROCUREMENTS

It is the policy of Fulton County Government that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the Board of Commissioners ("Board") that Fulton County and all vendors and Operators doing business with Fulton County shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the Board. Similarly, it is the policy of the Board that the contracting and procurement practices of Fulton County should not implicate Fulton County as either an active or passive participant in the discriminatory practices engaged in by private Operators or vendors seeking to obtain contracts with Fulton County.

Equal Business Opportunity Plan (EBO Plan): In addition to the proposal submission requirements, each vendor **must** submit an Equal Business Opportunity Plan (EBO Plan) with their bid/proposal. The EBO Plan is designed to enhance the utilization of a particular racial, gender or ethnic group by a bidder/proposer, Operator, or vendor or by Fulton County. The respondent **must** outline a plan of action to encourage and achieve diversity and equality in the available procurement and contracting opportunities with *this solicitation*.

The Plan **must** identify and include:

1. Potential opportunities within the scope of work of *this solicitation* that will allow for participation of racial, gender or ethnic groups. (Ex: subcontracting, joint venturing, etc.)

2. Efforts that will be made by the bidder/proposer to encourage and solicit minority and female business utilization in *this solicitation*. (Ex: media solicitation directed to M/FBEs, contacting Fulton County certified M/FBEs listed in the M/FBE Directory, etc.)

Fulton County encourages joint ventures, teaming, partnering and mentor-protégé relationships with minority and female businesses in an effort to achieve contracting and procurement diversity.

Prompt Payment: The prime Operator **must** certify in writing and **must** document on the Exhibit G Form (Prime Operator/SubContractor Utilization Report) that all SubContractors, sub-consultants and suppliers have been promptly paid for work and materials, (less any retainage by the prime Operator prior to receipt of any further

progress payments). In the event the prime Operator is unable to pay SubContractors, sub-consultants or suppliers until it has received a progress payment from Fulton County, the prime Operator shall pay all SubContractors, sub-consultants or suppliers funds due from said progress payment within forty-eight (48) hours of receipt of payment from Fulton County. In no event shall a SubContractor, sub-consultant or supplier be paid later than fifteen (15) days as provided for by state law.

6.2 REQUIRED FORMS AND EBO PLAN

In order to be compliant with the intent and provisions of the Fulton County Non-Discrimination in Purchasing and Contracting Ordinance (99-0960), bidders/proposers **must** submit the following completed documents. Failure to provide this information **shall** result in the proposal being deemed non-responsive.

- Exhibit A – Promise of Non-Discrimination
- Exhibit B – Employment Report
- Exhibit C – Schedule of Intended SubContractor Utilization
- Exhibit D – Letter of Intent to Perform as a SubContractor or Provide Materials or Services
- Exhibit E – Declaration Regarding SubContractors Practices
- Exhibit F – Joint Venture Disclosure Affidavit
- Equal Business Opportunity Plan (EBO Plan). This document is not a form rather a statement created by the bidder/proposer on its company letter head addressing the EBO Plan requirements.

The following document must be completed as instructed if awarded the project:

- Exhibit G – Prime Operator's SubContractor Utilization Report

All Contract Compliance documents (Exhibits A – F and EBO Plan) are to be placed in a **separate sealed envelope** clearly marked "Contract Compliance". The EBO Plan must be submitted on company letterhead. These documents are considered part of and should be submitted with the Technical Proposal.

EXHIBIT A – PROMISE OF NON-DISCRIMINATION

"Know all persons by these presents, that I/We (_____),
Name

_____ _____
Title Firm Name

Hereinafter "Company", in consideration of the privilege to bid on or obtain contracts funded, in whole or in part, by Fulton County, hereby consent, covenant and agree as follows:

1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, national origin or gender in connection with any bid submitted to Fulton County for the performance of any resulting there from,

2) That it is and shall be the policy of this Company to provide equal opportunity to all businesses seeking to contract or otherwise interested in contracting with this Company without regard to the race, color, gender or national origin of the ownership of this business,

3) That the promises of non-discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption,

4) That the promise of non-discrimination as made and set forth herein shall be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain,

5) That the failure of this Company to satisfactorily discharge any of the promises of non-discrimination as made and set forth herein shall constitute a material breach of contract entitling the Board to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owning on a contract; and

6) That the bidder shall provide such information as may be required by the Director of Contract Compliance pursuant to Section 4.4 of the Fulton County Non-Discrimination in Purchasing and Contracting Ordinance.

SIGNATURE:_____

ADDRESS:_____

_____

TELEPHONE NUMBER:_____

EXHIBIT B – EMPLOYMENT REPORT

The demographic employment make-up for the bidder/proposer **must** be identified and submitted with this bid/proposal. In addition, if SubContractors will be utilized by the bidder/proposer to complete this project, then the demographic employment make-up of the SubContractor(s) must be identified and submitted with this bid.

EMPLOYEES

	Native American		African American		Asian American		Hispanic American		Caucasian American		Other	
Male/Female	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**
Mgmt/Official												
Professional												
Supervisors												
Office/ Clerical												
Craftsmen												
Laborers												
Other (specify)												
TOTALS												

FIRM'S NAME:_____

ADDRESS:_____

_____

TELEPHONE NUMBER:_____

This completed form is for (Check one) _____Bidder/Proposer _____ SubContractor

Submitted by: _____ Date Completed:_____

EXHIBIT C - SCHEDULE OF INTENDED SUBCONTRACTOR UTILIZATION

If the bidder/proposer intends to subcontract any portion of this scope of work/service(s), this form **must be** completed and **submitted with the bid/proposal.** All prime bidders/proposers **must** include Letter(s) of Intent (Exhibit D) in the bid document for all SubContractors who will be utilized under the scope of work/services.

Prime Bidder/Proposer:_____

ITB/RFP Number:_____

Project Name or Description of Work/Service(s):_____

_____

_____

1. My firm, as Prime Bidder/Proposer on this scope of work/service(s) is_____is not a minority or female owned and controlled business enterprise. (Please indicate below the portion of work, including, percentage of bid/proposal amount that your firm will carry out directly):

   _____

   _____

2. If the Prime Bidder/Proposer is a Joint Venture, please complete Exhibit F: Joint Venture Disclosure Affidavit and attach a copy of the executed Joint Venture Agreement.

3. Sub-Operators (including suppliers) to be utilized in the performance of this scope of work/service(s), if awarded, are:

SUBCONTRATOR NAME:_____
ADDRESS:_____
_____
PHONE:_____
CONTACT PERSON:_____
ETHNIC GROUP*:_____COUNTY CERTIFIED**_____
WORK TO BE PERFORMED:_____
_____
DOLLAR VALUE OF WORK: $_____ PERCENTAGE VALUE:_____%

***Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); **If yes, please attach copy of recent certification.**

SUBCONTRATOR NAME:_____
ADDRESS:_____
_____
PHONE:_____
CONTACT PERSON:_____
ETHNIC GROUP*:_____COUNTY CERTIFIED**_____
WORK TO BE PERFORMED:_____
_____
DOLLAR VALUE OF WORK: $_____ PERCENTAGE VALUE:_____%

SUBCONTRATOR NAME:_____
ADDRESS:_____
_____
PHONE:_____
CONTACT PERSON:_____
ETHNIC GROUP*:_____COUNTY CERTIFIED**_____
WORK TO BE PERFORMED:_____
_____
DOLLAR VALUE OF WORK: $_____ PERCENTAGE VALUE:_____%

SUBCONTRATOR NAME:_____
ADDRESS:_____
_____
PHONE:_____
CONTACT PERSON:_____
ETHNIC GROUP*:_____COUNTY CERTIFIED**_____
WORK TO BE PERFORMED:_____
_____
DOLLAR VALUE OF WORK: $_____ PERCENTAGE VALUE:_____%

SUBCONTRATOR NAME:_____
ADDRESS:_____
_____
PHONE:_____
CONTACT PERSON:_____
ETHNIC GROUP*:_____COUNTY CERTIFIED**_____
WORK TO BE PERFORMED:_____
_____
DOLLAR VALUE OF WORK: $_____ PERCENTAGE VALUE:_____%

***Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); **If yes, please attach copy of recent certification.**

Total Dollar Value of SubContractor Agreements: ($)

Total Percentage Value: (%)

CERTIFICATION: The undersigned certifies that he/she has read, understands and agrees to be bound by the Bid/Proposer provisions, including the accompanying Exhibits and other terms and conditions regarding sub-Operator utilization. The undersigned further certifies that he/she is legally authorized by the Bidder/Proposer to make the statement and representation in this Exhibit and that said statements and representations are true and correct to the best of his/her knowledge and belief. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder/Proposer knowing them to be false, or if there is a failure of the intentions, objectives and commitments set forth herein without prior approval of the County, then in any such event the Operator's acts or failure to act, as the case may be, shall constitute a material breach of the contract, entitling the County to terminate the Contract for default. The right to so terminate shall be in addition to, and in lieu of, any other rights and remedies the County may have for other defaults under the contract.

Signature:_____**Title**:_____

Firm or Corporate Name:_____

Address:_____

_____

Telephone: ( )_____

Fax Number: ( )_____

Email Address:_____

EXHIBIT D

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR
OR
PROVIDE MATERIALS OR SERVICES

This form **must** be completed by **ALL** known SubContractor and submitted with the bid/proposal. The Prime Operator **must** submit Letters of Intent for **ALL** known SubContractors at time of bid submission.

To:_____
(Name of Prime Operator Firm)

From:_____
(Name of SubContractor Firm)

ITB/RFP Number:_____

Project Name:_____

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials, or services to be performed or provided):

Description of Work	Project Commence Date	Project Completion Date	Estimated Dollar Amount

_____ _____
(Prime Bidder) **(SubContractor)**

Signature_____ **Signature**_____

Title_____ **Title**_____

Date_____ **Date**_____

EXHIBIT E - DECLARATION REGARDING SUBCONTRACTING PRACTICES

If the bidder/proposer **does not intend to subcontract** any portion of the scope of work services(s), this form **must be** completed and submitted with the bid/proposal.

_____hereby declares that it is my/our intent to
(Bidder)
perform 100% of the work required for_____
(ITB/RFP Number)

_____

(Description of Work)

In making this declaration, the bidder/proposer states the following:

1. That the bidder/proposer does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform **all elements** of the work on this project with his/her own current work forces;

2. If it should become necessary to subcontract some portion of the work at a later date, the bidder/proposer will comply with all requirements of the County's Non-Discrimination Ordinance in providing equal opportunities to all firms to subcontract the work. The determination to subcontract some portion of the work at a later date shall be made in good faith and the County reserves the right to require additional information to substantiate a decision made by the bidder/proposer to subcontract work following the award of the contract. Nothing contained in this provision shall be employed to circumvent the spirit and intent of the County's Non-Discrimination Ordinances;

3. The bidder will provide, upon request, information sufficient for the County to verify Item Number one.

AUTHORIZED COMPANY REPRESENTATIVE

Name:_____ **Title:**_____ **Date:**_

Signature:_____

Firm:_____

Address:_____

Phone Number:_____

Fax Number:_____

Email Address:_____

EXHIBIT F - JOINT VENTURE DISCLOSURE AFFIDAVIT

ITB/RFP No._____

Project Name_____

This form must be completed and submitted with the bid/proposal if a joint venture approach is to be undertaken.

In order to evaluate the extent of small, minority and female business involvement being proposed by a Bidder/Proposer, certain relevant information must be provided prior to contract award. The information requested below is to clearly identify and explain the extent of small business participation in the proposed joint venture. All items must be properly addressed before the business entity can be evaluated.

1. Firms:

1) **Name of Business:_____**
Street Address:_____
Telephone No.:_____
Nature of Business:_____

2) Name of Business:_____
Street Address:_____
Telephone No.:_____
Nature of Business:_____

3) Name of Business:_____
Street Address:_____
Telephone No.:_____
Nature of Business:_____

NAME OF JOINT VENTURE (If applicable):_____

ADDRESS:_____

_____

PRINCIPAL OFFICE:_____

OFFICE PHONE:_____

Note: Attach additional sheets as required

1. Describe the capital contributions by each joint venturer and accounting thereof.

2. Describe the financial controls of the joint venture, e.g., will a separate cost center be established? Which venturer will be responsible for keeping the books? How will the expense therefore be reimbursed? What is the authority of each joint venture to commit or obligate the order?

3. Describe any ownership, options for ownership, or loans between the joint ventures. Identify terms thereof.

4. Describe the estimated contract cash flow for each joint venturer.

5. To what extent and by whom will the on-site work be supervised?

6. To what extent and by whom will the administrative office be supervised?

7. Which joint venturer will be responsible for material purchases including the estimated cost thereof? How will the purchase be financed?

8. Which joint venturer will provide equipment? What is the estimated cost thereof? How will the equipment be financed?

9. Describe the experience and business qualifications of each joint venturer.

10. Submit a copy of all joint venture agreements and evidence of authority to do business in the State of Georgia as well as locally, to include all necessary business licenses.

11. Percent of Minority/Female Business Enterprises ownership by each joint venture in terms of profit and loss sharing:_____

12. The authority of each joint venturer to commit or obligate the other:_____

_____

13. Number of personnel to be involved in project, their crafts and positions and whether they are employees of the Minority/Female Business Enterprises enterprise, the majority firm or the joint venture: _____

_____

_____

14. Identification of control and participation in venture; list those individuals who are responsible for day-to-day management and policy decision-maker, including, but not limited to, those with prime responsibility for areas designated below; (use additional sheets if necessary)

Name	Race	Sex	Financial Decisions	Supervision Field Operation
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

In connection with any work that these firms, as a joint venture, might be authorized to perform in connection with above captioned contract, we each do hereby authorize representatives of the Fulton County Department of Contract Compliance, Departments of Purchasing and Contract Compliance, and Finance, under the direction of the County Manger's Office, to examine, from time to time, the books, records and files to the extent that such relate to this County project.

WE DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT WE ARE AUTHORIZED, ON BEHALF OF THE ABOVE FIRMS, TO MAKE THIS AFFIDAVIT AND GRANT THE ABOVE PRIVILEGE.

FOR_____

(Company)

Date:_____

_____

(Signature of Affiant)

_____

(Printed Name)

_____

(Company)

Date:_____ **_____**

(Signature of Affiant)

_____

(Printed Name)

State of_____:

County of_____:

On this ____ day of _____, 20_____, before me, appeared_____, the undersigned officer, personally appeared_____, known to me to be the person described in the foregoing Affidavit and acknowledges that he (she) executed the same in the capacity therein stated and for the purpose therein contained.

EXHIBIT – G PRIME OPERATOR/SUB-OPERATOR UTILIZATION REPORT

This report **must** be submitted by the **tenth day** of each month, along with a copy of your monthly invoice (schedule of values/payment application) to Contract Compliance. Failure to comply **shall** result in the County commencing proceedings to impose sanctions to the prime Operator, in addition to pursuing any other available legal remedy. Sanctions may include the suspending of any payment or part thereof, termination or cancellation of the contract, and the denial of participation in any future contracts awarded by Fulton County.

REPORTING PERIOD		**PROJECT NAME:**	
FROM:		**PROJECT NUMBER:**	
TO:		**PROJECT LOCATION:**	

PRIME OPERATOR		**Contract Award Date**	**Contract Award Amount**	**Change Order Amount**	**Contract Period**	**% Complete to Date**
Name:						
Address:						
Telephone #:						

AMOUNT OF REQUISITION THIS PERIOD: $_____
TOTAL AMOUNT REQUISITION TO DATE: $_____
TOTAL AMOUNT REQUISITION TO DATE: $_____

SUBCONTRACTOR UTILIZATION (add additional rows as necessary)

Name of Sub-Operator	Description of Work	Contract Amount	Amount Paid To Date	Amount Requisition This Period	Contract Period Starting Date	Ending Date
TOTALS						

Executed By: _____

_____

(Signature) ***(Printed Name)***

Notary: _____ **Date:**

_____

My Commission Expires: _____

Should you have questions regarding any of the documents contained in Section 6, please feel free to contact the Office of Contract Compliance at (404) 612-6300, for further assistance.

SECTION 7
Insurance and Risk Management Provisions
Public Works (Operation and Maintenance)

It is Fulton County Government's practice to obtain Certificates of Insurance from our Operators and Vendors. Insurance must be written by a licensed agent in a company licensed to write insurance in the State of Georgia, with an A.M. Best rating of at least A- VI, subject to final approval by Fulton County. Respondents shall submit with the bid/proposal evidence of insurability satisfactory to Fulton County Government as to form and content. Either of the following forms of evidence is acceptable:

- A letter from an insurance carrier stating that upon your firm/company being the successful Bidder/Respondent that a Certificate of Insurance shall be issued in compliance with the Insurance and Risk Management Provisions outlined below.
- A Certificate of Insurance complying with the Insurance and Risk Management Provisions outlined below (Request for Bid/Proposal number and Scope of Services must appear on the Certificate of Insurance).
- A combination of specific policies written with an umbrella policy covering liabilities in excess of the required limits is acceptable to achieve the applicable insurance coverage levels.

Upon award, the Operator/Vendor must maintain at their expense, insurance with policy limits equal to or greater than the limits described below. Proof of insurance must be provided to Fulton County Government prior to the start of any activities/services as described in the bid document(s). Any and all Insurance Coverage(s) and Bonds required under the terms and conditions of the contract shall be maintained during the entire length of the contract, including any extensions or renewals thereto, and until all work has been completed to the satisfaction of Fulton County Government.

Accordingly the Respondent shall provide a certificate evidencing the following:

1. **WORKERS COMPENSATION/EMPLOYER'S LIABILITY INSURANCE – STATUTORY (In compliance with the Georgia Workers Compensation Acts, including but not limited to U.S. Longshoremen and Harbor Workers Act and any other State or Federal Acts or Provisions in which jurisdiction may be granted)**

Employer's Liability Insurance BY ACCIDENT	EACH ACCIDENT	$1,000,000
Employer's Liability Insurance BY DISEASE	POLICY LIMIT	$1,000,000
Employer's Liability Insurance BY DISEASE	EACH EMPLOYEE	$1,000,000

2. **COMMERCIAL GENERAL LIABILITY INSURANCE (Including contractual Liability Insurance)**

Bodily Injury and Property Damage Liability	Each Occurrence	$1,000,000
(Other than Products/Completed Operations)	General Aggregate	$2,000,000

Products\Completed Operation	Aggregate Limit	$2,000,000
Personal and Advertising Injury	Limits	$1,000,000
Fire Damage	Limits	$100,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE
Combined Single Limits Each Occurrence $1,000,000
(Including operation of non-owned, owned, and hired automobiles).

4. UMBRELLA LIABILITY
(In excess of above noted coverages) Each Occurrence $5,000,000

6. PROFESSIONAL LIABILITY Per Claim/Aggregate $5,000,000
(To be provided when the Contract includes specified Professional Services, and will be written with all Environmental/Pollution exclusions deleted).
Extended Reporting Period 3-5 Years

7. OPERATORS POLLUTION LIABILITY Each Occurrence $10,000,000

Certificates of Insurance

Certificates shall state that the policy or policies shall not expire, be cancelled or altered without at least sixty (60) days prior written notice to Fulton County Government. Policies and Certificates of Insurance are to list Fulton County Government as an Additional Insured (except for Workers' Compensation) and shall conform to all terms and conditions (including coverage of the indemnification and hold harmless agreement) contained in the Insurance and Risk Management Provisions. The General Liability Additional Insured language should apply to on-going and completed-operations, using ISO form CG 2010 (11/85 version) or equivalent.

The Operator agrees to name the Owner and all other parties required of the Operator/Vendor shall be included as insureds on the CGL, using ISO Additional Insured Endorsement forms CG 2010 11/85 or its equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured SubContractor. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, non-contributory, and Waiver of Subrogation provided to the Additional Insureds.

Additional Insured under the General Liability, Auto Liability, Umbrella Policies (with exception of Workers Compensation and Professional Liability), with no Cross Suits exclusion.

If Fulton County Government shall so request, the Respondent, Operator or Vendor will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.

Such certificates and notices **must** identify the "Certificate Holder" as follows:

Fulton County Government – Purchasing and Contract Compliance Department
130 Peachtree Street, S.W.
Suite 1168
Atlanta, Georgia 30303-3459

Certificates **must** list Project Name (where applicable).

Important:

It is understood that **Insurance in no way Limits the Liability of the Operator/Vendor.**

USE OF PREMISES

Operator/Vendor shall confine its apparatus, the storage of materials and the operations of its workers to limits/requirements indicated by law, ordinance, permits and any restrictions of Fulton County Government and shall not unreasonably encumber the premises with its materials.

PROTECTION OF PROPERTY

Operator/Vendor will adequately protect its own work from damage, will protect Fulton County Government's property from damage or loss and will take all necessary precautions during the progress of the work to protect all persons and the property of others from damage or loss.

Operator/Vendor shall take all necessary precautions for the safety of employees of the work and shall comply with all applicable provisions of the Federal, State and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where work is being performed.

Operator/Vendor shall erect and properly maintain at all times as required by the conditions and progress of the work, all necessary safeguards for the protection of its employees, Fulton County Government employees and the public and shall post all applicable signage and other warning devices t protect against potential hazards for the work being performed.

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

To the fullest extent of the Law, Operator/Vendor hereby agrees to release, indemnify, defend and hold harmless Fulton County, its Commissioners, officers, employees, SubContractors, successors, assigns and agents, from and against any and all losses (including death), claims, damages, liabilities, costs and expenses (including but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgments, settlements, court costs, attorney's fees or expenses, regardless of the outcome of any such action, proceeding, or investigation), caused by, relating to, based upon or arising out of any act or omission by Operator/Vendor, its directors, officers, employees, SubContractors, successors, assigns or agents, or otherwise in connection (directly or indirectly) with its acceptance, or the

performance, or nonperformance, of its obligations under these agreements. Such obligations shall not be construed to negate, abridge or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person as set forth in this paragraph.

Operator/Vendor's obligation to protect, defend, indemnify and hold harmless, as set forth hereinabove, shall also include, but is not limited to, any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations.

Operator/Vendor further agrees to protect, defend, indemnify and hold harmless Fulton County, its Commissioners, officers, employees, SubContractors, successors, assigns and agents from and against any and all claims or liability for compensation under the Worker's Compensation Act, Disability Benefits Act, or any other employee benefits act arising out of injuries sustained by any employees of Operator/Vendor. These indemnities shall not be limited by reason of the listing of any insurance coverage.

If the bid/quotation involves construction services Operator/Vendor will be responsible fully for any and all damage to the work during the course of construction, until the point of Final acceptance by Fulton County.

FULTON COUNTY ACKNOWLEDGES THAT ALL PROVISIONS OF THIS INDEMNITY AGREEMENT MAY NOT BE APPLICABLE TO THE OPERATOR/VENDOR'S BUSINESS. TO THE EXTENT THAT OPERATOR/VENDOR MAY DEMONSTRATE SUCH NONAPPLICABILITY, FULTON COUNTY MAY NEGOTIATE AMENDMENTS TO THIS AGREEMENT AS THE CIRCUMSTANCES DICTATE.

OPERATOR/VENDOR ACKNOWLEDGES HAVING READ, UNDERSTANDING, AND AGREEING TO COMPLY WITH THIS INDEMNIFICATION AND HOLD HARMLESS AGREEMENT, AND THE REPRESENTATIVE OF THE OPERATOR/VENDOR IDENTIFIED BELOW IS AUTHORIZED TO SIGN CONTRACTS ON BEHALF OF THE RESPONDING OPERATOR/VENDOR.

COMPANY: _____ SIGNATURE: _____

NAME: _____ TITLE: _____

DATE: _____

SECTION 8
CONTRACT

FULTON COUNTY

Vision

People *Families* *Neighborhoods*

Mission

To serve, protect and govern in concert with local municipalities

Values

People *Customer Services*
Ethics *Resource Management*
Innovation *Equal Opportunity*

CONTRACT DOCUMENTS
FOR

PROJECT NUMBER # 09RFP011209K-DJ

OPERATION AND MAINTENANCE OF WATER RECLAMATION FACILITIES AND PUMP STATIONS
For

PUBLIC WORKS DEPARTMENT

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CONTRACT AGREEMENT

Operator: ***[Insert Operator Name]***

Contract No.: ***[Insert Project Number and Title]***

Address: ***[Insert Operator Address]***
City, State

Telephone: ***[Insert Operator telephone #]***

Email: ***[Insert Operator Email]***

Contact: ***[Insert Operator Contact Name]***
[Insert Operator Contact Title

This Agreement made and entered into effective the _____ day of _____, 20 by and between **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as **"County"**, and **[Insert Operator Company Name]** to provide professional consulting services in Georgia, hereinafter referred to as **"Operator".**

WITNESSETH

WHEREAS, County through its ***[Insert User Department Name]*** hereinafter referred to as the **"Department"**, desires to retain a qualified and experienced Operator to perform ***[Insert project description/services to be provided***, hereinafter, referred to as the **"Project"**.

WHEREAS, Operator has represented to County that it is experienced and has qualified and local staff available to commit to the Project and County has relied upon such representations.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, County and Operator agree as follows:

County hereby engages Operator, and Operator hereby agrees, to perform the services hereinafter set forth in accordance with this Agreement, consisting of the following contract documents:

I. Form of Agreement;
II. Addenda;
III. Exhibit A: General Conditions;
IV. Exhibit B: Special Conditions;
V. Exhibit C: Scope of Work
VI. Exhibit D: Project Deliverables;
VII. Exhibit E: Compensation;
VIII. Exhibit F: Office of Contract Compliance Forms;
IX. Exhibit G: Insurance and Risk Management Forms
X. Exhibit H: Exhibits

The foregoing documents constitute the entire Agreement of the parties pertaining to the Project hereof and is intended as a complete and exclusive statement of promises, representations, discussions and agreements oral or otherwise that have been made in connection therewith. No modifications or amendment to this Agreement shall be binding upon the parties unless the same is in writing, conforms to Fulton County Policy and Procedure 800-6 governing change orders, is signed by the County's and the Operator's duly authorized representatives, and entered upon the meeting minutes of the Fulton County Board of Commissioners.

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: 1) the Agreement, 2) the RFP, 3) any Addenda, 4) change orders, 5) the exhibits, and 6) portions of Operator's proposal that was accepted by the County and made a part of the Contract Documents.

The Agreement was approved by the Fulton County Board of Commissioners on ***[Insert Board of Commissioners approval date and item number].***

IN WITNESS THEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed and their corporate seals to be hereunto affixed as of the day and year date first above written.

OWNER:

FULTON COUNTY, GEORGIA

John H. Eaves, Commission Chair
Board of Commissioners

ATTEST:

Mark Massey
Clerk to the Commission (Seal)

APPROVED AS TO FORM:

Office of the County Attorney

APPROVED AS TO CONTENT:

[Insert Department Head Name]
[Insert Department Head Title]

OPERATOR:

[Insert Operator COMPANY NAME]

[Insert Name & Title of person authorized to sign contract]

ATTEST:

Secretary/
Assistant Secretary

(Affix Corporate Seal)

III. EXHIBIT A: GENERAL CONDITIONS

ARTICLE 1. AUTHORIZED REPRESENTATIVE(S)

SECTION 1.1 COUNTY REPRESENTATIVE; DESIGNEES. COUNTY will designate in writing a person(s) to serve as its representative(s) (COUNTY Representative) in all dealings with Operators under this contract and to carry out the duties specified in this Contract, or necessarily implied from this Contract; provided however, COUNTY Representative(s) will have no authority to relieve Operator of any of its obligations under this Contract. Any communication given by COUNTY Representative(s) will have the same effect as though it has been given by City; provided that any failure of COUNTY Representative (s) to disapprove or reject any services shall not prejudice the authority of COUNTY to disapprove the services or give instructions for the rectification of defects in the services. . COUNTY Representative or any of its designee(s) may be changed upon prior written notice delivered to Operator.

SECTION 1.2 COUNTY REPRESENTATIVE(S) DISCRETION. Whenever under this Contract, COUNTY Representative is required to exercise its discretion by giving a decision, opinion or consent; by expressing satisfaction or approval; or by determining values, it will exercise that discretion reasonably, fairly and impartially within the terms of this Contract.

ARTICLE 2. OPERATOR REPRESENTATIVE(S)

Operator must designate in writing a person(s) acceptable to COUNTY Representative to serve as its representative ("Operator Representative") in all dealings with COUNTY. The initial Operator Representative will be ***[Insert Name]***, Project Manager, regarding day-to-day operational issues. For contractual matters, Operator Representatives will be ***[Insert Name(s)]***. Operator's Representative may be changed upon prior written notice delivered to the COUNTY Representative.

ARTICLE 3. INDEPENDENT OPERATOR/ SUBCONTRACTOR(S)

Nothing contained in this Agreement will be deemed to create a partnership or joint venture between COUNTY and Operator or cause COUNTY to be responsible for the debts or obligations of Operator or any other party. Operator shall not represent to anyone that its relationship to COUNTY is other than as COUNTY's Operator. Operator shall act as an independent Operator and not as the agent of COUNTY in performing this Agreement, maintaining complete control over

its employees and all of its lower-tier Suppliers and Subcontractors/Sub-consultants. Nothing contained in this Agreement or any lower tier purchase order or subcontract awarded by Operator will create any Agreement relationship between any lower-tier supplier or Subcontractor/Sub-consultant and COUNTY.

ARTICLE 4. LICENSES, PERMITS, TAXES

The price or prices for the Services requested by this RFP include full compensation for all licenses, permits and taxes that the Operator is or may be required to pay to complete this Service. The COUNTY is a tax-exempt entity.

ARTICLE 5. CHANGES

After an Agreement is formally awarded and executed, the COUNTY may, during the Agreement period, make changes within the general scope of the Agreement and its technical provisions. If any changes cause an increase or decrease in the Operator's cost of performing any part of the Services, or in the time of performance, or in both, then a written amendment to the Agreement reflecting that change will be negotiated and entered into between the COUNTY and successful Operator.

ARTICLE 6. TERMINATION OF AGREEMENT

SECTION 6.a) REMEDIES FOR BREACH. The parties agree that, except as otherwise provided in Section 6.2, 6.3, 6.4 and 6.5 with respect to termination rights, in the event that either party breaches this Service Contract, the other party may exercise any legal rights it has under this Service Contract, 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 Contract for cause except upon the occurrence of an Event of Default.

SECTION 6.b). EVENTS OF DEFAULT BY THE OPERATOR.

i) Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Operator upon which the County, by notice to the Operator, may terminate this Service Contract without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Security for Performance. The failure of the Operator to obtain, maintain in full force and effect or renew within 30 days prior to expiration any Security Instrument required by Article 38 as security for

the performance of this Service Contract, without excuse for Uncontrollable Circumstances or County Fault;

(2) Failure to Meet Effluent Requirements. The failure of the Operator to meet the monthly Effluent guarantee pursuant to Exhibit 2 PERFORMANCE GUARANTEES unless caused by Uncontrollable Circumstances or County Fault;

(3) Abandonment. The abandonment or failure of the Operator to operate all or a substantial portion of Managed Assets for a 24-hour period in any Contract Year, unless caused by Uncontrollable Circumstances or County Fault;

(5) Gross Misfeasance. The failure or refusal of the Operator to perform a material obligation hereunder such that the failure or refusal constitutes a gross misfeasance of duty, notwithstanding the fact that at the time the notice of an Event of Default is given such failure or refusal to perform may no longer exist or be continuing;

(6) Insolvency. The insolvency of the Operator or the Guarantor as determined under the Bankruptcy Code;

(7) Voluntary Bankruptcy. The filing by the Operator or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Operator or the Guarantor to the filing of any bankruptcy or reorganization petition against the Operator or the Guarantor under the Bankruptcy Code; or the filing by the Operator or the Guarantor of a petition to reorganize the Operator or the Guarantor pursuant to the Bankruptcy Code;

(8) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Operator or the Guarantor or of a major part of the Operator's or the Guarantor's property, respectively, or the filing against the Operator or the Guarantor of a petition to reorganize the Operator 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; or

(9) Default of Guarantor. The failure of the Guarantor to perform any payment or other obligation under the Guaranty in a timely manner, the material untruth of any representation or warranty made by the Guarantor in the Guaranty Agreement, or the failure of the Guarantor to comply with the terms and conditions of Section 38.1.

ii) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Operator upon which the County may terminate this Service Contract, by

notice to the Operator, if: (1) any representation or warranty of the Operator hereunder or the Guarantor under the Guaranty Agreement was false or inaccurate in any material respect when made, and the legality of this Service Contract or the Guaranty Agreement or the ability of the Operator to carry out its obligations hereunder or the ability of the Guarantor to carry out its obligation thereunder is thereby adversely affected; or (2) the Operator fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the County under this Service Contract within 60 days following the due date for such payment, or (b) to perform any material obligation under this Service Contract (unless such default is excused by an Uncontrollable Circumstance or County Fault as and to the extent provided herein), or (C) Contract fails to maintain required insurance except that no such default (other than those set forth in subsection (A) of this Section) shall constitute an Event of Default giving the County the right to terminate this Service Contract for cause under this subsection unless:

(1) The County has given prior written notice to the Operator stating that in its opinion a specified default in its duty to pay or perform exists which gives the County a right to terminate this Service Contract for cause under this Section, and describing the default in reasonable detail; and

(2) The Operator has not initiated within a reasonable time (in any event not more than 15 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary within 60 days to correct the default and prevent its recurrence.

If the Operator shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days unless caused by uncontrollable circumstances or County fault, from the initial default notice) as the Operator shall continue with due diligence to carry out to completion all such actions.

iii) Other Remedies Upon Operator Event of Default. The right of termination provided under this Section upon an Event of Default by the Operator is not exclusive. If this Service Contract is terminated by the County for an Event of Default by the Operator, the County 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 Contract, under the Security Instruments and under Applicable Law. Without limiting the foregoing, upon any termination of the Operator for an Event of Default the damages payable by the Operator to the County shall include the costs of (1) making all repairs and replacements to the Managed Assets, (2) remediating any public health and safety problems, and (3) paying all unpaid fines and penalties payable to any Governmental Body, in each case resulting from any breach of this Service Contract by the Operator. Such termination damages shall also include, without limitation, a one-time payment equivalent to the sum of (1) the excess, if any, of (a) the present value of the Managed Assets operations, maintenance, repair and replacement, or under a new service agreement with a replacement operator chosen as result of a competitive selection process, if the Managed Assets are to be operated, maintained, repaired and replaced pursuant to such an agreement, in either case for a period equal to the balance of the Term at the time of termination, over (b) the estimated present value of the Service Fee for the balance of the Term; plus (2) all reasonable costs incurred by the County in procuring, negotiating and implementing a new service agreement with a replacement operator, if any.

SECTION 6.c). EVENTS OF DEFAULT BY THE COUNTY.

i) Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the County upon which the Operator, by notice to the County, may terminate this Service Contract:

(1) Representations and Warranties. Any representation or warranty of the County hereunder was false in any material respect when made, and the legality of this Service Contract or the ability of the County to carry out its obligations hereunder is thereby adversely affected; or

(2) Failure to Pay or Perform. The failure, refusal or other default by the County in its duty: (1) to pay the amount required to be paid to the Operator under this Service Contract within 60 days following the due date for such payment; or (2) to perform any other material obligation under this Service Contract (unless such default is excused by an Uncontrollable Circumstance or Operator Fault).

ii) Notice and Cure Opportunity. No such default described in subsections (A)(1) or (A)(2) of this Section shall constitute an Event of Default giving the Operator the right to terminate this Service Contract for cause under this subsection unless:

(1) The Operator has given prior written notice to the County stating that a specified default exists which gives the Operator a right to terminate this Service Contract for cause under this Section, and describing the default in reasonable detail; and

(2) The County has not initiated within a reasonable amount of time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default.

If the County shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions, the default shall not constitute an Event of Default during such period of time (in any event more than 60 days from the initial default notice) as the County shall continue with due diligence to carry out to completion all such actions.

SECTION 6.d). COUNTY CONVENIENCE TERMINATION DURING THE MANAGEMENT PERIOD.

i) Termination Right and Fee. The County shall have the right at any time during the Management Period, exercisable in its sole discretion, for its convenience and without cause, to terminate this Service Contract upon 120 days' written notice to the Operator.

ii) Payment of Amounts Owing Through the Termination Date. Upon any termination pursuant to this Section, the Operator shall also be paid all amounts due for the Contract Services to be paid as part of the Service Fee but not yet paid as of the date of termination.

iii) Completion or Continuance by County. After the date of any termination under this Section, the County 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 Operators.

iv) Termination for Non-Appropriation. The County reserves the right to terminate this Service Contract if funds are not appropriated or otherwise made available in any Contract Year for the next Contract Year. Such termination shall be treated as a termination for convenience.

SECTION 6.e). COUNTY ODOR TERMINATION RIGHTS DURING THE MANAGEMENT PERIOD.

i) Odor Termination. The County shall have the right, but not the obligation, to terminate this Service Contract upon 30 days written notice (as determined by the County) at any time following (1) the issuance by the County of a fourth or any subsequent Odor Citation, and provided that in order for such termination to occur such fourth or subsequent Odor Citation must be at least the second such Odor Citation in any calendar year, or (2) the issuance by the County of a Sustained Odor Condition Determination, in either case based on determinations made in accordance with the applicable provisions of Exhibit 2.

SECTION 6.f). OBLIGATIONS OF THE OPERATOR UPON TERMINATION OR EXPIRATION.

i) Operator Obligations. Upon a termination of the Operator's right to perform this Service Contract under Section 6.2, 6.3, 6.4 and 6.5 or upon the expiration of this Service Contract, the Operator shall, as applicable:

(1) Stop the Contract Services on the date and to the extent specified by the County;

(2) Promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;

(3) Subject to subsection (C) of this Section remove from the Managed Assets all construction equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Operator, and repair any damage caused by such removal;

(4) Clean the Managed Assets, and leave them in a neat and orderly condition;

(5) Subject to subsections (B) and (C) of this Section, promptly remove all employees of the Operator and any Subcontractors and vacate the Managed Assets;

(6) With respect to Capital Modifications, promptly deliver to the County a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the Operator or any Subcontractor but not yet incorporated in the Managed Assets;

(7) Deliver to the County the Operation and Maintenance Manuals and all computer programs used at the Managed Assets in the performance of Contract Services, including all revisions and updates thereto;

(8) Deliver to the County a copy of all books and records in its possession relating to the performance of the Contract Services;

(9) Advise the County promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(10) Promptly deliver to the County 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

(11) Assign to the County any Subcontract that the County elects in writing, at its sole election and without obligation, to have assigned to it. The County shall assume, and the Operator shall be relieved of its obligations under, any Subcontract so assigned from the date of such assignment;

(12) Terminate all Subcontracts which the County has not directed the Operator to assign, and make no additional agreements with Subcontractors;

(13) As directed by the County, transfer to the County by appropriate instruments of title, and deliver to the Plant (or such other place as the County may specify), all special order items pursuant to this Service Contract for which the County has made or is obligated to make payment;

(14) Promptly transfer to the County all warranties given by any manufacturer or Subcontractor with respect to particular components of the Management Services.

(15) Notify County promptly in writing of any legal proceedings against the Operator by any Subcontractor or other third parties relating to the termination of the Management Services;

(16) Give written notice of termination, effective as of date of termination of this Service Contract, promptly under each policy of Required Insurance (with a copy of each such notice to the County), but permit the County to elect to continue such policies in force thereafter at its own expense, if possible;

(17) Arrange its dealings with employees such that no "successor clause" or accrued benefit liability will bind the County in the event the County determines to offer employment to the Operator's employees at the Managed Assets following the Termination Date; and

(18) 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 County's costs, and take no action which shall increase any amount payable to the County under this Service Contract.

ii) Hiring of Operator Personnel. Upon the termination or expiration of this Service Contract under any provision hereof, the County or any successor operator of the Managed Assets designated by the County shall have the right to offer employment on any terms it may choose to any Employee employed full time at the Managed Assets. No Operator employment agreement, job offer, letter or similar document may contravene this right. Operator employees who have executed "non-compete" clauses with the Operator shall be released from such covenant solely for employment by the successor operator or the County at the Managed Assets.

iii) Continuity of Service and Technical Support. Upon the termination of the Operator's right to perform this Service Contract under Sections 6.2, 6.3 or 6.4, or 6.5 or upon the expiration of this Service Contract, the Operator, at the request and direction of the County, shall provide continuity of service for the smooth and orderly transition of management back to the County or any replacement operator designated by the County. Such service shall be for a period of up to 180 days and shall include providing all or such portion of the Contract Services, as the County may determine. In addition, the Operator shall provide the County and any replacement operator with a one-time training program relating to the operation of the Managed Assets, including any Capital Modifications made thereto.

iv) Operator Payment of Certain Costs. If termination is pursuant to Section 6.2, the Operator shall be obligated to pay the costs and expenses of undertaking its

post-termination responsibilities under this Section. If the Operator fails to comply with any obligation under this Section, the County may perform such obligation and the Operator shall pay on demand all reasonable costs thereof subject to Cost Substantiation pursuant to Section 48.4.

v) Exit Transition Plan. The Operator shall comply with the Exit Transition Plan in transferring management of the Managed Assets to the County upon the expiration or termination of this Service Contract pursuant to Exhibit 6 EXIT TRANSITION PLAN.

SECTION 6.g). NO WAIVERS. No action of the County or the Operator pursuant to this Service Contract (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 Contract. No course of dealing or delay by the County or the Operator in exercising any right, power or remedy under this Service Contract 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 County or the Operator under this Service Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 6.h). NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party be liable to the other or obligated in any manner to pay to the other, except with respect to indemnification of Loss-and-Expenses arising from third party claims for which one party is obligated to indemnify the other pursuant to the provisions of this Service Contract, 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 under this Service Contract, or the material falseness or inaccuracy of any representation made in this Service Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 6.i). FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all Legal Proceedings related to this Service Contract or to the Managed Assets or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the Superior Court of Fulton County, Georgia. The Operator and the County each irrevocably consents to the jurisdiction of such courts in any such actions or proceedings, waives any objection it may have to the jurisdiction of any such action or proceeding, and each party reserves its right to a trial by jury.

SECTION 6.j). NON-BINDING MEDIATION.

i) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Service Contract, 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.

ii) 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.

iii) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Service Contract. No Mediator shall be empowered to render a binding decision.

iv) 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 Contract by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

Operator shall gather from County all available non-privileged data and information pertinent to the performance of the services for the Project. Certain services as described in Exhibit C, Scope of Services, if required, will be performed and furnished by County in a timely manner so as not to unduly delay Operator in the performance of said obligations. County shall have the final decision as to what data and information is pertinent.

County will appoint in writing a County authorized representative with respect to work to be performed under this Agreement until County gives written notice of the appointment of a successor. The County’s authorized representative shall have complete authority to transmit instructions, receive information, and define County’s policies, consistent with County rules and regulations. Operator may rely upon written consents and approvals signed by County’s authorized representative that are consistent with County rules and regulations.

ARTICLE 7. CONFLICT OF INTEREST

The successful Operator shall be a firm that has no conflict of interest concerning its entry into a formal written Agreement with the COUNTY or in its execution of Services under that Agreement in fulfillment of the requirements of that Agreement and this RFP.

ARTICLE 8. TERM OF AGREEMENT

SECTION 8.a). EFFECTIVE DATE AND TERM. This Service Contract shall become effective on the Contract Date, and shall continue in effect for 5 years following the Commencement Date (the period from the Contract Date to the fifth anniversary of the Commencement Date). All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. The County shall have no obligation to make Service Fee payments hereunder until after the Commencement Date. At the end of the Term of this Service Contract, all other obligations of the parties hereunder shall terminate, except as provide in Section 6.7 and 6.8

SECTION 8.2. COUNTY RENEWAL OPTION. This Service Contract may be renewed and extended for an additional period of two (2) separate consecutive two (2) year terms, (subject to convenience termination without cost to the County at any time or 90 days written notice) at the sole option of the County on the same conditions as are applicable during the Initial Term. The Operator shall give the County written notice of the approaching expiration of the Initial Term no later than 270 days prior to such expiration. In the event the County elects to exercise its option to extend the Term, the County shall give the Operator written notice of such election not later than 90 days prior to the expiration of the Initial Term.

ARTICLE 9. PROFESSIONAL RESPONSIBILITY

Section 9.01 Operator represents that is has, or will be secure at its own expenses, all personnel required to perform all Services to be completed under this Agreement.

Section 9.02 All the Services required hereunder will be performed by Operator or under the direct supervision of Operator. All personnel engaged in the Services by Operator shall be fully qualified and shall be authorized or permitted under applicable state and local law to perform such Services.

Section 9.03 None of the Work or Services covered by this Agreement shall be transferred, assigned, or subcontracted by Operator without the prior written consent of the County.

ARTICLE 10. CHANGES IN SCOPE OF SERVICES

The COUNTY may, from time to time, request changes in the Scope of Services increase or decrease in the amount of the compensation, which may be mutually agreed upon by and between the COUNTY and successful Operator, shall be effective and enforceable until and unless a written amendment to this Agreement has been executed by both parties and attached hereto.

ARTICLE 11. REPORTS AND DOCUMENTATION

All reports, information, data, or other documents given to, prepared by or assembled by the Operator under this Agreement is the property of the County and shall be kept confidential and shall not be made available to any individual or organization by the Operator without prior written approval by the County's designated contract administrator. For the duration of this Agreement, all records generated by the Operator in the course of performing Services accordance with this Agreement shall be open to inspection and audit by County, or any person designated by County. Upon request of County, Operator shall provide all records and information required by County within reasonable time, but not later than five (5) days. Except as required by law, Operator's obligations hereunder with respect to confidential information shall terminate with respect to any particular portion of the confidential information if and when: (i) it is in the public domain at the time of its communication; (ii) it enters the public domain through no fault of Operator subsequent to the time of the County's communication to Operator; (iii) it is communicated by the County to a third party free of any obligation of confidence; or (iv) Operator has the County's written permission.

ARTICLE 12. REPORTING RESPONSIBILITY

The Director of Public Works, or his/her designated representative, is the authorized representative.

ARTICLE 13. OWNERSHIP OF INFORMATION: CONFIDENTIALITY

All reports prepared by or assembled by Operator arising out of the Services performed under this Agreement are the exclusive property of the COUNTY and will be kept confidential and may not be made available to any individual or organization by the Operator without the prior written approval of the COUNTY; provided, however, that these provisions shall not apply to data that is in the public domain; was previously

known to Operator; or was independently acquired by the Operator from third parties who are under no obligation to COUNTY to keep said data and information confidential. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of Operator, nor shall they be interpreted in any way to restrict Operator from complying with a legally enforceable court order to provide information or data; provided, however, the Operator shall immediately place COUNTY on notice of such court order to permit COUNTY the opportunity to determine whether a Protective Order shall be filed. This restriction includes, but is not limited to, press releases, presentations, promotional materials and other public disclosures.

Except as provided in the preceding paragraph, the Operator shall keep confidential, and shall require its employees, agents, subordinates, or Subcontractors, to keep confidential all information disclosed by the COUNTY or its contractors to the Operator, or developed by the Operator or the Operator's employees, agents, subordinates, or Subcontractors/Sub-consultants in the performance of Services hereunder. Disclosure of any such information shall constitute a material breach of this Agreement and shall entitle the COUNTY to recover from Operator any damages COUNTY incurs because of such breach.

The COUNTY shall have the right to any Specifications, computer programs, technical reports, operating manuals and similar work product developed and paid for under this Agreement. If research or development is furnished in connection with the performance of this Agreement, and if in the course of such research or development patentable subject matter is produced by the Operator, its officers, agents, employees, or Subcontractors, the COUNTY shall have, without cost or expense to it, an irrevocable, nonexclusive royalty-free, license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by the COUNTY. Promptly upon request by the COUNTY, the Operator shall furnish or obtain from the appropriate person a form of license satisfactory to the COUNTY, but it is expressly understood and agreed that, as between the COUNTY and the Operator, the license herein provided for shall nevertheless arise for the benefit of the COUNTY immediately upon the production of said subject matter, and shall not await formal exemplification in a written license agreement as provided for above. Such license agreement may be transferred by the COUNTY to its successors immediate, or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by the COUNTY, but such license shall not be otherwise transferable.
Any documents, including, but not limited to, mylars, Agreement drawings, originals of technical Specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared

or compiled in connection with this Agreement, shall become the property of the COUNTY, and the COUNTY shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein.

PROPERTY RIGHTS.

i) Protection from Infringement. The Operator shall pay all royalties and license fees payable in connection with the performance of the Management Services. The Operator shall protect, indemnify and hold harmless the County, and any of the County Indemnitees, from and against all Loss-and-Expense, and shall defend the County Indemnitees in any Legal Proceeding arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the performance of the Management 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 Operator shall not, however, be required to reimburse or indemnify any person for any Loss-and-Expense to the extent due to the negligence or willful misconduct of such person. The provisions of this Section shall survive termination of this Service Contract.

ii) Intellectual Property Developed by the Operator. All intellectual property developed by the Operator at or through the use of the Managed Assets or otherwise in connection with the performance of the Contract Services shall be owned by the Operator, and shall be made fully available to the County on demand. Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. The Operator hereby grants the County an irrevocable, perpetual and unrestricted right to use such intellectual property for any County purpose, whether before or following the Termination Date. Neither the County nor the Operator 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.

ARTICLE 14. RECORDS AND AUDIT

ASSET AND FINANCIAL RECORDS.

i) System Records. The Operator, on and after the Commencement Date, shall operate and maintain the installed computerized information systems with respect to the Managed Assets for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Service Contract and demonstrate compliance with the Contract Standards. The

Operator shall promptly provide the County, with copies of all operations and maintenance data and other information kept by the Operator in its performance of the Contract Services.

ii) Record Documents. The Operator shall maintain at the Plants and make available to the County upon request for review and copying: (1) all designs, drawings, blueprints, plans, specifications and "as-built" or record drawings and documents pertaining to the Managed Assets, and (2) similar documents relating to any Capital Modifications. The Operator shall: (1) keep current all such records to show any changes to the Managed Assets (including valves, pipes, pumps, meters and other assets) made by the Operator in the performance of the Contract Services; and (2) provide advice and assistance to the County, based on such records, in establishing and maintaining any County geographic mapping and information systems.

iii) Financial Records. The Operator 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 Managed Assets and Contract 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 Operator fails to prepare or maintain any books, records or accounts as required under this Section, the Operator shall not be entitled to any requested payments or adjustment for which Cost Substantiation was required hereunder. The Operator shall keep the relevant portions of the books, records and accounts maintained with respect to each Contract Year until at least the seventh 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), and shall make such books and records available to the County for inspection, audit and copying upon reasonable notice during business hours to the extent necessary to allow the County to determine to its reasonable satisfaction the accuracy, completeness, currency and propriety of any charge or request for payment. The provisions of this Section shall survive the termination of this Service Contract.

iv) Operator Financial Reports. The Operator shall furnish the County, within 90 days after the end of each Contract Year, consolidating balance sheets and income statements for the Operator attached to the audited year end financial statements reported upon by the Operator's independent public accountant. The Operator shall also furnish the County with copies of all quarterly and annual reports and other

filings of the Operator and the Guarantor filed with the Securities and Exchange Commission.

v) Inspection, Audit and Adjustment. The County shall have the right to perform or commission an 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 County has overstated the Service Fee, then the Operator shall, at the election of the County, either immediately reimburse to the County 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 County, at the Prime Rate. If an inspection or audit contemplated by this Section discloses an overpayment of the Service Fee to the Operator of 1% or more of the total amount that should have been properly paid by the County during the period audited, then the Operator shall, in addition to the reimbursement or credit of such overstated amount, with interest, reimburse the County 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 County may have, including remedies for an Event of Default by the Operator.

Operator and its Subcontractors shall be responsible for maintaining accurate records of all correspondence, documents, accounting records and other relative evidence. These records shall remain on file for a minimum of three (3) years. All records shall be made available to the COUNTY for review upon request. COUNTY may examine and copy, at all reasonable times, with advance notification, those records and accounts. Operator shall maintain all records in a central location in the metropolitan Atlanta area.

ARTICLE 15. COMMERCIAL ATIVITIES

Neither Operator nor its employees may establish any commercial activity or issue concessions or permits of any kind to third parties for establishing activities at the COUNTY.

ARTICLE 16. ETHICS, GRATUITIES AND KICKBACKS

The right of Operator to proceed may be terminated in accordance with the Clause titled TERMINATION OF AGREEMENT if, after notice and hearing, COUNTY determines that Operator, any agent, or other representative of Operator gave or agreed to give, any employee or former employee of COUNTY, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any

Specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or an Agreement or subcontract, or to any solicitation or Proposal for an Agreement or subcontract.

ARTICLE 17. RIGHTS AND REMEDIES

The rights and remedies of COUNTY provided in this clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

ARTICLE 18. AWARD VIOLATION

Operator warrants that it has not employed or retained any company or person, other than a bona fide employee working for Operator to solicit or secure this Agreement; and that it has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the above warranty and upon a finding after notice and hearing, the COUNTY shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 19. NON-DISCRIMINATION IN CONTRACT AND PURCHASING

The Operator shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex or, with respect to otherwise qualified individuals and handicap. The Operator will take all actions reasonably necessary to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin or, with respect to otherwise qualified individuals, handicap. Such action shall include, without limitation: (1) recruitment and recruitment advertising; (2) layoff or termination; (3) upgrading, demotion, transfer, rates of pay or other form of compensation; and (4) selection for training, including apprenticeship. The Operator shall impose the non-discrimination provisions of this Section by contract on all Subcontractors hired to perform work related to the Managed Assets and shall take all reasonable actions necessary to enforce such provisions. The Operator will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. It is the policy of Fulton County Government that discrimination against

businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the Board of Commissioners ("Board") that Fulton County and all vendors and Operators doing business with Fulton County shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the Board. Similarly, it is the policy of the Board that the contracting and procurement practices of Fulton County should not implicate Fulton County as either an active or passive participant in the discriminatory practices engaged in by private Operators or vendors seeking to obtain contracts with Fulton County.

ARTICLE 20. STANDARD OF PROFESSIONAL SERVICES

Operator, by the execution of this Agreement, acknowledges that it is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other members of its profession and further contracts that in the performance of the duties herein set forth, will exercise such degree of care, learning, skill and ability as is ordinarily employed by Operator under similar conditions and like circumstances and shall perform such duties without neglect.

All Services shall be performed in a manner consistent with the highest generally accepted level of care and skill ordinarily exercised by professionals performing Services of a similar nature, taking into account standards, state-of-the-art and governmental requirements existing at the time the Services are performed.

ARTICLE 21. INSURANCE AND UNCONTROLLABLE CIRCUMSTANCES

SECTION 21.a). INSURANCE.

i) Operator Insurance. At all times during the Term of this Service Contract, the Operator shall obtain and maintain or cause to be obtained and maintained the Required Insurance in accordance with the requirements of Section 7 of RFP and shall pay all premiums with respect thereto as the same become due and payable.

ii) Insurers, Deductibles and County 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 Section 7of RFP. The insurers shall be selected by the Operator with the consent of the County, which consent shall not be unreasonably withheld, and shall be authorized to write such insurance in the State. The insurance coverage may be written with deductible amounts within the limits allowed in Section 7 of RFP, and the Operator shall be responsible for paying all deductible amounts. The Operator 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 Operator

hereunder. All policies evidencing such insurance shall provide for: (1) payment of the losses to the County and to the Operator as their respective interests may appear; and (2) at least 30 days prior written notice of the cancellation thereof to the Operator and the County. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance carried by the County. The County 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.

iii) Certificates, Policies and Notice. The delivery by the Operator to the County of certificates of insurance is required by this Service Contract as a condition to the occurrence of the Commencement Date (Required Management Period Insurance). The Operator shall also supply the County, 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 Operator shall furnish certificates of insurance to the County to confirm the continued effectiveness of the Required Insurance. Whenever a Subcontractor is utilized, the Operator shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Section 7 of RFP.

iv) Maintenance of Insurance Coverage. If the Operator fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Operator fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the County's election (but without any obligation to do so), the County, following notice to the Operator, may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by the County the amount thereof shall be immediately reimbursable to the County by the Operator. The failure of the Operator to obtain and maintain any Required Insurance shall not relieve the Operator of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Operator shall indemnify and hold harmless the County against any Loss-and-Expense arising out of such failure. The purchase of insurance to satisfy the Operator's obligations under this Section shall not be a satisfaction of any Operator liability under this Service Contract or in any way limit, modify or satisfy the Operator's indemnity obligations hereunder.

SECTION 21.b). UNCONTROLLABLE CIRCUMSTANCES.

i) Relief from Obligations. Except as expressly provided under the terms of this Service Contract, neither party to this Service Contract 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 Contract, except to the extent specifically provided otherwise, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Service Contract 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 Contract, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstances. The County shall pay the Service Fee during the continuance of any Uncontrollable Circumstance, adjusted to account for any cost reductions achieved through Operator mitigation measures required by subsection (B) of this Section, as well as for any cost increases to which the Operator is entitled under subsection (C) of this Section.

ii) Notice and Mitigation. The party that asserts the occurrence of an Uncontrollable Circumstance shall immediately notify the other party by telephone or facsimile, on the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 5 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, and 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: (1) the amount, if any, by which the Service Fee is proposed to be adjusted as a result of such Uncontrollable Circumstance; (2) any areas where costs might be reduced and the approximate amount of such cost reductions; and (3) its estimated impact on the other obligations of such party under this Service Contract. The affected party shall also provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever an Uncontrollable Circumstance occurs, the party claiming to be adversely affected thereby shall, as promptly and as reasonably possible, use all reasonable efforts to eliminate the cause thereof, reduce costs resulting there from, mitigate and limit damage to itself and the other party, and resume full performance under this Service Contract. 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 Circumstances 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.

iii) Acceptance of Relief Constitutes Release. The Operator's acceptance of any performance, or cost relief under this Section shall be construed as a release of the County by the Operator (and all persons claiming by, through, or under the Operator) for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed.

ARTICLE 22. INDEMNIFICATION

Operator hereby agrees to release, indemnify, defend and hold harmless Fulton County, its Commissioners, officers, employees, subcontractors, successors, assigns and agents, from and against any and all losses (including death), claims, damages, liabilities, costs and expenses (including but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgments, settlements, court costs, attorney's fees or expenses, regardless of the outcome of any such action, proceeding, or investigation), caused by, relating to, based upon or arising out of any act or omission by Operator, its directors, officers, employees, subcontractors, successors, assigns or agents, or otherwise in connection (directly or indirectly) with its acceptance, or the performance, or nonperformance, of its obligations under these agreements. Such obligations shall not be construed to negate, abridge or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person as set forth in this paragraph.

Operator obligation to protect, defend, indemnify and hold harmless, as set forth hereinabove, shall also include, but is not limited to, any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations.

Operator further agrees to protect, defend, indemnify and hold harmless Fulton County, its Commissioners, officers, employees, sub-consultants, successors, assigns and agents from and against any and all claims or liability for compensation under the Worker's Compensation Act, Disability Benefits Act, or any other employee benefits act arising out of injuries sustained by any employees of Operator. These indemnities shall not be limited by reason of the listing of any insurance coverage.

These indemnity provisions are for the protection of the County indemnities only and shall not establish, of themselves, any liability to third parties. The provisions of this article shall survive termination of this Agreement.

ARTICLE 23. REPRESENTATIONS AND WARRANTIES

SECTION 23.a) REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents and warrants that:

(1) Existence and Powers. The County is a political subdivision of the State, validly existing under the Constitution and the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Service Contract;

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

(3) No Conflict. To its knowledge, neither the execution nor delivery by the County of this Service Contract nor the performance by the County of its obligations in connection with the transactions contemplated hereby or the fulfillment by the County of the terms or conditions hereof: (a) conflicts with, violates or results in a material breach of any law or governmental regulation applicable to the County; or (b) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a material default under any of the foregoing;

(4) No Litigation. Except as disclosed in writing to the Operator, to its knowledge, there is no Legal Proceeding before or by any Governmental Body, or proceeding for referendum or other voter initiative, pending or, to the County's knowledge, overtly threatened or publicly announced against the County, 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 Contract by the County or the validity, legality or enforceability of this Service Contract against the County, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby, or on the ability of the County to perform its obligations hereunder or under any such other agreement or instrument.

(5) Governmental Approvals. The County has and shall continue to have throughout the Term of this Service Contract, all Governmental Approvals necessary to effectuate its responsibilities under this Service Contract or required of the County as owner of the Managed Assets, and the County has enacted all

municipal laws, ordinances or regulations which are necessary for the performance by the County of this Service Contract; and

(6) Applicable Law Compliance. Except as disclosed in writing to the Operator, to its knowledge (1) the County is not in material violation of any Applicable Law pertaining to the Managed Assets, or (2) the County has not received notice of a violation or an alleged violation of any such Applicable Law.

SECTION 23.b). REPRESENTATIONS AND WARRANTIES OF THE OPERATOR. The Operator represents and warrants that:

(1) Existence and Powers. The Operator is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia and fully authorized to do business in the State, with the full legal right, power and authority to enter into and perform its obligations under this Service Contract;

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

(3) No Conflict. To its knowledge, neither the execution nor delivery by the Operator of this Service Contract nor the performance by the Operator of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Operator of the terms or conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Operator; or (b) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Operator is a party or by which the Operator or any of its properties or assets are bound, or constitutes a default under any of the foregoing;

(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 Service Contract by the Operator or the performance of its payment or other obligations hereunder except such as have been duly obtained or made;

(5) No Litigation. Except as disclosed in writing to the County in a certification of an officer of the Operator addressed to the County simultaneously with the execution and delivery of this Service Contract, there is no Legal Proceeding before or by any Governmental Body pending or, to the Operator's knowledge, overtly threatened or publicly announced against the Operator or the Guarantor, 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 Contract by the Operator, or the validity, legality or enforceability of this Service Contract against the Operator or any other agreement or instrument entered into by the Operator in connection with the transactions contemplated hereby, or on the ability of the Operator to perform its obligations hereunder or under any such other agreement or instrument.

(6) Claims and Demands. Except as disclosed in writing to the County in a certification of an officer of the Operator addressed to the County simultaneously with the execution and delivery of this Service Contract, there are no material and adverse claims and demands based in environmental, contract or tort law pending or to its knowledge, threatened against the Operator or any Affiliate of the Operator, or the Guarantor or any Affiliate of the Guarantor with respect to any water or wastewater plant designed, constructed, operated, maintained or managed by any of the foregoing.

(7) Governmental Approvals. The Operator has or will obtain in the course of its performance hereunder, either directly or through qualified Subcontractors, the Governmental Approvals which the Operator must obtain in its own name or that of its Subcontractors to provide the Contract Services.

(8) Applicable Law Compliance. Except as disclosed in writing to the County in a certification of an officer of the Operator addressed to the County simultaneously with the execution and delivery of this Service Contract, to its knowledge, the Operator is not in material violation of any law, order, rule or regulation applicable to any water or wastewater plant designed, constructed, operated, maintained or managed by the Operator or any Affiliate of the Operator.

(9) Practicability of Performance. The technology and management practices to be employed in the operation and maintenance of the Managed Assets are furnished exclusively by the Operator pursuant to the terms of this Service Contract, and the Operator assumes and shall have exclusive responsibility for their efficacy, notwithstanding the inclusion of design drawings, specifications, design principles or other terms and conditions in the RFP and Performance Guarantees between the Operator and the County. The Operator assumes the risk of the practicability and possibility of performance of the Managed Assets, and of treating Influent through the operation of the Managed Assets 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 which may be different from those assumed by the Operator in entering into this Service Contract, and agrees that sufficient consideration for the assumption of such risks and duties is included in the Service Fee. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance;

(10) Patents and Licenses. The Operator owns, or is expressly authorized to use under patent rights, licenses, franchises, trademarks or copyrights, the

technology necessary for operation and maintenance of the Managed Assets and the Operator is authorized to assign the right to use such technology to the County upon termination of this Service Contract or expiration of the Term without any further approvals;

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

ARTICLE 24. ASSIGNMENT

i) By the Operator. The Operator shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Service Contract, its right to execute the same, or its right, title or interest in all or any part of this Service Contract or any monies due hereunder whatsoever, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the County. Any such approval given in one instance shall not relieve the Operator of its obligation to obtain the prior written approval of the County to any further assignment. Any assignment of this Service Contract which is approved by the County shall require the assignee of the Operator to assume the performance of and observe all obligations, representations and warranties of the Operator under this Service Contract, 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 Operator in any way from any of its obligations under Service Contract unless such approval specifically provides otherwise.

ii) By the County. The County may not assign its rights or obligations under this Service Contract without the prior written consent of the Operator. The County may, however, assign its rights and obligations under this Service Contract, without the consent of the Operator, to a trustee in connection with future bond issuances as security for such bonds, and another Governmental Body if such assignee assumes, and is legally capable of discharging, the duties and obligations of the County hereunder.

ARTICLE 25. NOTICES

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notice to County, shall be addressed as follows:

Department Of Public Works
141 Pryor Street, SW
Suite 6001
Atlanta, Georgia 30303
Telephone: 404 612 7427
Facsimile: 404 730 8300
Attention: *Assistant Director, Water Services*

With a copy to:

Fulton County Department of Purchasing & Contract Compliance
Purchasing Director
130 Peachtree Street, Suite 1168
Atlanta, Georgia 30303
Telephone: (404) 612-5800
Facsimile: (404) 893-6273
Attention: Felicia Strong-Whitaker

Notices to Consultant shall be addressed as follows:

[Insert Consultant Representative for project]
[Insert Consultant Address]
Telephone:
Facsimile:
Attention: ***[Insert Consultant Representative for project]***

ARTICLE 26. EXTENT OF AGREEMENT

This agreement presents the entire agreement between the COUNTY and the Operator and may be amended only by written instrument, which is approved by both parties. the parties agree that this agreement shall not become binding on the COUNTY, and the COUNTY shall incur no liability upon the same, until such agreement has been executed by Board of Commissioners and delivered to Operator.

ARTICLE 27. INCORPORATION OF EXHIBITS

All exhibits (and any subsequent amendments thereto), attached hereto, and referenced herein, are hereby incorporated within this Agreement as if set forth fully herein.

ARTICLE 28. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Georgia now in force and as hereafter amended from time-to-time.

ARTICLE 29. LEGAL CONSTRUCTION

If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, that invalidity, illegality or unenforceability will not affect any other provision of this Agreement and this Agreement will be construed as if the invalid, illegal or enforceable provision had never been contained in this Agreement.

ARTICLE 30. WAIVER

The failure of COUNTY to seek redress for any violation of, or to insist upon the strict performance of, any term of this Agreement will not prevent a subsequent violation of this Agreement from being actionable by COUNTY. The provision in this Agreement of any particular remedy will not preclude COUNTY from any other remedy.

ARTICLE 31. COUNTERPARTS

This Agreement may be executed concurrently in one (1) or more counterparts, each of which will be deemed to be an original, but all of which will together constitute one (1) Agreement. This Service Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Service Contract.

ARTICLE 32. FURTHER ACTS

COUNTY and Operator each agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

ARTICLE 33. MODIFICATIONS

This Agreement may be altered or amended only by written instrument signed by COUNTY and Operator.

ARTICLE 34. COMPLIANCE WITH APPLICABLE GOVERNMENTAL REQUIREMENTS

Operator shall comply with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, permits, licenses or other governmental requirements of any kind, then in effect or which come into effect during the time the Services are being performed, and any present or future amendments to those governmental requirements, which specifically relate to [i] the business of the COUNTY; [ii] the business of the Operator or the Operator's Subcontractors/Sub-consultants; [iii] the Agreement and the Agreement Documents; [iv] the performance of the Services under this Agreement by the Operator and its Subcontractors/Sub-consultants; or [v] any other matters relating to this Agreement.

ARTICLE 35. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this contract, which is not disposed of by agreement, shall be decided by the Fulton County Public Works Department designated representative. The representative shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Consultant. The Consultant shall have 30 days from date the decision is sent to appeal the decision to the County Manager or his designee by mailing or otherwise furnishing to the County Manager or designee, copy of the written appeal. The decision of the County Manager or his designee for the determination of such appeal shall be final and conclusive. This condition shall not be pleaded in any suit involving a question of fact arising under this Agreement, unless the same is fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, Operator shall be afforded an opportunity to be heard and to offer evidence

in support of an appeal. Pending any final decision of a dispute hereunder, Operator shall proceed diligently with performance of the Agreement and in accordance with the decision of Fulton County Public Works Department designated representative.

ARTICLE 36. INTERPRETATION NOT AFFECTED

The organization of this Agreement into articles, sections, paragraphs and subparagraphs, a table of contents and the use of headings and subheadings are for convenience and reference only and will not modify or affect the meaning, interpretation, construction or effect of this Agreement, nor the rights, obligations and liabilities of the parties under this Agreement.

ARTICLE 37. STANDARDS AND CODES: GOVERNMENTAL REQUIREMENTS

Wherever references are made in this Agreement to standards or codes in accordance with which the Services under this Agreement are to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement will apply unless otherwise expressly stated. In case of a conflict between any referenced standards and codes and any Agreement Documents, the latter will govern. All applicable governmental requirements in effect at the time the Services under this Agreement are performed, and as amended during the term of this Agreement and required by law to retroactively apply, will apply to Operator.

ARTICLE 38. SECURITY FOR PERFORMANCE

SECTION 38.a). GUARANTOR

i) Guaranty Agreement. The Operator shall cause the Guaranty Agreement to be provided and maintained by the Guarantor during the Term hereof.

ii) Material Decline in Guarantor's Credit Standing. For purposes of this Section, a "Material Decline in Guarantor's Credit Standing" shall be deemed to have occurred if neither the Operator nor Guarantor maintains the Minimum Financial Criteria contained in Exhibit 15. The Operator immediately shall notify the County of any Material Decline in Credit Standing.

iii) Credit Enhancement After Acceptance. If, at any time during the Term of this Service Contract, a Material Decline in Guarantor's Credit Standing occurs, the Operator shall within 30 days after such occurrence provide credit enhancement of its obligations hereunder by increasing the amount of the Letter of Credit to an

amount equal to the aggregate Service Fee projected for the two Contract Years following the Contract Year in which the decline occurs, and shall maintain such credit enhancement until either the Guarantor's credit standing has been restored to investment grade or an additional guarantee is provided by another firm or Operator acceptable to the County whose credit rating would have avoided the occurrence of a Material Decline in the Guarantor's Credit Standing.

iv) Annual Reports. The Operator shall furnish the County, within 90 days after the end of each Contract Year, consolidating 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 Operator shall also furnish the County with copies of the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission.

SECTION 38.b). LETTER OF CREDIT.

i) Terms and Purpose. On or before the Commencement Date, the Operator shall provide further security for the performance of its obligations hereunder during the Management Period through an irrevocable direct pay letter of credit presentable in Atlanta, Georgia, issued by a United States bank whose long-term debt is rated "A" or better by either Rating Service and which maintains a banking office in the State **(the "Letter of Credit").** The Letter of Credit shall be in the amount of equal to **One Year of Service Fee** which amount shall be escalated each Contract Year based on the Adjustment Factor, 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. The County shall be authorized under the Letter of Credit to make one or more sight drawings thereon upon certification to the issuing bank that the drawing conditions described in subsection (B) of this Section have occurred. The Letter of Credit shall permit a drawing thereon in the full stated amount thereof in the event that any required renewal, extension or replacement thereof is not made prior to 30 days of its expiration. The Letter of Credit shall serve as security for the performance of the Operator's obligations hereunder, and the stated amount thereof shall in no way limit the amount of damages to which the County may be entitled for any Operator Event of Default hereunder.

ii) Conditions to Drawing. It shall be a condition to the right of the County to draw on the Letter of Credit, other than a draw based on a failure to renew, extend or replace the Letter of Credit or based on an Event of Default set forth in Section 6.2(A)(6) or (8) that: (1) the County (a) has given the Operator written notice of a breach of this Service Contract, whether or not such breach constitutes an Event of Default, and attached a copy of its good faith assessment of the damages the County has suffered or the liquidated damages provided for herein, as a result of

such breach, in which case the County shall have a right to draw the amount of the damages so assessed, or (b) has given the Operator a notice of termination based on an Event of Default, in which case the County shall have the right to draw the entire stated amount of the Letter of Credit. Notice to the Guarantor of a breach hereof shall not be a condition to the County's drawing rights under the Letter of Credit. In the event that the County draws on the full amount of the Letter of Credit on account of an occurrence of an Event of Default as set forth in Section 6.2(A)(6) or (8), the County shall use such moneys to cover any damages suffered as a result of such event and to pay itself any other amounts owed by the Operator under the provisions of the Service Contract, and the County shall hold the balance of such amount as security for the Operator's obligations hereunder, until the final resolution of such bankruptcy, when any remaining funds shall revert to the Operator, provided the Service Contract is in full force and effect and the Letter of Credit has been reinstated.

iii) 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 County shall pay the amount wrongfully drawn to the Operator together with interest thereon at the Overdue Rate calculated from the date of the drawing to the date of payment to the Operator as the sole and exclusive remedy to the Operator.

SECTION 38.c). COST OF PROVIDING SECURITY FOR PERFORMANCE:

(A) Generally. The cost and expense of obtaining and maintaining the Security Instruments required under this Article, as security for the performance of the Operator's obligations hereunder shall be borne by the Operator without reimbursement from the County.

ARTICLE 39. FORCE MAJEURE

Neither County nor Consultant shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to acts of God, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation, provided however, that nothing herein shall relieve or be construed to relieve Consultant from performing its obligations hereunder in the event of riots, rebellions or legal strikes.

ARTICLE 40. SUBSTITUTION OF APPROVED OPERATOR'S KEY TEAM MEMBERS

Operator shall not, absent good cause, replace or remove the team members presented to the COUNTY during the solicitation process and approved key team members during the term of the Agreement, without the prior written approval of the COUNTY. If any key member of the COUNTY approved team shall retire, resign or otherwise cease employment with Operator, Operator shall appoint promptly a replacement team member who shall be subject to prior approval by the COUNTY. The COUNTY reserves the right to reject any replacement team member. If the COUNTY, in its sole discretion, determines that any key team member is performing their responsibilities under the Agreement in an unsatisfactory manner or if irreconcilable differences or an unworkable relationship shall arise, Operator shall, within five (5) days after receipt of Written Notice from the COUNTY of such circumstance, shall replace such key team member with a successor acceptable to the COUNTY; provided, however, the COUNTY represents that it will not give such notice to the Operator unless and until the COUNTY, in its sole determination, has exercised reasonable efforts to rectify to its satisfaction, the adverse circumstances regarding the key team member. Any changes in the staffing of Operator will require written notification to the COUNTY and the COUNTY's written approval of the replacement team member.

ARTICLE 41. MANAGEMENT OF CONFLICTS OF INTERESTS

Operator shall immediately notify the COUNTY in writing, specifically disclosing any and all potential or actual conflicts of interests, which arise or may arise during the execution of its Services in the fulfillment of the requirements of this Agreement. The COUNTY shall make a written determination as to whether a conflict of interest actually exists and the actions to be taken to resolve said conflict of interest.

ARTICLE 42. SUSPENSION OF SERVICES

Suspension Notice. COUNTY may, by Written Notice to Operator, suspend at any time the performance of all or any portion of the Services to be performed under this Agreement. Upon receipt of a suspension notice, Operator shall, unless the notice requires otherwise:

a. immediately discontinue suspended Services on the date and to the extent specified in the notice;
b. place no further orders or subcontracts for material, services or facilities with respect to suspended services, other than to the extent required in the notice; and
c. take any other reasonable steps to minimize costs associated with the suspension.

Notice to Resume. Upon receipt of notice to resume suspended Services, Operator will immediately resume performance under this Agreement as required in the notice.

ARTICLE 43. LABOR, PERSONNEL AND SERVICES RULES; QUALIFICATIONS AND PROCEDURES

Operator shall employ only competent and skilled personnel to perform the Services and shall remove from any jobsite any Operator personnel determined to be unfit or to be acting in violation of any provision of this Agreement.

The COUNTY shall have the sole discretion to approve Operator's proposed personnel to be assigned to the project.

Operator is responsible for maintaining labor relations in a manner resulting in harmony among workers and will comply with and enforce project and jobsite safety rules, procedures, regulations, services rules and hours established by COUNTY. Operator represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the Services under this Agreement.

ARTICLE 44. DECREASES IN SCOPE OF SERVICES

COUNTY may decrease the Services during the term or any extension or renewal of the Agreement. In the event COUNTY decreases the scope of any Services, COUNTY will provide Operator fifteen (15) days prior written notice, describing in that notice the specific Services decreased. Upon notification of a decrease in any Services, Operator shall:

G. immediately discontinue the decreased Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the decreased Services;

H. inventory, maintain and turn over to COUNTY all data, information, documents, work product and property furnished by Operator or provided by COUNTY for performance of the decreased Services;

I. cooperate with the COUNTY in the transfer of data, information, documents, work product, and property and disposition of decreased Services in progress so as to mitigate damages;

J. comply with other reasonable requests from COUNTY regarding the decreased Services; and

K. and continue to perform, in accordance with all of the terms and conditions of this Agreement, that portion of the Services remaining.

ARTICLE 45. FINES AND PENALITIES

The Operator is responsible for payment of all fines and damages which result from violations of state and federal Permits. If Federal, State or other applicable Governmental Requirements are violated by the Operator or any of its agents, subcontractors, suppliers or materialmen, or of anyone acting under its direction or control or on its behalf, and COUNTY is subjected to a fine by any regulating or governing authority, the Operator will reimburse COUNTY in full for all fines promptly upon receipt of an invoice from COUNTY. If the Operator fails to reimburse COUNTY within 30 days after its receipt of an invoice, COUNTY may deduct the full amount of any fines from sums due or to become due to the Operator under the O&M Contract.

ARTICLE 46. LUMP SUM BUDGETING AND BUDGET LIMITATION; CPI ADJUSTMENT

a. The lump sum price will be subject to change only due to changes in the scope of services. The CPI Adjustment will be calculated as follows:

b. As of January 1 (the “Adjustment Date”) of each year of the O&M Contract, the Lump Sum Price for the year will become an amount equal to the Lump Sum Price which was applicable to the immediately preceding year, plus an amount equal to one-hundred percent (100%) of the percentage increase in the Consumer Price Index (the “Index”) for All Urban Consumers for the metropolitan Atlanta area, published by the United States Department of Labor Bureau of Labor Statistics during the calendar year preceding the Adjustment Date, multiplied by the Lump Sum Price for the preceding year. The percentage increase in the Index will be determined by comparing the Index for the month of December immediately preceding the Adjustment Date to the Index for the month of December of the preceding year. Until such time as the adjustment has been computed, the Operator AGENT will continue to receive payment of the Lump Sum Price in the amount in effect for the preceding year, as it becomes payable in accordance with the O&M Contract. When computed, the CPI Adjustment will be retroactive to the Adjustment Date and the additional amount due with respect to the Lump Sum Price for which it was paid at the preceding year’s rate will be

paid to the Operator in accordance with the O&M Contract in the month immediately following the month in which the CPI Adjustment for the applicable term is computed. If the Index is discontinued, such other governmental index or method of computation with which it is replaced or which is substantially comparable to the Index will be used. If the Index is revised such that Indexes for the December comparison dates are computed on different base years, the conversion factor published by the government will be used in making the adjustment computation.

ARTICLE 47. DEFINITIONS

Section 47.1. As used in this Service Contract, the following terms shall have the meanings set forth below:"Acceptable Septage" means Septage that (1) does not contain grease trap material, and (2) has a pH not lower than 4 and not higher than 12. "Adjustment Factor" Defined in Contract Section 62.3(F).

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

"Appendix" means any of the Appendices attached to this Service Contract, as the same may be amended or modified from time to time in accordance with the terms hereof.

"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 Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or other similar agreement between the County and the EPD or EPA, in each case having the force of law and applicable from time to time: (a) to the sitting, design, acquisition, construction, equipping, financing, ownership, possession, start up, testing, operation, maintenance, repair, replacement or management of municipal wastewater treatment systems, including the Managed Assets; (b) to the conveyance, treatment, storage or discharge of the Influent thereto or the Effluent thereof; (c) to the air and odor emissions therefore; or (d) to the transfer, handling, processing, transportation or disposal of sludge and other residuals produced thereby. Applicable Law shall be deemed not to include the Excluded Conditions.

"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 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.

"Billing Period" means each calendar month, except that (1) the first Billing Period shall begin on the Commencement Date and shall continue to the last day of the month in which the Commencement Date occurs and (2) the last Billing Period shall end on the last day of the Term of this Service Contract. 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.

"Capital Modification" means any material change, alteration, improvement, upgrade or modification of any of the Managed Assets, or any installation of new equipment or systems, including any of the foregoing that results from a replacement of any of the Managed Assets or the installation of new equipment, machinery, systems or other property at the Managed Assets.

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

"Change in Law" means any of the following acts, events or circumstances to the extent that compliance therewith materially increases the cost of performing, or materially increases the scope, of a party's obligations 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 Contract Date, unless such Applicable Law was on or prior to the Contract Date duly proposed and published in the Federal Register or was 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 Contract Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Contract Date) to the extent such order or judgment is not the result of willful or negligent action, breach of this Service Contract, violation of law, illegal act, error or omission or lack of reasonable diligence of the Operator or of the County, 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.

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 effective as of the Contract Date;

(ii) any Non-Georgia Sludge Disposal-Related Change in Law;

(iii) any action by a Governmental Body or any other event that affects generally applicable working conditions or standards that is not specific to the wastewater treatment industry or to the Managed Assets, and that does not require a Capital Modification in order to effectuate compliance therewith; and

(iv) any action by a Governmental Body relating to sales or use taxes including the imposition or increase in any such taxes.

In addition, any change in Applicable Law regarding the frequency or timing of testing of Influent or Effluent may constitute a Change in Law for purposes of the recovery of increased costs of such testing, but shall not constitute a Change in Law with respect to the Operator's obligations to comply with Applicable Law or to meet any obligation under this Agreement.

"Change Order" means a written order approved by the County and signed by the County's Contract Representative authorizing and approving a Capital Modification or any other change to the Contract Services which the Operator is permitted to undertake pursuant to Applicable Law.

"Clean Water Act" means the Clean Water Act (formally referred to as the Federal Water Pollution Control Act), 33 U.S.C. §1251 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

"Commencement Date" means the first date on which all of the Commencement Date Conditions shall be satisfied or waived, as agreed to in writing by the parties.

"Consumables" means fuel oil, diesel fuel, quick lime, lubricants, polymers, office supplies and other chemicals, fuels, materials, supplies and similar consumables used in connection with the operation and maintenance of the Managed Assets.

"Consumer Price Index" or "CPI" means the final reported non-seasonably adjusted Consumer Price Index as reported by the U.S. Department of Labor, Bureau of Labor Statistics, for All Urban Consumers, for the Atlanta, Georgia Metropolitan Area.

"Contract Administrator" has the meaning specified in Section 50.5 C.

"Contract Date" means the date this Service Contract is executed and delivered by the parties hereto.

"Contract Representative" means, in the case of the Operator, the individual specified in writing from time to time by the Operator as the representative of the Operator for all purposes of this Service Contract and, in the case of the County, the Director of Public Works or such other representative as shall be designated in writing from time to time by the County.

"Contract Standards" means the terms, conditions, methods, techniques, requirements, practices and standards imposed or required during the Term by: (1) Applicable Law; (2) the NPDES Permits; (3) the Minimum Technical Requirements; (4) the Performance Guarantees; (5) Good Engineering and Construction Practice; (6) Good Industry Practice; (7) the Operation and Maintenance Manual; (8) applicable equipment manufacturers specifications; (9) applicable Insurance Requirements; and (10) any other standard, term, condition, method, technique, practice or requirement specifically provided in this Service Contract to be observed by the Operator. Section 47.2(J) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

"Contract Year" means the County's fiscal year commencing on January 1 in any year and ending on December 31 of that year; provided, however, that the first Contract Year shall commence on the Commencement Date and shall end on the following December 31, and the last Contract Year shall commence on January 1 prior to the date this Service Contract expires or is terminated, whichever is applicable, and shall end on the last day of the Term of this Service Contract or the effective date of any termination, whichever is applicable. 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 365/366 days.

"County" means the County of Fulton, Georgia, a political subdivision of the State.

"County Fault" means any breach (including the untruth or breach of any County representation or warranty herein set forth), failure, nonperformance or noncompliance by the County with respect to its obligations under this Service Contract to the extent not directly attributable to any Uncontrollable Circumstance or Operator Fault, and

which materially and adversely affects the Operator's rights, obligations or ability or costs to perform under this Service Contract.

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

"Encumbrance" means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Managed Assets.

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

"EPD" means the Environmental Protection Division of the State of Georgia Department of Natural Resources or any predecessor or successor agency.

"Excessive Influent" means (1) Toxic Substances, (2) Hazardous Material, (3) Influent in excess of the applicable Plant Capacity, and (4) Unacceptable Septage.

"Exit Transition Plan" means the transition services, including plans for temporary, short-term, operational procedures and activities relating to and after contract termination, to be undertaken by the Operator when and as more fully specified in Exhibit 6.

"Fees and Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, Operators, Operators 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.

"Good Industry 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 operation, maintenance, repair, replacement and management practices in the municipal wastewater treatment industry as observed in the Southeast region of the United States.

"Governmental Approvals" means all approvals, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services, including the NPDES Permits and the Consent Order.

"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.

"Guarantor", a corporation organized and existing under the laws of, and its permitted successors and assigns.

"Guaranty Agreement" or "Guaranty" means the Guaranty Agreement entered into concurrently with this Service Contract from the Guarantor to the County in the form provided in the Transaction Agreement 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 substance" as defined in CERCLA and "hazardous waste" as defined in RCRA.

"Industrial Pretreatment Program" or "IPP" means the municipal/industrial pretreatment program of sampling, inspecting, analyzing and keeping records with respect to compliance by industrial and certain commercial users with the County's sewer use ordinance and technically based local limits.

"Influent" means all wastewater, stormwater, infiltration and inflows entering the Managed Assets, including Sewer Influent and Trucked-In Material/Septage.

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance Operator which has issued a policy of Required Management Period Insurance or Required Construction Period Insurance under this Service Contract, as in effect during the Term hereof, compliance with which is a condition to the effectiveness of such policy.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Service Contract or the Managed Assets, and all appeals therefrom.

"Lien" means any and every lien against the Managed Assets, the Design/Build Improvements or against any monies due or to become due from the County to the Operator under this Service Contract, for or on account of the Contract Services, including without limitation mechanics', material men's, laborers' and lenders' liens.

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

"Managed Asset Equipment" means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, other than Managed Asset Structures, constituting part of the Managed Assets, including, without limitation, above-ground pipes, pumps, bar screens, grit handling equipment, sludge handling equipment, chemical feed storage equipment, tank covers and traveling bridges etc.

"Managed Assets" means all or any portion of the Plants, Plant Realty, Pump Stations, and Pump Station Realty.

"Managed Assets Realty" means the parcels of real property upon which the Managed Assets, or any portion thereof, are located, including the Sites.

"Managed Asset Structures" means all structures, buildings underground pipes and concrete tanks, other than Managed Asset Equipment, constituting part of the Managed Assets.

"Management Period" means the period from and including the Commencement Date to and including the last day of the Term of this Service Contract.

“Major Equipment” means equipment having minimum cost of $5,000 and life cycle of five years.

"Management Services" means everything required to be furnished and done for and relating to the Managed Assets by the Operator pursuant to this Service Contract during the Term hereof. Management Services include the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, disposal, insurance, sales, delivery and other things and kinds of services whatsoever necessary for the full performance of the Operator's operation, maintenance, repair, replacement, management and related obligations under this Service Contract, and all of the Operator's administrative, accounting, recordkeeping, reporting, notification and similar responsibilities of every kind whatsoever under this Service Contract pertaining to such obligations.

"Non-Georgia Sludge Disposal-Related Change in Law" means a Change-in-Law by a Governmental Body other than the Federal Government, regarding the disposal, land application or processing of Plant Sludge outside of the State.

"NPDES Permits" means National Pollutant Discharge Elimination System Permit as issued by the EPD for the Plants and attached hereto as Reference Documents.

"Operator" means, a corporation organized and existing under the laws of Georgia, and its permitted successors and assigns, same as Contractor.

"Operator Fault" means any breach (including the untruth or breach of any Operator representation or warranty herein set forth), failure, nonperformance or noncompliance by the Operator with respect to its obligations under this Service Contract to the extent not directly attributable to any Uncontrollable Circumstance or County Fault, and which materially and adversely affects the County's rights, obligations or ability to perform under this Service Contract.

“Operation and Maintenance Manual" means the manual and related computer programs prepared by the Operator containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Management Services, developed and maintained.

"Participating Community" means those communities with whom the County has entered or enters into contracts for the treatment of Effluent or Septage.

"Performance Guarantees" means the guarantees of performance made by the Operator specifically set forth in Exhibit 2.

"Plant Realty" means the parcels of real property upon which the Plants or any portions thereof, are located.

"Plants" means the real property on which they are located, consisting of buildings, structures, fixtures and equipment, and the roads, grounds, fences and landscaping appurtenant thereto, utilized for preliminary treatment, primary treatment, secondary treatment and advanced biological treatment (nitrification) of Influent, Effluent disinfection and de-chlorination, Plant Sludge treatment, laboratory functions and administration and management of the Managed Assets, including any Capital Modifications made thereto from time to time.

"Plant Sludge" means bio-solids generated by the treatment of Influent at the Managed Assets.

"Pre-Existing Environmental Condition" means, and is limited to, (1) the presence anywhere in, on or under the Managed Assets on the Contract Date, if not disclosed to the Operator as of the Contract Date, of underground storage tanks (for the storage of chemicals, fuel oil or diesel fuel) that are not then in use in connection with operation of the Managed Assets; and (2) the presence anywhere in, on or under the Managed Assets, as of the Contract Date, of Hazardous Materials, Contaminated Soil or other Contaminated Materials (but expressly excluding for purposes of this definition (i) any matters disclosed to the Operator by the County as of the Contract Date; (ii) any matters of which the Operator has actual knowledge as of the Contract Date; and (iii) asbestos and lead which is uncovered as a result of demolition activities, and any such excluded matters shall not constitute a Pre-Existing Environmental Condition for which the Operator could be afforded relief from its obligations hereunder or additional compensation).

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

"Private Management Approvals" means all approvals, authorizations, consents or clearances, if any, necessary to be obtained by the County from the EPA, the EPD or any other Governmental Body in connection with the Management Services to be performed under this Service Contract.

"Project Manager" has the meaning specified in Section 50.5 (A).

"Public Education and Community Outreach Plan" means the plan to be developed by the Operator based upon the outline contained in Exhibit 14.

"Pump Station Realty" means the parcels of real property upon which the Pump Stations or any portions thereof, are located.

"Pump Stations" means those pump stations and related meters which pump and meter Influent to the Plants, together with all improvements thereto acquired, installed, constructed or reconstructed from time to time.

"Rating Service" means Moody's Investors Service, Inc. or Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any of their respective successors and assigns and, if such corporations shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Rating Service" shall be deemed to refer to any other nationally recognized securities rating agency designated by the County.

"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.

"Reference Document" means any of the documents attached to this Service Contract identified as such as the same may be amended from time to time in accordance with the terms hereof.

"Repair and Replacement Standards" means the standards for repairing and replacing the Managed Assets set forth in Sections 53.2 and 53.3 and Exhibit 3.2.3. & 3.2.3.1 Operation and Maintenance Standards.

"Required Insurance" means the Required Management Period Insurance.

"Residuals" means Plant Sludge and Side Streams.

"SCADA" means, in the context of data gathering and telemetry systems, "Supervisory Control and Data Acquisition".

"Security Instruments" means the Guaranty Agreement, the Letter of Credit.

"Senior Supervisors" has the meaning specified in Section 5.5 (B).

"Septage" means the liquid and solid material pumped from a septic tank, cesspool or similar domestic sewage treatment system, or a holding tank, during cleaning located within the County and municipalities under contract with the County for the processing of Septage at the Plant and which is normally characterized by large quantities of grit and grease, great capacity to foam upon agitation, poor settling and dewatering characteristics, and high solids and organic content.

"Service Contract" means this Service Contract for the Operation and Maintenance of Water Reclamation Assets between the Operator and the County, including the Exhibits, Transaction Agreement Forms and the Transaction Documents, as the same may be amended or modified from time to time in accordance herewith.

"Service Fee" has the meaning set forth in Article 62.

"Service Territory" means the portion of the County and all other territories in which customers are served by the Managed Assets.

"Sewer Influent" means all flows reaching the Plants from all connected sources, including residential, commercial, municipal and industrial sources. Sewer Influent includes all wastewater, infiltration and inflows.

"Sewer Use Ordinance" means the municipal legislative enactment which (1) is enforceable in Federal, State, or Local Courts, and (2) authorizes or enables the County to apply and enforce the IPP and the other requirements of the Clean Water Act, and any requirements created by or pursuant to this Service Contract.

"Side Streams" means any material other than Plant Sludge which is, or at any time has been, a part of the Sewer Influent or Trucked-In Material and that ultimately is required to be disposed of in a manner other than that approved for Effluent including, but not limited to, grit (detritus), screenings, scum, grease and liquid byproducts and waste streams from intermediate treatment processing.

"Significant Industrial User" or "SIU" means a significant industrial user, as defined in 40 CFR 403.3(t), of the Managed Assets.

"Site" means the real property on which the Plants are located.

"Small, Minority and Female Owned Business Opportunity Plan" means the Operator's plan to utilize small minority and female owned businesses in the Operation and maintenance of the Managed Assets.

"Staffing Plan" means the staffing plan for the Management Services meeting the requirements set forth in Exhibit 4 Facilities Plans.

"State" means the State of Georgia.

"Subcontract" means an agreement or purchase order by the Operator or a Subcontractor to the Operator, as applicable.

"Subcontractor" means every person (other than employees of the Operator) employed or engaged by the Operator or any person directly or indirectly in privity with the Operator (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.

"Sustained Odor Condition" has the meaning specified in subsection 52.3(F).

"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 Contract.

"Total Suspended Solids" or "TSS" means solids that either float on the surface of, or are in suspension in wastewater, the analysis of which shall conform to 40 C.F.R. 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants."

"Toxic Substance" means any toxic, hazardous, chemical, industrial, explosive, flammable, volatile, reactive, corrosive or radioactive waste, material or substance which, alone or in combination with other substances, is contained in sufficiently high concentrations or volumes in Influent received at the Managed Assets, and while the Managed Assets are being operated and maintained in accordance with the provisions of this Service Contract so as:

(1) to interfere with the biological processes necessary for the removal of the organic and chemical contents of the Influent required to meet the Effluent Requirements;

(2) to endanger human health or safety; or

(3) to cause Effluent or Residuals to become a Hazardous Material, if any such result could not reasonably have been provided by the management of the Managed Assets in accordance with the Contract Standards.

A waste, material or substance which is contained in Influent and which is tested under the IPP shall not be considered to be a Toxic Substance for the purpose of this definition unless such waste, material or substance is present in Influent in levels, with characteristics or for durations which are outside the range of levels, characteristics or durations established as representative by IPP data compiled from the date which is [two] years prior to the Contract Date to the month preceding the date on which such substance is alleged to constitute a Toxic Substance.

"Transaction Agreement Form" means any of the Transaction Agreement Forms appended to this Service Contract.

"Transaction Document" means any of the Transaction Documents appended to this Service Contract.

"TRC" means total residual chlorine.

"Trucked-In Material" means materials which are delivered to the Plant other than through the collection system and which are permitted under Section 50.15 and Exhibit 7 Septage Handling Protocol to be accepted for treatment.

"TSS Loading Adjustment" has the meaning specified in Section 62.4.

"Unacceptable Septage" means Septage other than Acceptable Septage.

"Uncontrollable Circumstance" means any act, event or condition that is beyond the reasonable control of, and is not also the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Service Contract on the part of, the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Service Contract, and that materially interferes with or materially increases the cost of performing its obligations hereunder (other than payment obligations).

(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances may include, but shall not be limited to, the following:

(a) a Change in Law;

(b) the receipt of Excessive Influent at the Plants, subject to the terms of Section 52.6;

(c) the occurrence of an Upset subject to the terms of Section 52.6;

(d) the existence of a Pre-Existing Environmental Condition;

(e) the existence of Specified Subsurface Conditions;

(f) naturally occurring events (except weather conditions normal for the Service Territory) such as landslides, underground movement, earthquakes, lightening, fires, tornadoes, hurricanes, floods (but only to the extent the hydraulic capacity of the Managed Assets is exceeded), epidemics, and other acts of God;

(g) explosion, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

(h) labor disputes, except labor disputes involving the employees of the Operator, its Affiliates, or Subcontractors which affect the performance of the Contract Services;

(i) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the Managed Assets are located to provide and maintain Utilities to the Managed Assets which are required for the performance of this Service Contract;

(j) any failure of title to the Managed Assets or any enforcement of any Encumbrance on the Managed Assets not consented to in writing by, or arising

out of any action or agreement entered into by, the party adversely affected thereby; and

(k) the preemption 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 Managed Assets.

(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 with respect to which the Operator has assumed the "as-is" risk under Section 50.4, except as specifically provided in subsection 50.4(C);

(b) terms, conditions and prices prevailing in the market for the transportation and disposal of Residuals;

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

(d) changes in the financial condition of the County, the Operator, the Guarantor, or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;

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

(f) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Managed Assets or otherwise increasing the cost to the Operator of performing the Contract Services;

(g) any impact of prevailing wage or similar laws, customs or practices on the Operator's costs;

(h) weather conditions normal for the Service Territory;

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

(j) any surface, subsurface geotechnical or hydrological conditions and other Site conditions including without limitation the existence of compressible soil layers,

masses, unstable soil, manmade deposits and water table fluctuations, utility lines, pipes and structures (other then Pre-Existing Environmental Conditions and Specified Subsurface Conditions);

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

(l) power outages not caused by third party Utilities;

(m) a Change in Law pertaining to Taxes;

(n) any failure in obtaining EPD approval for any of the Design/Build Improvements;

(o) failure of the Operator to secure patents which it deems necessary for the performance of the Contract Services;

(p) 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 Operator than are imposed by the Contract Standards; and

(q) a Non-Georgia Sludge Disposal-Related Change in Law.

"Upset" has the meaning given such term in the Clean Water Act.

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

SECTION 47.2. INTERPRETATION. In this Service Contract notwithstanding any other provision hereof:

i) References Hereto. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms refer to this Service Contract; and the term "hereafter" means after, and the term "heretofore" means before, the Contract Date.

ii) 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.

iii) 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.

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

v) Entire Service Contract. This Service Contract contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Service Contract. Without limiting the generality of the foregoing, this Service Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the County's RFP for the Managed Assets, the proposal of the Operator submitted in response thereto, and any amendments or supplements to the RFP or the proposal.

vi) Cost and Expense of Performance. All obligations undertaken by each party hereto shall be performed at the cost and expense of the party undertaking the obligation, unless the other party has explicitly agreed herein to bear all or a portion of the expense either directly or by reimbursement to the other party.

vii) 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.

viii) Treatment of Influent. The terms "treat", "treated", "treatment", "treating" and any similar terms, when used with respect to Influent, shall mean and refer to the operation of the Managed Assets to receive, and process Influent and discharge Effluent, all in accordance with this Service Contract.

ix) Good Industry Practice . Good Industry 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 Contract, Good Industry Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Operator, the Operator shall be relieved of its obligation to comply with such evolved Good Industry Practice, (but not Good Industry Practice and Good Engineering and Construction Practice as of the Contract Date) unless the County agrees to adjust the Service Fee subject to Cost Substantiation, to account for such additional costs. Except to the extent that the Operator is relieved of its obligation to comply with such evolved Good Industry Practice, as provided above, in no event shall any evolution of Good Industry

Practice, or any County election to pay or not pay any such additional costs, relieve the Operator of its obligations hereunder.

x) Applicability and Stringency of Contract Standards. The Operator 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 Operator 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.

xi) Internal Conflict or Discrepancy. In the event of a conflict or discrepancy between any of the terms or conditions of this Service Contract, including any conflict or discrepancy between the main body of this Service Contract and any Appendix or Transaction Agreement Form, the interpretation which imposes the terms or conditions of greatest stringency on the Operator or results in the lowest Service Fee payable by the County shall govern.

xii) Delivery of Documents in Digital Format. In this Service Contract, the Operator is obligated to deliver reports, records, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Operator agrees that all such documents shall be submitted to the County both in printed form (in the number of copies indicated) and, at the County's request, in digital form. Electronic copies shall consist of computer readable data submitted in any standard interchange format which the County may reasonably request to facilitate the administration and enforcement of this Service Contract.

xiii) Severability. If any clause, provision, subsection, Section or Article of this Service Contract 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, effectuate 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 Contract; and (3) negotiate such changes, in substitution for or addition to the remaining provisions of this Service Contract 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 Contract shall be construed and enforced as if such invalid portion did not exist.

xiv) No Third Party Rights. This Service Contract is exclusively for the benefit of the County and the Operator and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

xv) References to Days. All references to days herein are references to calendar days.

xvi) Reference to Including. All references to "including" herein shall be interpreted as meaning "including without limitation."

xvii) Reference to Knowledge. All references to "knowledge", "knowing", "know" or "knew" shall be interpreted as references to a party having actual knowledge.

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

xix) Governing Law. This Service Contract shall be governed by and construed in accordance with the applicable laws of the State of Georgia.

xx) Defined Terms. The definitions set forth in Section 47.1 shall control in the event of any conflict with the definitions used in the recitals hereto.

xxi) Fulton County Superior Court Jurisdiction. Any claim brought disputing the terms of this contract shall be brought in Fulton County Superior Court.

Operator shall agree that in the performance of this Agreement the Operator will comply with all lawful agreements, if any, which the Operator had made with any association, union, or other entity, with respect to wages, salaries, and working conditions, so as not to cause inconvenience, picketing, or work stoppage.

ARTICLE 48. MISCELLANEOUS PROVISIONS

SECTION 48.a). OPERATOR BUSINESS. The Operator agrees that its business will be limited to that contemplated by this Service Contract and it will not engage in activities or incur liabilities other than in connection with the Operator's performance of this Service Contract and the transactions contemplated hereby.

SECTION 48.b). RELATIONSHIP OF THE PARTIES. The Operator is an independent Operator of the County and the relationship between the parties shall be limited to performance of this Service Contract 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 Contract shall be deemed to constitute either party a partner, agent or legal representative of the other party, except as explicitly provided hereunder. 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 Contract or the performance thereof.

SECTION 48.c). INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due the County 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 48.d). COST SUBSTANTIATION.

i) Substantiating Non-Fixed Costs. The Service Base Fee have been negotiated by the parties and fixed by the terms of this Service Contract. Any other cost proposed or incurred by the Operator which is directly or indirectly chargeable to the County in whole or in part hereunder shall be the fair market price for the good or service provided, or, if there is no market, shall be a just and commercially reasonable price. The Operator shall provide certified Cost Substantiation for all such other costs invoiced to the County hereunder, and for all estimates and quotations furnished to the County hereunder for the purpose of negotiating a fixed or lump-sum price for Capital Modifications, additional Management Services or other additional work necessitated on account of Uncontrollable Circumstances, County Fault or County direction.

ii) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Service Contract under which such cost is properly chargeable to the County, shall describe the competitive or other process utilized by the Operator to obtain a fair market price, and shall state such cost is a fair market price for the service or materials to be supplied (or, if there is no market, that such cost is just and commercially reasonable) and that such services and materials are reasonably required pursuant to this Service Contract. The 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 County and shall include reasonably detailed information concerning: (1) all Subcontracts; (2) the

amount and character of materials and services furnished, the persons from whom purchased, the amounts payable therefore and related delivery and transportation costs and any sales or personal property Taxes; (3) a statement of the equipment used and any rental payable therefore; (4) Operator and Subcontractor worker hours, duties, wages, salaries, benefits and assessments; and (5) Operator and Subcontractor profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. The Operator's entitlement to reimbursement of Cost Substantiated costs of the Operator shall be subject to the limitations set forth in this Section.

iii) Mark-Up. The Operator will be entitled to a mark-up of 10% of the price on services and materials provided, which is directly or indirectly chargeable to the County. The Operator shall provide all the estimates, quotations or lump sum price for capital modification, additional management services or other additional work at County direction. There shall be no mark-up with respect to work due to Uncontrollable Circumstances.

iv) 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 County with the request for reimbursement of such costs.

SECTION 48.e). SUBCONTRACTORS.

i) Use Restricted. The Operator shall operate the Managed Assets with its own employees. Subcontractors may be used to perform other Contract Services, subject to the County's right of approval set forth in subsection (B) of this Section.

ii) Limited County Review and Approval of Permitted Subcontractors. The County shall have the right, based on the criteria provided below in this Section, to approve all Subcontractors which the Operator is permitted to engage under subsection (A) of this Section for Contract Services valued in excess of $50,000 annually, (1) Affiliates of the Operator; (2) equipment suppliers; (3) Governmental Bodies; and (4) Subcontractors hired by the Operator for purposes of remedying an emergency situation. The Operator shall furnish the County written notice of its intention to engage such Subcontractors, together with all information requested by the County 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, County or local Taxes; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the County or the State. The approval or withholding thereof by the County of any proposed Subcontractor shall not create any liability of the County to the Operator,

to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State or County contracting for any services similar in scope to the Management Services.

iii) Subcontract Terms and Subcontractor Actions. The Operator shall retain full responsibility to the County under this Service Contract 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 Operator in connection with the provision of the Contract Services shall relieve the Operator from its obligations hereunder to perform the Contract Services. The Operator shall be responsible for settling and resolving with all Subcontractors all claims arising out of provision of services pursuant to the Service Contract.

iv) Indemnity for Subcontractor Claims. The Operator 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 County for labor, services, materials or equipment furnished for the Contract Services. The Operator acknowledges that its indemnity obligations under Section 22 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.

v) Assignability. All Subcontracts entered into by the Operator with respect to the Contract Services shall be assignable to the County, solely at the County's election and without cost or penalty, upon the expiration or termination of this Service Contract.

SECTION 48.f). ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY. i) Rights as Government Not Limited. Nothing in this Service Contract shall be interpreted as limiting the rights and obligations of the County in its governmental or regulatory capacity, (including actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the Operator to bring any action against the County, not based on this Service Contract, arising out of any act or omission of the County in its governmental or regulatory capacity.

ii) No County Obligation to Issue Governmental Approvals. Nothing in this Service Contract shall obligate the County to issue or approve any Governmental Approval required with respect to the Managed Assets, or the Management Services, and the County shall not be deemed to be in breach or default hereunder as a result of any delay or failure in the issuance or approval of any such Governmental Approval. The County retains all issuance and approval rights it has under Applicable Law with respect to such Governmental Approvals, and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this Service Contract.

SECTION 48.g). BINDING EFFECT. This Service Contract shall bind and inure to the benefit of and shall be binding upon the County and the Operator and any assignee acquiring an interest hereunder consistent with Section 48.8.

SECTION 48.h). AMENDMENT AND WAIVER. This Service Contract may not be amended except by a written amendment signed by the parties. Any of the terms, covenants, and conditions of this Service Contract 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 48.i). SOURCES OF FUNDS. Notwithstanding anything to the contrary in this Service Contract, payments of the Service Fee and all other amounts of any kind or nature whatsoever that may at any time be due and owing to the Operator pursuant to the terms of, or resulting from, this Service Contract are intended by the parties to and shall be strictly limited to and payable solely out of revenues derived from Water and Sewer Fund and shall not be payable from any other source. No such payments shall be, or be deemed to be, a debt of the County under any circumstance or for any purpose whatsoever, nor shall this Service Contract constitute a pledge of the full faith and credit of the County, or shall the County appropriate or be required to appropriate funds to pay for any amounts due under this Service Contract. The Operator will never have the right to compel the exercise of any taxing power of the County to pay any amount due to the Operator under this Service Agreement, nor to enforce payment thereof against any property of the County other than the funds available in the County's water and sewer fund. The Operator shall have no recourse for payment hereunder against any other source of funds, and the Operator hereby irrevocably and unconditionally waives any recourse or claim it may or could otherwise have or allege to have against any other payment source other than the water and sewer fund. The County agrees to continue the water and sewer fund, which shall receive all revenues from the Managed Assets, pursuant to the terms and conditions of the applicable financing documents and which shall be responsible for the payment, solely from such funds, of all amounts due the Operator under this Service Contract. In the event the Operator shall receive any funds or proceeds attributable to or collected with respect to the Managed Assets, the Operator shall immediately remit such funds to County. The County and the Operator acknowledge that as a requirement under the financing documents, the water and sewer fund has been created and that all revenues from the Managed Assets are now and shall continue to be deposited into the water and sewer fund. Disbursements for the Service Fee shall only be made from the water and sewer fund for payments of expenses relating to the Managed Assets pursuant to the financing documents.

SECTION 48.j). NOTICES. All notices, consents, approvals or written communications given pursuant to the terms of this Service Contract 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 on 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.

SECTION 48.k). OPERATOR BANKRUPTCY MATTERS. i) Exclusive Jurisdiction. It is expressly agreed and understood by the parties hereto that, in the event the Operator shall be or become the subject of any bankruptcy proceeding, the United States Bankruptcy Court for the Northern District of Georgia, Division (the "Bankruptcy Court") shall have the sole and exclusive jurisdiction of such bankruptcy proceeding.

ii) Waiver of Automatic Stay; Entitlement to Lift of Stay. The Operator hereby acknowledges that the continuous provision of wastewater treatment is critical and essential to the public welfare of the citizens of the County and other jurisdictions which may be served by the Managed Assets. Accordingly, due to the paramount public interest affected by its management of the Managed Assets, the Operator hereby unconditionally and irrevocably waives the benefits of the automatic stay set forth in Section 362 of the Bankruptcy Code in the event the Operator files for bankruptcy, and agrees not to oppose in any respect whatsoever a motion confirming the enforceability and efficacy of this waiver or a motion for relief from stay filed by the County to enforce the rights and remedies granted to the County in the Service Contract. Moreover, the Operator hereby acknowledges and agrees that the automatic stay set forth in Section 362(a) of the Bankruptcy Code would not apply to the County's enforcement of its rights and remedies under the Service Contract because any such enforcement would be in furtherance of the County's policy and regulatory power that is expressly excepted from Section 362(a) of the automatic stay under Section 362(b)(4) of the Bankruptcy Code. In addition to and not in limitation of the foregoing, however, in the event that the automatic stay set forth in Section 362(a) of the Bankruptcy Code were deemed to be applicable to the County's enforcement of its rights under this Agreement, in the event any voluntary bankruptcy petition is filed by, or any involuntary bankruptcy petition is caused to be filed by the Operator or any Affiliate of the Operator against the Operator, pursuant to any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, the Operator agrees that the County shall be entitled to obtain upon ex parte application therefore, and without further notice or action of any kind or nature whatsoever, an order from the Bankruptcy Court granting immediate relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so as to permit the County to exercise all of its rights and remedies pursuant to this Service Contract, including, without limitation, termination of this Service Contract pursuant to Section 15.2 hereof, the causing of the assignment by the Operator to the County pursuant to Subsection 18.6(I) hereof of such third party contracts as the City shall elect, and at law and in equity.

iii) Executory Contract Issues. The Operator agrees due to the paramount public interest affected by its operation and management of the Managed Assets pursuant to this Service Contract as aforesaid that, in the event the Operator files for bankruptcy, the Operator shall, within two (2) Business Days of a bankruptcy filing, file a motion pursuant to Section 365 of the Bankruptcy Code to either assume or reject the Agreement (the "Section 365 Motion"). If the Operator fails to file the Section 365 Motion, the Operator agrees not to oppose, in any respect whatsoever, any motion filed by the County with respect to the Service Contract, including, but not limited to, a (a) motion for relief from stay under Section 362 of the Bankruptcy Code to terminate the Service Contract; or (b) motion to compel the Operator to assume or reject the Service Contract promptly under Section 365(d)(2) of the Bankruptcy Code.

iv) Property of the Estate. The Operator agrees that it owns no right, title or interest of any kind or nature whatsoever in the Managed Assets, the revenues or proceeds generated thereby or any equipment, materials, supplies or other real or personal property hereafter located on, in or used in connection with the operation and maintenance of the Managed Assets, all of which is and shall remain solely and exclusively the property of the County. Accordingly, neither the Managed Assets nor any part thereof, nor any such revenues or proceeds generated thereby, shall constitute property of the Operator's bankruptcy estate under Section 541 of the Bankruptcy Code in the event that the Operator files for bankruptcy and the Operator hereby covenants and agrees not to assert any position to the contrary at any time or in any judicial proceedings.

SECTION 48.l). NOTICE OF LITIGATION. In the event the Operator or County receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the System, the party receiving such notice or undertaking such 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.

SECTION 48.m). FURTHER ASSURANCES. The County and Operator 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 Contract. The County and the Operator, in order to carry out this Service Contract, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Service Contract and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

IV. EXHIBIT B: SPECIAL CONDITIONS

ARTICLE 49. TRANSITION PERIOD

SECTION 49.a). OPERATOR TRANSITION PERIOD RESPONSIBILITIES.
i) Obligation to Proceed. The Operator shall satisfy the following Operator responsibilities as soon as practicable after the Contract Date each of which shall be a condition precedent to occurrence of the Commencement Date:

(1) Transition Plan. The Operator shall carry out and complete the Transition Plan for the orderly transfer of management responsibility for the Managed Assets from the current Operator in accordance with Exhibit 6 Exit Transition Plan, as it specifically pertains to transition obligations to be performed by the Operator prior to the Commencement Date, and shall provide all operation & management services necessary in connection therewith. The Operator shall demonstrate and certify such compliance to the satisfaction of the County.

(2) Letter of Credit. The Operator shall obtain and deliver to the County the Letter of Credit in accordance with Section 38.2. of the contract.

(3) Required Management Period Insurance. The Operator shall submit to the County certificates of insurance for the Management Period as specified in Section 7 of the RFP # 09RFP.01120K-DJ.

(4) Contact Information. The Operator shall submit to the County the contact information specified in subsection 50.5(E).

(5) Applicable Law Compliance. The Operator shall comply with all other requirements of Applicable Law pertaining to the activities constituting the Commencement Date Conditions.

(6) Operator Law Compliance. The Operator shall certify to the County as of the Commencement Date that it is in substantial compliance with all laws, regulations, rules and orders applicable to its business, noncompliance with which would have a material and adverse effect upon its business or its ability to perform its obligations under this Service Contract.

(7) Financial Condition. The Operator shall provide audited financial statements of the Operator and the Guarantor, and consolidated balance sheets and income statements for the Operator, in each case for the most recently completed fiscal year and quarterly period. Since the Contract Date, there shall not have occurred any change, financial or otherwise, in the condition of the Operator or the Guarantor that would materially and adversely affect the ability of the Operator or the Guarantor to perform their respective obligations under this Service Contract and the Guaranty.

(8) Representations. The representations of the Operator set forth in Section 23.2 and of the Guarantor set forth in the Guaranty shall be true and correct in all material respects as of the Commencement Date as if made on and as of the Commencement Date, and the Operator shall deliver to the County a certificate of an authorized officer of each to that effect.

(9) Access to Managed Assets During Transition Period. The execution of this Service Contract shall be deemed to constitute the granting to the Operator of a right of access to the Managed Assets for the purposes of (1) performing further inspections, analysis and such additional studies or tests as deemed necessary by the Operator, and (2) performing all necessary onsite activities pursuant to this Section. Such right of access shall be subject to the County's prior approval, which shall not be unreasonably withheld, as to time and scope, and shall be exercised in a manner consistent with the performance obligations of the County. The Operator shall assume all risks associated with such activities, and shall indemnify the County and the County Indemnitees against all Loss-and-Expense arising out of such activities. The Operator shall execute and deliver such additional Site access agreements as the County shall require in connection with such access by the Operator.

ii) Notice of Default. The Operator shall provide to the County, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Governmental Approval or Subcontract pertaining to the Transition Period.

SECTION 49.b). COUNTY TRANSITION PERIOD RESPONSIBILITIES. The County shall satisfy the following County responsibilities as soon as practicable after the

Contract Date, each of which shall be a condition to the occurrence of the Commencement Date:

(i) Transfer of Possession and Responsibility. The County shall provide written notice to the Operator that it is prepared to relinquish and transfer possession of and operating responsibility for the Managed Assets to the Operator as of the Commencement Date, and shall provide for an orderly transfer of responsibility to the Operator in accordance with the Transition Plan.

(ii) Representations. The representations of the County set forth in Section 23.1 shall be true and correct in all material respects as of the Commencement Date as if made on and as of the Commencement Date, and the County shall deliver to the Operator a letter from an authorized County Personnel to that effect.

SECTION 49.c). COMMENCEMENT DATE CONDITIONS. i) Commencement Date Conditions Defined. The obligations of the Operator and the County to proceed with their respective obligations hereunder during the Management Period shall not commence until all of the following conditions (the "Commencement Date Conditions") are satisfied or waived solely by County:

(1) Operator Transition Period Responsibilities. The Operator shall have fulfilled all of its responsibilities with respect to the Transition Period under Section 49.1.

(2) County Transition Period Responsibilities. The County shall have fulfilled all of its responsibilities with respect to the Transition Period under Section 49.2.

(3) Governmental Approvals. All Governmental Approvals required for the commencement of the Management Services shall have been issued or obtained and shall be in full force and effect.

(4) Inventory and Valuation. An inventory and valuation of all spare parts and Consumables to be transferred to the Operator on the Commencement Date shall have been conducted as required by Section 53.2, and the parties shall have agreed on such inventory and valuation for purposes of such Section.

(5) Acceptability and Effectiveness of Documents. All of the documents and instruments identified in this Section shall be in form and substance reasonably satisfactory to both parties, and shall be valid, in full force and effect and enforceable against each party thereto on the Commencement Date. It is understood that any such document, instrument or agreement the form of which is set forth in a Transaction Agreement Form, that is executed and delivered in substantially such form is and shall be deemed to be in form and substance satisfactory to the parties. No such document, instrument or agreement shall be subject to the satisfaction of any outstanding condition

precedent except those expressly to be satisfied after the Commencement Date. No party to any such document, instrument or agreement shall have repudiated or be in default or imminent default thereunder, and each party shall have received such certificates or other evidence reasonably satisfactory to it of such facts as such party shall have reasonably requested.

(6) Legal Proceedings. There shall be no Legal Proceeding before or by any Governmental Body, pending or threatened, which: (a) challenges, or might challenge, directly or indirectly, (i) the authorization, execution, delivery, validity or enforceability of this Service Contract or the Guaranty, or (ii) the interest of the County in the Managed Assets; (b) seeks to enjoin or restrict the use of the Managed Assets in the manner or for the purposes contemplated by this Service Contract; or (c) seeks damages, fines, remediation or any other remedy in connection with the environmental condition or any other matter pertaining to the Managed Assets, in any such case which can reasonably be expected to materially and adversely affect the County's or the Operator's ability to comply with its obligations hereunder.

(7) No Change in Law Affecting Service Contract. No Change in Law shall have occurred after the Contract Date and before the Commencement Date that would make the authorization, execution, delivery, validity, enforceability or performance of this Service Contract a violation of Applicable Law.

ii) Commencement Date Conditions for Which Both Parties Have Responsibility. The County and the Operator shall each use all reasonable efforts in taking such actions as may reasonably be under their control in order to satisfy the Commencement Date Conditions set forth in items (3), (4), (5), (6), (7) and (8) of subsection (A) of this Section as soon as practicable.

iii) No Payment to Either Party for Transition Period Expenses of the Other. All costs and expenses incurred by each party in performing its obligations during the Transition Period shall be for the account of such party and shall not be reimbursable by the other party except upon the occurrence of an Event of Default.

SECTION 49.d). CLOSING THE TRANSITION PERIOD. i) Establishment of Commencement Date. The parties shall give each other prompt notice when each Commencement Date Condition has been achieved. Upon the satisfaction of the Commencement Date Conditions, the parties shall hold a formal closing on a date and at a location determined by the County acknowledging such satisfaction, delivering copies of all relevant documents, and certifying that the Commencement Date has occurred. The date of such closing shall be deemed to be the Commencement Date hereunder, and thereupon the County shall issue a Notice to Proceed and the Management Period shall commence. Written documents or instruments constituting or

evidencing satisfaction of the Commencement Date Conditions shall be furnished to each party for review prior to the Commencement Date to the extent practicable.

ii) Failure of Conditions. If by the 60th day subsequent to the Contract Date as such date may be extended by the County for up to one year in its sole discretion (and as such date may be extended day-for-day by any third party Legal Proceeding which has a material bearing upon the ability of the parties to proceed with the transactions contemplated hereby, but not later than the second anniversary of the Contract Date), or such later date upon which the County and the Operator may agree, any of the Commencement Date Conditions are not satisfied, or have not been waived by the party relying on such condition, either party may, by notice in writing to the other party, terminate this Service Contract. Neither party shall be liable to the other for the termination of this Service Contract pursuant to this Section except to the extent that such party breaches its obligations under Section 49.1 or 49.2, respectively, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the Commencement Date Conditions.

ARTICLE 50. MANAGEMENT & OPERATION

SECTION 50.a). OWNERSHIP AND USE OF THE MANAGED ASSETS.

i) County Ownership. The Managed Assets are and shall be owned by the County throughout and following the Term of this Service Contract, and the Contractor shall have no ownership interest therein. The Contractor shall perform the Contract Services as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the Managed Assets, and all Capital Modifications.

ii) Use. During the Term hereof, the Contractor may enter upon, occupy and use the Managed Assets to operate, maintain, repair, replace and manage the Managed Assets, including any Capital Modifications and to provide the Contract Services in accordance herewith, and for no other purpose. The Contractor shall not enter upon, occupy or use any other County property, without prior written approval of the County. The Contractor shall keep the Managed Assets in good and safe order and condition in light of their intended use hereunder.

iii) Liens and Encumbrances. At all times during the Term of this Service Contract, the Contractor shall keep the Managed Assets free from any and all Liens and Encumbrances arising out of or in connection with (1) the Contract Services, or (2) any acts, omissions or debts of the Contractor, their Affiliates and their Subcontractors. If any such Liens or Encumbrances arise, the Contractor shall cause the Lien or Encumbrance to be discharged or fully bonded to the satisfaction of the County promptly after the County has notified the Contractor of its existence or the Contractor

otherwise becomes aware of such Lien or Encumbrance. If the Contractor does not promptly discharge or so bond any such Lien or Encumbrance, the County shall have the right to do so and the Contractor shall promptly reimburse the County for amounts paid and Fees And Costs incurred in discharging such Lien or Encumbrance.

SECTION 50.b). CONTRACTOR OBLIGATIONS GENERALLY. i) Management Responsibility. Commencing on the Commencement Date, the Contractor shall operate and manage the Managed Assets on a 24-hour per day, 7-day, 52 week basis, and shall collect, receive and treat Influent, discharge Effluent, provide sampling, perform process control analytical services, Pump Station meter reading, transport and dispose of Residual and operating wastes, control odor, provide all information necessary to secure Governmental Approvals, supply the County with the plans and manuals described in Exhibit 4 Facilities Plans , and otherwise manage and operate the Managed Assets so as to comply with the Contract Standards applicable to such activities, each of the plans pertaining thereto set forth in the Exhibits, and the other terms and conditions of this Service Contract.

SECTION 50.c). COUNTY OBLIGATIONS GENERALLY. The County, in addition to the obligations it has accepted elsewhere in this Service Contract, shall:

(1) Cooperate with the Contractor in carrying out its Transition Plan responsibilities;
(2) Make available to the Contractor upon request all information relating to the Managed Assets which is in the possession of the County and material to the Contractor's performance hereunder;
(3) Grant and assure the Contractor access to the Managed Assets and the performance of its obligations hereunder;
(4) Make available for the Contractor's use hereunder of all Consumables and spare parts in inventory at the Managed Assets as of the Commencement Date;
(5) Operate, maintain, repair and replace all aspects of the wastewater collection system not included in the Managed Assets;
(6) Comply with Applicable Law pertaining to the County as owner of the Managed Assets (except to the extent the Contractor has agreed to perform and assume any such obligations in this Service Contract), including the County's duty to implement, administer and enforce the IPP as provided in Exhibit 8 Municipal/Industrial Pretreatment Program;
(7) Pay the Service Fee and any other amounts due the Contractor in accordance with the terms and conditions of this Service Contract.

SECTION 50.d). MANAGED ASSETS CONDITION CONFIRMATION. i) Familiarity with Managed Assets. The Contractor acknowledges that: (1) the Contractor's agents and representatives have visited, inspected, observed and are familiar with the Managed Assets, their design, and their physical condition relevant to the obligations of the Contractor pursuant to this Service Contract, including structural and operating conditions, roads, Utilities, topographical conditions and historical Influent, Effluent and Residuals quality conditions; (2) the Contractor is familiar with all current local conditions which may be material to the Contractor's performance of its obligations under this Service Contract (including, but not limited to, transportation; seasons, climate and ambient air; access, availability, handling, storage and disposal of materials, supplies, Residuals and equipment; and availability and quality of labor and Utilities); (3) the Contractor has received, reviewed and independently verified the Reference Documents, the background documents provided in the RFP and all other records and information pertaining to the Managed Assets that it has deemed necessary to receive, review and verify for the purposes of entering into and performing this Service Contract, and assumes the risk of incompleteness or inaccuracy in any information provided to it by the County or third parties in the process of entering into this Service Contract; and (4) based on the foregoing, the Managed Assets can be managed, operated, maintained, repaired and replaced, so as to comply with the Performance Guarantees and the other terms and conditions hereof.

ii) "As-Is" Condition of Managed Assets. The County makes no representation or warranty with respect to the Managed Assets. Based on its review of the design drawings, plans and specifications pertaining to the Managed Assets, its inspections of the Managed Assets, and other inquiries and investigations made by the Contractor prior to the Contract Date, which the Contractor acknowledges to be sufficient for this purpose, the Contractor assumes the risk of the adequacy and sufficiency of the design of the Managed Assets and the existing, "as-is" condition of the Managed Assets as such design or condition may affect the ability of the Contractor to comply with Applicable Law, meet the Performance Guarantees, meet its maintenance, repair and replacement obligations or perform any of its other obligations hereunder for the compensation provided for herein. The Contractor agrees that any latent or patent defect, flaw, error, inoperability, inadequacy or other condition or aspect of the design or existing condition of the Managed Assets which exists as of the Contract Date or which may be revealed during the performance hereof shall not be an Uncontrollable Circumstance. The Contractor's assumption of risk under this subsection is subject to the limitations provided in subsection (C) of this Section.

iii) Limitations on the Contractor's Assumption of "As-Is" Risk . It is specifically understood that the Contractor's assumption of the "as-is" risk of the condition of the Managed Assets as provided in subsection (B) of this Section shall not extend to: (1) Pre-Existing Environmental Conditions and (2) Specified Subsurface

Conditions. No other Uncontrollable Circumstance, however, shall relieve or limit the Contractor's assumption of the "as-is" risk as provided in subsection 50.4 (B).

SECTION 50.e). SERVICE COORDINATION AND CONTRACT ADMINISTRATION.
i) Contractor's Project Manager. The Contractor shall appoint a full-time manager of the Managed Assets (the "Project Manager") who shall be trained, experienced and proficient in the management and operation of wastewater treatment system assets comparable to the Managed Assets, and whose sole employment responsibility shall be managing the Contractor's performance of the Management Services. The primary residence of the Project Manager shall be within a fifty mile radius of the Managed Assets Site. The Contractor acknowledges that the performance of the individual serving from time to time as the Project Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the County and the Project Manager will be essential to effectuating the intent and purposes of this Service Contract. Accordingly, not fewer than 30 days prior to the date on which any candidate for Project Manager from time to time during the Term of this Service Contract is proposed by the Contractor to assume managerial responsibility for the Managed Assets, the Contractor shall: (1) provide the County with a comprehensive resume of the candidate's training, experience, skills and approach to management and customer relations; and (2) afford the County an opportunity to interview the candidate with respect to such matters. The County shall have the right within 30 days following such interview to disapprove the hiring of the proposed candidate.
ii) Contractor's Senior Supervisors. The Contractor shall appoint and inform the County of the identity of the corporate officials of the Contractor with senior supervisory responsibility from time to time for the Managed Assets and the performance of this Service Contract (the "Senior Supervisors"). The Contractor shall promptly notify in writing to the County of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the County in any reviews of the performance of the Project Manager which the County may undertake from time to time, and shall give full consideration to any issues raised by the County in conducting such performance reviews.
iii) County's Contract Administrator. The County shall designate an individual to administer this Service Contract and act as the County's liaison with the Contractor in connection with the Contract Services (the "Contract Administrator"). The Contractor understands and agrees that the Contract Administrator has only limited authority with respect to the implementation of this Service Contract, and cannot bind the County with respect to any Service Contract amendment, or any waiver of the obligations of the Contractor hereunder. Within such limitations, the Contractor shall be entitled to rely on the written directions of the Contract Administrator.
iv) County Approvals and Consents. When this Service Contract shall require any approval or consent by the County to a Contractor submission, request or report, the

approval or consent shall 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 County with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Service Contract, and except for requests, reports and submittals made by the Operator that do not, by their terms or the terms of this Service Contract, require a response or action, if the County does not find a request, report or submittal acceptable, it shall provide written response to the Contractor describing its objections and the reasons within 30 days of the County's receipt. If no response is received, the request, report or submittal shall be deemed rejected and the Contractor may resubmit the same, with or without modification.

v) Communications and Meetings. On or before the Commencement Date, the Contractor shall inform the County of the telephone, fax numbers, e-mail address and other means by which the Project Manager and Senior Supervisors may be contacted. The County shall furnish to the Contractor comparable communications information with respect to the Contract Administrator. The Contractor shall meet with the County each month to review the content of the operators reports required to be prepared pursuant to Section 50.13. The Project Manager and, if requested by the County, the Senior Supervisors each shall personally attend the monthly meetings with the County, and all special meetings which the County may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Managed Assets and this Service Contract.

vi) Customer Service. The Contractor shall respond immediately to all complaints and communications received by the Contractor or the County regarding the collection, treatment and discharge of wastewater, odor and air emissions, noise, or any other matter related to the Contract Services. The Contractor shall immediately investigate each such complaint and communication and, the Contractor shall promptly rectify the matter. Complaints and communications concerning back-ups, stoppages, spillages, leaks, breaks and emergencies shall be responded to immediately. All customer communications shall be immediately logged and promptly responded to in writing, faxed to the County on a daily basis, and reported to the County as part of the monthly operations reports delivered pursuant to Section 50.13. The Contractor shall establish, maintain and make freely known a telephone number, e-mail address and mailing address to which customer complaints and communications may be directed.

vii) Damage to Customers. The Contractor shall be responsible for and bear all costs for damage caused to the property and businesses of customers of the County that utilize the Managed Assets, such as damage resulting from sewer backups in basements, which is caused by the Contractor's negligence or failure of contractor to perform the Contract Services.

viii) Relations with Participating Communities. The Contractor shall cooperate with and assist the County in performing its obligations under its agreements with the Participating Communities relating to the Managed Assets, including providing all

information, data and reports required under such agreements. The Contractor shall indemnify and hold harmless the County, in the manner provided in Section 22, from any Loss-and-Expense resulting under such agreements from any failure to perform obligations owed to a Participating Community thereunder to the extent the Loss-and-Expense is attributable to an unexcused failure by the Contractor to perform the Contract Services.

ix) Public Education and Community Outreach Plan. The Contractor shall prepare and deliver to the County within 60 days of the Commencement Date, a Public Education and Community Outreach Plan, which plan shall be based upon the outline contained in Exhibit 14.

SECTION 50.f). OPERATION AND MAINTENANCE MANUAL. i) Development. The Contractor shall provide to the County three copies of a draft Operation and Maintenance Manual within120 days following the Commencement Date. The content of the Operation and Maintenance Manual shall be consistent with the Contract Standards, shall contain a detailed description of the means and methods of properly operating the Managed Assets and all sampling, testing and measurement procedures, shall document predictive, preventive and corrective maintenance procedures, practices and schedules, and shall otherwise be sufficiently detailed to permit the Managed Assets to be operated and maintained by a third party reasonably experienced in wastewater treatment. The Operation and Maintenance Manual shall be developed and maintained in a manner which is fully consistent with the computerized maintenance management system installed and utilized by the Contractor pursuant to Section 53.4. The Contract Services shall be performed in compliance with the Operation and Maintenance Manual and the Contractor's computerized maintenance management system. The Operation and Maintenance Manual shall contain the Exit Transition Plan in compliance with Exhibit 6.

ii) County Review and Comment. The Contractor shall review and discuss in good faith with the County any aspect of the draft Operation and Maintenance Manual, and shall deliver six copies of final Operation and Maintenance Manual to the County within 30 days following completion of review and discussion with the County. The Contractor shall keep the Operations and Maintenance Manual current and shall supply the County with appropriate updates, supplements or revisions thereto, to be reviewed in accordance with the procedures described in this Section. Notwithstanding any such review and comment by and discussion with the County, the Operation and Maintenance Manual shall remain, at all times, the responsibility of the Contractor. Neither the review of or comment upon, nor the failure of the County to comment upon, the Operation and Maintenance Manual shall: (1) relieve the Contractor of any of its responsibilities under this Service Contract; (2) be deemed to constitute a representation by the County that operating the Managed Assets pursuant to the Operation and Maintenance Manual will cause the Managed Assets to be in compliance

with this Service Contract or Applicable Law; or (3) impose any liability upon the County or its officers, employees, agents, consultants or representatives.

iii) Supplements for Capital Modifications. The Contractor shall prepare supplements and revisions to the Operation and Maintenance Manual or to the extent applicable, a new Operations and Maintenance Manual, which may be required due to the design, construction and installation of all Capital Modifications. Such supplements and revisions shall be provided, reviewed in the same manner as provided in this Section with respect to the initial Operation and Maintenance Manual. Such Operation and Maintenance Manual shall be provided in an electronic format that enables network access.

SECTION 50.g). STAFFING AND PERSONNEL TRAINING. i) Staffing. The Contractor shall staff the Managed Assets during the Term of this Service Contract with qualified personnel who meet the licensing and certification requirements of the State, under a Staffing Plan that is consistent with the Contract Standards in Exhibit 4 Facilities Plans. The Contractor shall have two State certified operators on site at all times, and shall at all times maintain two Class 1 operators on its staff dedicated to the Managed Assets. The Contractor shall discipline or replace, as appropriate, any employee of the Contractor or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Contractor shall immediately notify the County of any change in staffing levels and positions.

ii) Changes in Staffing Plan. Changes in the Staffing Plan as a result of the Capital Modifications or otherwise, shall not constitute a Change in Law unless such changes are mandated by a separate and identified Change in Law event. In the case of such a separate and identified Change in Law event, the Staffing Plan as approved and in effect as of the date of such event shall be the baseline for measuring the effect of any such Change in Law event that affects required staff levels.

iii) Training. The Contractor shall be responsible for training all personnel to perform the Management Services. Within 180 days following the Commencement Date, the Contractor shall submit to the County for its review and comment a personnel training program which the Contractor proposes to institute in order to ensure that the Managed Assets are managed and operated in accordance with this Service Contract. Such personnel training program shall include the personnel training guidelines, policies and procedures established: (1) by the EPD 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 50.h). SAFETY AND SECURITY. i) Safety. The Contractor shall maintain the safety of the Managed Assets at a level consistent with the Contract Standards. Without limiting the foregoing, the Contractor shall: (1) take all precautions for the safety of, and provide protection to prevent damage, injury or loss by reason of

or related to the operation of the Managed Assets to, (a) all employees working at the Managed Assets and all other persons who may be involved with the operation, maintenance, repair and replacement of the Managed Assets, (b) all visitors to the Managed Assets, (c) all materials and equipment under the care, custody or control of the Contractor on the Site, (d) other property constituting part of the Managed Assets, and (e) County Property; (2) establish and enforce all reasonable safeguards for safety and protection; (3) give all notices and comply with all Applicable Law 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 Managed Assets whose duty shall be the supervision of plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with Federal, State and County 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 carry out a Site-specific safety program, including employee training and periodic inspections, designed to implement the requirements of this Section.

ii) OSHA. The Contractor shall take all actions required in order to bring the Managed Assets in compliance with the Occupational Safety and Health Act as in effect after the Commencement Date. Any amendments to the Occupational Safety and Health Act or the regulations thereunder which take effect after the Commencement Date shall constitute a Change in Law.

iii) Security. The Contractor shall be responsible for the security of the Managed Assets. The Contractor shall guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism, theft or malicious mischief of third parties, and shall provide for safe and orderly vehicular movement.

The Contractor shall give immediate notice of losses, take timely steps to mitigate extent of damages, i.e. preserve undamaged property, emergency measures; and present to Fulton County an estimated damage repair costs within 30 days.

SECTION 50.i). COMPLIANCE WITH APPLICABLE LAW.

i) Compliance Obligation. The Contractor shall perform all of its obligations hereunder in accordance with Applicable Law, and shall cause all Subcontractors to comply with Applicable Law. The Contractor shall comply with the terms of all Governmental Approvals applicable to the Managed Assets, the Influent, the Effluent, air emissions, noise and odor, and Residuals notwithstanding the fact that the Contractor may not be a permittee or co-permittee with respect to some or all of such Governmental Approvals.

ii) Sampling, Collection and Laboratory Work. The Contractor shall perform and provide all sampling, collection, transportation of samples, laboratory work (except with respect to laboratory work of discharges for NPDES and IPP purposes, which will be performed by the County) and analyses, and quality assurance and quality control

procedures and programs required by the Contract Standards. Storm water sampling & testing shall be contractor's responsibility. All testing laboratories utilized by the Contractor shall be EPD and EPA certified for the applicable test, shall be operated in accordance with Good Industry Practice, and shall be audited and monitored by the Contractor for compliance with EPA standard test methods. All sampling and test data shall be available for review by, and reported to, the County in accordance with Section 50.13. The Contractor explicitly assumes the risk of incorrect sampling, testing and laboratory work required by this Service Contract and the Contract Standards to be undertaken by or on behalf of the Contractor, 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

iii) Investigations of Non-Compliance. In connection with any actual or alleged event of noncompliance with Applicable Law, the Contractor 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; (4) in conjunction with the County, 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 County with a true, correct and complete copy of any written notice of violation or noncompliance with Applicable Law, and true and accurate transcripts of any oral notice of noncompliance with Applicable Law, issued or given by any Governmental Body. The Contractor shall furnish the County 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 noncompliance, and of any Legal Proceeding alleging such noncompliance.

iv) Fines, Penalties and Remediation. Except to the extent excused by Uncontrollable Circumstances or County Fault, in the event that the Contractor or any Subcontractor fails at any time to comply with Applicable Law with respect to the Managed Assets, the Influent, the Effluent, air emissions, noise, odor, Residuals or other environmental or operating conditions, the Contractor shall, without limiting any other remedy available to the County upon such an occurrence and notwithstanding any other provision of this Service Contract: (1) immediately correct such failure and resume compliance with Applicable Law; (2) bear all Loss-and-Expense of the Contractor and the County resulting therefrom; (3) pay any resulting damages, fines, assessments, levies, impositions, penalties or other charges; (4) Assists the County to 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 Contractor to comply with

Applicable Law. It shall not be an excuse for an event of noncompliance with Applicable Law.

v) No Nuisance Covenant. The Contractor shall keep the Managed Assets neat, clean and litter-free at all times, ensure that the operation of the Managed Assets does not create any odor, litter, noise, fugitive dust, vector 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, the Contractor shall expeditiously remedy the condition, all changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless the County from any Loss-and Expense relating thereto in the manner provided in Section 22.

SECTION 50.j). OPERATING AND CONSTRUCTION GOVERNMENTAL APPROVALS.

i) Applications and Submittals. The Contractor shall make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained or maintained by or in the name of the Contractor or the County under Applicable Law in order to operate and maintain the Managed Assets. With respect to Governmental Approvals which are required to be obtained in the name of the County, the Contractor shall: (1) prepare the application and act as the lead interface with the EPD 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 or otherwise reasonably requested by the County in order to assist and support the County in obtaining, maintaining, renewing, extending and complying with the terms of such Governmental Approvals. All permit and filing fees required in order to obtain and maintain Governmental Approvals for the Contract Services shall be paid by the County.

ii) Data and Information. All data, information and action required to be supplied or taken in connection with the Government Approvals required for the Contract Services shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the County as the legal and beneficial owner of the Managed Assets and primary permittee. The data and information supplied by the Contractor to the County 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 County sufficiently in advance to allow full and meaningful review and comment by the County. The Contractor shall be responsible for any cost consequences which may result from the submission of materially incorrect or incomplete information. The County

reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by the Contractor pursuant to this Section.

iii) Non-Compliance and Enforcement. The Contractor shall report immediately to the County all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Managed Assets. The County 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 Contractor to comply with any Governmental Approval shall constitute a breach of this Service Contract as well as an event of noncompliance with the Governmental Approval.

iv) Reports to Governmental Bodies. The Contractor shall prepare all periodic and annual 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 Managed Assets, including sampling and testing results and monthly discharge monitoring reports. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the County, if such are acceptable to the Governmental Body. The Contractor first shall provide the County with copies of such regulatory reports for review, comment and signature, as applicable, at least seven days before their filing with the Governmental Body and, in any case, within 10 days after the end of each month, and then with the Governmental Body.

v) Potential Regulatory Change. The Contractor shall keep the County regularly apprised as to potential changes in regulatory requirements affecting the wastewater treatment industry and the Managed Assets, and provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the County should a Change in Law actually occur. The Contractor shall participate in performance evaluation surveys conducted by the EPD and EPA.

SECTION 50.k). COUNTY ACCESS TO MANAGED ASSETS. The County shall have the right at any time, on a 24-hour per day, 7 day, 52 week per year basis, to have immediate access to the Managed Assets, to visit and inspect the Managed Assets and observe the Operator's performance of the Contract Services without providing advance notice to the Operator. The Operator shall permit and facilitate access to the Managed Assets for such purposes by County personnel and by agents and contractors designated by the County. All visitors shall comply with the Operator's reasonable operating and safety procedures and rules, and shall not interfere with the Operator's operations of the Managed Assets. When visiting any portion of the Managed Assets that is staffed by the Operator at the time of the visit, all County employees, agents and contractors shall announce themselves to the staff and Operator’s employees may elect

to Walk Through with any County employees, agents and contractors during the visit. The parties agree that the County shall have immediate access to the Managed Assets, and no Operator's rule or procedure shall impede, impair or delay such access.

SECTION 50.l). ASSET AND FINANCIAL RECORDS.

i) System Records. The Operator, on and after the Commencement Date, shall operate and maintain the installed computerized information systems with respect to the Managed Assets for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Service Contract and demonstrate compliance with the Contract Standards. The Operator shall promptly provide the County, with copies of all operations and maintenance data and other information kept by the Operator in its performance of the Contract Services.

ii) Record Documents. The Operator shall maintain at the Plants and make available to the County upon request for review and copying: (1) all designs, drawings, blueprints, plans, specifications and "as-built" or record drawings and documents pertaining to the Managed Assets, and (2) similar documents relating to any Capital Modifications. The Operator shall: (1) keep current all such records to show any changes to the Managed Assets (including valves, pipes, pumps, meters and other assets) made by the Operator in the performance of the Contract Services; and (2) provide advice and assistance to the County, based on such records, in establishing and maintaining any County geographic mapping and information systems.

iii) Financial Records. The Operator 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 Managed Assets and Contract 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 Operator fails to prepare or maintain any books, records or accounts as required under this Section, the Operator shall not be entitled to any requested payments or adjustment for which Cost Substantiation was required hereunder. The Operator shall keep the relevant portions of the books, records and accounts maintained with respect to each Contract Year until at least the seventh 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), and shall make such books and records available to the County for inspection, audit and copying upon reasonable notice during business hours to the extent necessary to allow the County to determine to its reasonable satisfaction the accuracy, completeness, currency

and propriety of any charge or request for payment. The provisions of this Section shall survive the termination of this Service Contract.

iv) Operator Financial Reports. The Operator shall furnish the County, within 90 days after the end of each Contract Year, consolidating balance sheets and income statements for the Contractor attached to the audited year end financial statements reported upon by the Operator's independent public accountant. The Operator shall also furnish the County with copies of all quarterly and annual reports and other filings of the Operator and the Guarantor filed with the Securities and Exchange Commission.

v) Inspection, Audit and Adjustment. The County shall have the right to perform or commission an 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 County has overstated the Service Fee, then the Operator shall, at the election of the County, either immediately reimburse to the County 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 County, at the Prime Rate. If an inspection or audit contemplated by this Section discloses an overpayment of the Service Fee to the Contractor of 1% or more of the total amount that should have been properly paid by the County during the period audited, then the Operator shall, in addition to the reimbursement or credit of such overstated amount, with interest, reimburse the County 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 County may have, including remedies for an Event of Default by the Operator.

SECTION 50.13. PERIODIC REPORTS

i) Daily, Weekly, Monthly and Severe weather Operations: The Operator shall prepare and provide the County a daily operations and maintenance report, weekly compliance report, severe weather operations report and a monthly operations and maintenance reports. Operator shall provide monthly operations report and DMRs to County by the 10th of each month for submittal to EPD.

ii) Annual Operations and Maintenance Reports. The Operator shall furnish the County, within 30 days after the end of each Contract Year, an annual summary of the information contained in the monthly operations reports. The Operator shall also perform and report to the County, as part of its annual operations report, the results of a comprehensive performance evaluation which reviews and analyzes the administrative, operational and maintenance practices employed in the management of the Managed Assets.

iii) Default Reports. The Operator shall provide to the County, immediately after the receipt thereof, copies of any written notice of a material default, breach or noncompliance received or sent under or in connection with any material contract entered into by the Operator in connection with the Contract Services.

iv) Permit Communications and Reports. The Operator shall provide to the County copies of all final communications and reports furnished to any Governmental Body pursuant to subsection 50.10 simultaneously with their submittal to the Governmental BodySECTION 50.14. EMERGENCIES.

i) Emergency Plan. Within 60 days following the Contract Date, the Operator shall provide the County 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 County and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the County and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; (3) assure the timely availability of all personnel required to respond to any emergency. The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary.

ii) Emergency Action. Notwithstanding any requirement of this Service Contract requiring County approval or consent to reports or submittals, if at any time the Operator 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 Managed Assets, or to mitigate the immediate consequences of an emergency event, then the Operator shall take all such action necessary to remedy such emergency situation. As promptly thereafter as is reasonable, the Operator shall notify the County of the event and the Operator 's response thereto. The cost of the Operator 's response measures shall be borne by the Operator except to the extent the emergency event was caused by an Uncontrollable Circumstance.

SECTION 50.15. TRUCKED-IN MATERIAL. The Operator shall receive, accept and treat, but only at the direction of and at locations specifically designated by the County in its sole discretion. The Fixed Component element of the Base Fee of the Service Fee contains full compensation for such services. All revenue received in connection with any Trucked-in-Material shall be the property of the County and for its account. The rules and procedures for the acceptance of Trucked-In Material are set forth in Exhibit 7 and shall be incorporated in the Operations and Maintenance Manual.

SECTION 50.16. CONTRACT ADMINISTRATION

i) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term of this Service Contract. 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 Contract.

ii) Contract Administration Memoranda. The principal formal tool for the administration of matters arising under this Service Contract 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 County and the Contractor 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) claims for an increase or decrease of the Service Fee or other demands for compensation or performance based on any provision of this Service Contract; (2) issues as to the meaning, interpretation, application or calculation to be made under any provision hereof; (3) the specific details and terms of any Change Order; (4) notices, waivers, releases, satisfactions, confirmations, further assurances and approvals given hereunder; and (5) other similar contract administration matters.

iii) 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 County reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, signed by the Contract Representative of each party, and co-signed by the Authorized Representative of the Contractor and the County. The County and the Contractor 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 Contract.

iv) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and performance of this Service Contract. Any material change, alteration, revision or modification of this Service Contract, however, shall be effectuated only through a formal Service Contract amendment authorized, approved or ratified by resolution of the governing body of the County and properly authorized by the Contractor.

ARTICLE 51. MUNICIPAL/INDUSTRIAL PRETREATMENT PROGRAM

SECTION 51.a). IPP ADMINISTRATION BY THE COUNTY: The County shall continue to maintain in force its existing rules, regulations and ordinances constituting the IPP in accordance with Applicable Law, and shall modify the IPP to reflect the requirements of any Change in Law pursuant to Exhibit 8. The Operator represents that it has reviewed the IPP as in force on the Contract Date.

SECTION 51.b). IPP ENFORCEMENT BY THE COUNTY: The County retains the right and the responsibility to approve sewer connections, make determinations as to whether a person constitutes a Significant Industrial User, and issue industrial discharge permits to each SIU in accordance with Applicable Law. The County shall enforce the IPP in accordance with Applicable Law.

ARTICLE 52. PERFORMANCE

SECTION 52.a). MANAGED ASSETS PERFORMANCE GENERALLY.

i) Reliance. The Operator acknowledges that the County, in serving the wastewater treatment needs of the Service Territory, is providing an essential public service, and in complying with its obligations under Applicable Law is relying on the performance by the Operator of its obligations hereunder.

ii) Maximum Capacity Utilization. The Operator shall utilize the capacity of the Managed Assets to its maximum reasonable extent in order to reduce Effluent pollution discharged and to control odor emitted from the Managed Assets. The Operator shall not intentionally reduce the level of wastewater treatment or odor control capable of being achieved by the Managed Assets in an effort to reduce its operating and maintenance expenses.

iii) Curtailments and Shutdowns. If the operation of the Managed Assets for any reason is temporarily reduced, curtailed or shut down so that the Operator is unable to collect, receive and treat any quantity of Influent or discharge Effluent in accordance herewith, the Operator shall immediately advise the County as to the nature and probable duration thereof and the expected effect on the operation of the Managed Assets, and take all steps necessary to remedy the curtailment or shutdown and to resume full performance hereunder as soon as possible.

iv) Limitations on Operator Rights. The Operator shall not treat wastewater other than Sewer Influent flowing to the Managed Assets from the Service Territory, shall not receive or process Septage except as provided in Section 50.15 and Exhibit 7, and shall not use the Managed Assets for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than the County and its customers in the Service Territory. The Operator shall not impose a fee or charge on any person for the treatment of Influent, sludge, grease, septage, or any other waste. The only compensation to the Operator for providing the Management Services shall be the Service Fee payable by the County hereunder.

SECTION 52.b). EFFLUENT GUARANTEE.

i) Applicable Law Limits. Except to the extent relieved as provided in Section 52.6, the Operator shall operate the Managed Assets on a continuous, uninterrupted 24-hour per day, 7-day per week, 52 week/year basis so as to receive and treat all Influent flowing to or received at the Plants and discharge Effluent in compliance with the requirements of Applicable Law.

ii) Service Fee Reductions for Effluent Exceedances and Reporting Violations. Except to the extent the Operator is relieved as provided in Section 52.6, the Service Fee shall be reduced in the amounts set forth below for the exceedances and reporting violations indicated in Exhibit 2 Performance Guarantees.

iii) Indemnity for Loss-and-Expense from Non-Complying Effluent. In the event that any Effluent discharged by the Operator fails to comply with the requirements of subsections (A) and (B) of this Section ("Non-Complying Effluent"), except to the extent such failure of compliance is caused by an Uncontrollable Circumstance, the Operator shall indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 22 from the Loss-and-Expense of any tort, environmental or other liability resulting from the discharge of such Non-Complying Effluent. 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 person from exposure to such Non-Complying Effluent based on any theory of recovery, including theories of toxic tort or environmental impairment. The Loss-and-Expense to which the indemnity provided in this Section extends shall not be construed to constitute consequential or other damages as set forth in Section 22, as to which both parties have waived any rights of recovery.

iv) Change in Law Affecting Effluent. The parties acknowledge that a Change in Law may affect Effluent standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Contract Date. In the event a Change in Law occurs, the Operator shall not be entitled to performance relief or additional compensation hereunder unless (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Effluent characteristic or parameter which is more stringent or burdensome to comply with than the Contract Standards applicable to such characteristic or parameter, or requires equipment or processes not then in place or practiced at the Managed Assets, and (2) the Operator is unable, after taking all mitigation measures required under Section 21.2 with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation.

v) Service Fee Reduction For Failure To Comply. In the event the Operator fails to meet the Sludge Guarantee, the County shall reduce the Service Fee per Exhibit 2 Performance Guarantees.

SECTION 52.c). ODOR GUARANTEE.

i) Applicable Law Limits. Except to the extent relieved as provided in Section 52.6, in operating the Managed Assets the Operator shall comply with all limits and requirements established by Applicable Law with respect to odor control.

ii) Contract Limits. In addition to its obligation to comply with odor limits and requirements imposed by Applicable Law as provided in subsection (A) of this Section and except to the extent relieved as provided in Section 52.6, the Operator shall operate and maintain the Managed Assets in compliance with the Odor Guarantee as set forth in Exhibit 2.

iii) Odor Control Practices Report. The Operator shall submit, as part of the monthly operations report required by Section 50.13, a monthly odor control practices report to the County which includes: (1) a listing of all odor complaints received during the month, with name, address, and nature of complaint; (2) all investigations conducted and actions taken or planned in response to such complaints; (3) evidence showing compliance with the odor control operating practices required by this Service Contract; (4) the quantity of odor control chemicals used during the month; (5) the duration of time that each load of Residuals remained on the Site after being produced; (6) the health of the microbes in the aeration system components of the Managed Assets; and (7) such other matters pertaining to odor control as the County may require from time to time.

iv) Preventing Recurrence of Violations. The general remedies for exceeding Effluent and odor limits are set forth in Exhibit 2, and may include termination provided in Sections 6.2 and 6.6. With respect to odor particularly, the parties acknowledge the extreme sensitivity of this issue to the general public and the difficulties in establishing meaningful monetary remedies for odor control violations. Accordingly, in the event the Operator fails to comply with its odor control obligations set forth or referred to in this Section, and is not excused by Uncontrollable Circumstances or County Fault, the Operator shall be obligated to implement the changes in operating, maintenance, repair, replacement and management practices as the County shall determine to be necessary, in light of the nature, extent and repetitiveness of such non-compliance, to assure that the odor violation will not recur.

v) Odor Incident. An "Odor Incident" for purposes of this Service Contract is an odor condition of limited duration emanating from the Managed Assets, to the extent not caused by Uncontrollable Circumstances or County Fault, which by its intensity is offensive and repulsive to members of the surrounding community with a normal sense of smell.

vi) Sustained Odor Condition. A "Sustained Odor Condition" for purposes of this Service Contract is an odor condition emanating from the Managed Assets, to the extent not caused by Uncontrollable Circumstances or County Fault, which by its intensity is offensive and repulsive to members of the surrounding community with a normal sense of smell on a sustained basis, either due to (1) the extended duration for a period of at least three (3) consecutive days of a single odor condition, or (2) the repetition of a single odor condition, or occurrence of varied odor conditions, in close succession, provided, however, that no more than one odor condition may be deemed

to have occurred in a single day for purposes of determining whether a Sustained Odor Condition has occurred.

vii) Indicator of an Odor Condition. Factors which may be relevant to the determination of an odor condition which may constitute an Odor Incident or a Sustained Odor Condition include without limitation, the number, frequency, legitimacy and forcefulness of odor complaints logged, non-compliance with the requirements contained in Section 2.2.2 of Exhibit 2 Performance Guarantees, the size of the area or magnitude of the number of individuals affected, and the degree of impact on the individuals affected, with consideration being given to the Operator's recent record of performance of managing the Managed Assets to control odor.

viii) Citations for Odor Incidents. The County shall have the right to issue Odor Citations to the Operator upon a determination by the County that an Odor Incident or Sustained Odor Condition has occurred.

ix) Service Fee Reductions for Odor Citations. The Service Fee shall be reduced, Pursuant to Odor Guarantee in Exhibit 2.

x) Elimination of Prior Odor Citations. There shall be no elimination of Prior Odor Citation during the term of the Contract. All previous Odor Citations shall be subject to the conditions of Section 6.5 (A) Odor Termination.

xi) Sustained Odor Condition Determination. The County shall have the right to make a determination that a Sustained Odor Condition has occurred.

xii) County Termination Rights Based on Odor Citations or a Sustained Odor Condition Determination. The County shall have the right, but not the obligation, to terminate this Service Contract based upon Odor Conditions or upon a Sustained Odor Condition Determination by the County pursuant to and in accordance with Section 6.5. The rights of the County to reduce the Service Fee based upon Odor Conditions or to terminate this Service Contract based on upon Odor Conditions or a Sustained Odor Condition Determination as provided in this Section and Sections 6.2 and 6.5, shall not be exclusive, and the County shall have all of the other remedies provided herein in the event of a breach of this Service Contract relating to odor, including without limitation the right to require the Operator to prevent the recurrence of odor violations as provided in subsection (D) of this Section.

xiii) Concurrent Odor Incidents and Sustained Odor Conditions. Notwithstanding the pendency of proceedings relating to the issuance of an Odor Citation, the County shall have the right to give notice of a Sustained Odor Condition (whether based on the continuance of the Odor Incident giving rise to the possible issuance of the Odor Citation or based upon other odor conditions).

xiv) Judicial Challenge to County Action. No determination or other action taken by the County pursuant to this Section shall be subject to judicial challenge.

SECTION 52.d). TRUCKED-IN MATERIAL.

i) Trucked-In Material Guarantee. The Operator shall accept, process and treat at the Plant, as directed by the County from time to time, materials constituting Trucked-In Material in the following quantities:

(1) Septage. Acceptable Septage, without restriction as to source, in amounts up to a maximum of 500,000 gallons on any one day.

ii) Treatment of Trucked-In Material. Trucked-In-Material constitutes Influent and shall be treated to the standards set forth in Section 52.2.

iii) Trucked-In Material Deliveries. The Operator shall be responsible for the orderly and timely scheduling of all deliveries of Trucked-In Material. The weekday operating hours for the receipt of Trucked-In Materials shall be from 8:00 a.m. to 4:00 p.m. The Operator shall not at any time accept, process or treat Trucked-In Materials at the Plant that have not been arranged for by the County, and shall not impose any fee or charge on any person making a delivery of Trucked-In Materials.

iv) Alternative Disposal of Trucked-In Material. In the event the Operator elects to reject any deliveries of Trucked-In Material or in the event there is a temporary shutdown of the capacity of the Plants to accept and treat Trucked-In Material due to a mechanical problem, damage at the Plants, or maintenance work (not due to an Uncontrollable Circumstance or County Fault), the Operator shall be considered to have met its obligations under this Section during such shutdown if it: (1) accepts such Trucked-In Material at the Plant up to the maximum amounts set forth herein and, with no increase in the Service Fee, arranges for its handling, transfer, transportation and disposal or processing at a Designated Disposal Facility; and (2) promptly and continuously takes all actions (including, without limitation, making all repairs and replacements and all changes in operating maintenance and management practices) necessary in order to continue or resume performance and to eliminate the cause of, and avoid or

prevent a recurrence of the rejection or shutdown. In the event that deliveries are so rejected or prevented for a period of more than 45 days, regardless of whether such alternative disposal has occurred, the Operator shall be considered to have materially breached this Service Contract and the County shall have the rights set forth in Article 6.

v) Failure of Alternative Disposal. In the event the Operator fails without excuse hereunder to comply with its obligations under this Section and Trucked-In Material which would have been received at the Plant in the ordinary course of business is not received, the Service Fee shall be reduced by an amount equal to: (1) all disposal fees which the County would have received from third parties had such obligations been complied with; and (2) an amount equal to all damages and other Loss-and-Expense payable or incurred by the County to third parties and all costs related to contract enforcement and dispute resolution which are reasonably attributable to such failure.

SECTION 52.e). COUNTY REMEDIES FOR NON-COMPLIANCE WITH PERFORMANCE GUARANTEES. If the Operator fails to comply with any Performance Guarantee and is not excused from performance as provided in Section 52.6, the Operator shall, without relief under any other Performance Guarantee, and in addition to any other remedy provided herein or required by a Governmental Body: (1) immediately notify the County of any such non-compliance; (2) promptly provide the County within 24 hours with copies of any notices sent to or received from the EPA, the EPD or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law; (3) reduce the Service Fee by the amounts pursuant to Exhibit 2; (4) pay any other resulting damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom; (5) take any action (including, without limitation, making all repairs and 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 the recurrence of non-compliance with such Performance Guarantee; (6) promptly prepare all public notifications required by Applicable Law, and submit such notifications for publication; and (7) assist the County 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.

SECTION 52.f). UPSETS AND EXCESSIVE INFLUENT AFFECTING OPERATOR COMPLIANCE WITH PERFORMANCE GUARANTEES.

i) Relief Generally. The Operator shall be relieved of its obligation to comply with a Performance Guarantee to the extent and for any period during which the operation of the Managed Assets is affected by the occurrence of an Upset or the receipt of Excessive Influent.

ii) Upsets and Excessive Influent. The occurrence of an Upset or the receipt of Excessive Influent shall not be considered to be an Uncontrollable Circumstance, and the Operator shall not be entitled to relief from a Performance Guarantee due to the occurrence of an Upset or the receipt of Excessive Influent, unless the Operator affirmatively demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) with respect to violations of Applicable Law, the EPD and EPA concur that an Upset occurred and grant relief;
(2) the Managed Assets were at the time operated, maintained, repaired, replaced and managed in accordance with the Contract Standards;
(3) an Upset actually occurred or Excessive Influent was actually received;
(4) the Operator submitted notice thereof as required by Applicable Law;
(5) the Operator complied with any remedial measures required under Applicable Law and appropriate mitigating measures required under Section 21.2.
(6) the Operator complied with its obligations with respect to the IPP under Article 52; and
(7) the occurrence or receipt thereof could not have been prevented by the exercise of reasonable efforts consistent with Good Industry Practice on the part of the Operator. Notwithstanding the above, in the event the Operator demonstrates that items (2) - (7) occurred (but not item (1)), the Operator shall not be relieved from its obligation to comply with the Performance Guarantees and its obligations pursuant to Section 52.6, however the Operator shall be relieved from applicable Service Fee reductions which otherwise would have been deducted from the Service Fee.

iii) Response Measures to Upsets and Excessive Influent. If an Upset occurs or a Plant receives Excessive Influent, the Operator shall, without limiting its obligations under the Contract Standards: (1) use all reasonable efforts consistent with Good Industry Practice to maintain Plant performance as if the Upset had not occurred or Excessive Influent had not been received; (2) advise the County of the situation and the Operator's planned course of action within 24 hours of the Operator's first knowing of the occurrence of an Upset or the receipt of Excessive Influent; and (3) use all reasonable efforts consistent with Good

Industry Practice to return the Effluent to compliance with the requirements of Applicable Law and the Performance Guarantees as soon as reasonably possible, but, in any event, within ten days after the Upset has occurred or the Plant has ceased receiving Excess Influent.

iv) Service Fee Impact. To the extent the occurrence of an Upset or the receipt of Excessive Influent constitutes an Uncontrollable Circumstance hereunder, the Service Fee shall be increased by an amount equal to the reasonable costs incurred by the Operator in responding to the effect of the Uncontrollable Circumstance on the Managed Assets and on the treatment and disposal of Effluent and Residuals.

SECTION 52.g). TESTING, METERING AND WEIGHING.

i) Testing. The Operator shall conduct all tests of Influent, Effluent (except with respect to the laboratory testing of discharges for NPDES purposes), Residuals, Storm Water, air emissions and odor in accordance with the Contract Standards. The tests shall be made at State certified laboratories to the extent required by the Contract Standards and shall be conducted at the Operator's sole cost and expense, except to the extent such tests are required by a Change in Law and are not required under the terms hereof as of the Contract Date. All Influent and Effluent sampling and testing for contract performance and for the application of the Variable Component of the Base Fee of the Service Fee shall be conducted at the testing locations identified in the testing and sampling standards set forth in Exhibit 5 Sampling and Testing standards and Exhibit 7septage Handling Protocol.

ii) Metering and Weighing. The Operator shall maintain in good working order, and repair and replace when necessary, devices at the Plants and Pump Stations, (as applicable) capable of (1) metering the daily volume of Influent and Effluent, (2) metering or weighing Trucked-In Material, and (3) metering or weighing the daily amount of Residuals leaving the Plants for disposal. The County shall have full access to such meters, 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 County pursuant to Section 50.13. 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 Operator shall estimate to the extent allowable law as accurately as practicable the data required by the

Operator to perform the Contract Services. This estimate and methodology shall, with the County's approval, be used as the basis for determining the operating data required hereunder during the outage. The County shall have the right to monitor, inspect and test such metering and weighing devices which are part of the Managed Assets at any time and for any purpose and to meter Influent and Effluent and to take measurements regarding Residuals and Trucked-In Material without unreasonably interfering with the Operator's ordinary operations.

SECTION 52.h). RELEASES, LEAKS AND SPILLS.

i) Unauthorized Releases Prohibited. The Operator shall operate the Managed Assets in such a manner that Influent, Effluent, Residuals, Trucked-In Material and Hazardous Materials will not contaminate, or be released, leak or spill on or into the environment other than as permitted by the Contract Standards.

ii) Notification and Reporting. The Operator, after first notifying the County, shall be responsible for fulfilling all notification of and reporting requirements established by Applicable Law related to any unauthorized release into the environment from or in connection with its operation and management of the Managed Assets. The Operator shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the County, along with any documents provided to the relevant Governmental Body regarding the release.

iii) Cleanup and Costs. The Operator shall coordinate with the County in identifying the source of any unauthorized release and cooperate with the County and all appropriate Governmental Bodies in effectuating the prompt remediation thereof. The Operator shall, in the most expeditious manner possible under the circumstances, cause any waste or material released without authorization to be cleaned up, removed from the Managed Assets or other point of release, and transported to and discharged or disposed of at a landfill or other disposal site which constitutes an Acceptable Disposal Site, and all perform necessary remediation measures to be performed. All costs associated with the identification, testing, cleanup, removal, transportation and disposal of such waste or material and performing necessary remediation measures shall be borne by the Operator, except to the extent the release of the waste or material resulted from an Uncontrollable Circumstance or County Fault, in which case such costs shall be borne by the County.

iv) Pre-Existing Environmental Conditions. The Operator shall operate and manage the Managed Assets so as not to aggravate the effect of any Pre-Existing Environmental Condition. If at any time a Pre-Existing Environmental Condition is

determined to exist which requires an action under Applicable Law, then the County shall within 60 days after written notice from any Governmental Body or the Operator of the presence or existence thereof, commence and diligently prosecute such 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 County 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 County 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 operation of the Managed Assets pending resolution of the contest, so that the Operator shall have no liability as a result of the failure of the County to dispose of, remediate or otherwise correct such purported Pre-Existing Environmental Condition during the period of contest.

SECTION 52.i). PROVISION OF FACILITY PLANS: A. Plans Objectives: Operator shall be required to prepare several comprehensive plans pursuant to Exhibit 4 Facilities Plans, which documents the Operator's and County objectives of improving facilities performance.

B. Service Fee Reduction For Failure To Comply With The Provision Of Facility Plans: The County shall reduce the service fee by any amount necessary for a third party to develop said plans.

ARTICLE 53. MAINTENANCE, REPAIR AND REPLACEMENT

SECTION 53.a). MAINTENANCE, REPAIR AND REPLACEMENT GENERALLY.

i) Ordinary Maintenance. The Operator shall maintain the Managed Assets in good working order, condition, repair and paint in a neat and orderly condition and in accordance with the Contract Standards including those standards set forth in Exhibit 3, and shall maintain the aesthetic quality of the Managed Assets as originally constructed. The Operator 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 Managed Assets and shall conduct predictive, preventive and corrective maintenance of the Managed Assets as required by the Contract Standards. The Operator shall keep maintenance records in accordance with the maintenance, repair and

replacement plan and the NPDES Permits. The Service Fee shall be reduced by $5,000 for any month in which the maintenance records are not so maintained.

ii) Inspections, Cleaning and Blockage Removal. The Operator shall conduct daily inspections of the pipes which are part of the Managed Assets to maintain their continuous operability. The Operator shall be responsible for routine and non-routine cleaning of such Managed Assets in accordance with Contract Standards. The Operator shall also be responsible for removing any blockages contained in such Managed Assets that restrict their use and function.

iii) Repair and Maintenance of Managed Assets Realty. The Operator, in accordance with the Contract Standards, shall maintain and repair the Managed Assets in good working order and in a neat and orderly condition (including the cleanup of litter and debris on a daily basis or more frequently as required). The Operator shall also maintain and repair all Managed Assets Realty fencing and signage. In addition, the Operator shall provide lawn mowing, leaf raking, bush cutting services to the Managed Assets Realty, and provide winter maintenance (snow and ice removal) to all Managed Assets Realty parking lots, roadways, walk-ways, and building entrances and exists pursuant to Exhibit 12 Building, Ground Maintenance and Painting..

iv) Major Maintenance, Repair and Replacements. The Operator shall be responsible for providing all maintenance, repairs and replacement of the machinery, equipment, structures, improvements and all other property constituting the Managed Assets during the Term of this Service Contract required under the Contract Standards, including without limitation all maintenance, repair and replacement which may be characterized as "major" or "capital" in nature. The County's approval for any such maintenance, repair or replacement shall not be required unless the cost of materials of a repair or replacement is reasonably anticipated to exceed $25,000, in which event the County shall have the approval rights. The obligations of the Operator under this Article are intended to assure that the Managed Assets 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 Managed Assets are returned to the County at the end of the Term in a condition which does not require the County to undertake a significant overhaul in order to continue to provide reasonably priced and efficient wastewater treatment services.

(E) Major Maintenance Repair and Replacement Expenditure Reconciliation and Deficiencies. The County shall undertake all major maintenance repairs and

replacements on the Managed Assets as necessary to comply with the Contract Standards with limitation as to the cost of any individual item greater than $25,000.

The County has allocated a significant maintenance allowance for each year of the Agreement. Repair and replacement expenditures will be funded by the Operator for all expenses for a single asset per occurrence totaling less than $25,000 dollars. Repair and replacement expenses of more than $25,000 dollars for a single asset per occurrence will be funded by the County through the annual maintenance allowance after $25,000 deductible.

SECTION 53.b). MANAGED ASSET EVALUATIONS.

i) Initial and Final Valuation of Spare Parts and Consumables. As required by Exhibit 11 Equipment and Chemical Inventory, prior to the Commencement Date the Operator shall prepare an itemized inventory and valuation of all spare parts and Consumables in stock at the Managed Assets and having operational utility at the managed Assets, which are to be transferred to the Operator for its use. In like manner, prior to the Termination Date, the County shall cause an evaluator to prepare an itemized inventory and valuation of all spare parts and Consumables in stock at the Managed Assets and having operational utility at the Managed Assets, which are to be transferred to the County on the Termination Date. The final valuation amount shall be compared to the initial valuation amount, as adjusted by the change in the Consumer Price Index over such period. The amount of any valuation shortfall or excess shall be paid by the Operator to the County or by the County to the Operator as appropriate, on or before the Termination Date.

ii) Initial Evaluation of the Managed Asset Structures. The Operator shall within 180 days following the Commencement Date evaluate the Managed Asset Structures. The purpose of the evaluations shall be to establish an informational baseline for determining compliance by the Operator with its maintenance, repair and replacement obligations under this Article. The evaluation of the Managed Asset Structures shall determine and establish the existing condition and state of repair of the Managed Asset Structures. The Operator's evaluation report shall be submitted to the County for its review and comment.

iii) Inventory and Record Review. As part of the evaluation, the Operator shall photograph and prepare an itemized inventory of all property constituting the Managed Asset Structures.

iv) Final Evaluation of Managed Assets. Not later than ninety days prior to the Termination Date resulting from the expiration of this Service Contract, or concurrently with the termination resulting from an early termination of this Service Contract, the County shall conduct a final evaluation of the Managed Assets. The evaluation shall include a physical inspection of the Managed Asset Structures, as well as appropriate testing, and performance testing of the Managed Asset Equipment in accordance with Section 53.3 to ensure that the Managed Assets are returned to the County in good working order.

v) Required Condition of Managed Asset Structures Upon Return to the County. The Managed Asset Structures shall be returned to the County in good condition, working order and repair, taking into account their condition and state of repair on the Commencement Date and the initial Managed Asset overhaul required by Section 53.3 and with ordinary wear and tear excepted.

vi) Required Condition of Managed Asset Equipment Upon Return to County. The Managed Asset Equipment shall be returned to the County in such a condition and state of repair such that each piece of Managed Asset Equipment demonstrates the standards required by Section 53.3(A).

vii) Managed Assets Condition Deficiency. In the event the final audit establishes a maintenance, repair and replacement deficiency under this Section; the Operator shall, at the election of the County, either remedy the deficiency or make a cash payment to the County sufficient to enable the County to remedy the deficiency.

viii) Capital Modification. In the event that Capital Modifications constituting Managed Asset Structures are made during the Term, such assets shall be returned to the County on the Termination Date in good condition, working order and repair, with ordinary wear and tear excepted and recognizing the maintenance, repair and replacement obligations of the Operator set forth in subsection 53.1(A) and 53.1(D). In the event that Capital Modifications constituting Managed Asset Equipment are made during the Term and are paid for by the County, such Capital Modifications shall be subject to Section 53.3 (A) requirements.

Section 53.c) MINIMUM PERFORMANCE STANDARDS AND PERIODIC MAINTENANCE INSPECTIONS.

i) Minimum Performance Standards. Minimum equipment working conditions and performance standards for each major operating system of Managed Asset Equipment in accordance with this Section and Exhibit 3 and 13 (the "Minimum

Performance Standards is provided in Exhibit 13"). The purpose of the Minimum Performance Standards shall be to create, on an item-by-item basis, a standard of reference regarding the state of repair and performance of the Managed Asset systems against which maintenance, repair and replacement performance deficiencies can be objectively determined.

ii) Annual Maintenance Inspection. The County may upon reasonable written notice, perform a formal inspection of the Managed Assets and relevant records of the Operator each Contract Year to determine compliance with the Minimum Performance Standards and the Contract Standards generally. The Operator shall cooperate fully with the inspections including providing operational resources and support, which shall not interfere unreasonably with the Operator's performance of the Contract Services.

(C) Ongoing Maintenance Review. The County shall have the right, but not the obligation, to review and inspect the Managed Assets and the Operator's maintenance records on a continuous basis using County personnel in a manner that will not interfere unreasonably with the Operator's performance of the Contract Services. Questions and comments regarding the Operator's maintenance practices or specific work resulting from such ongoing reviews shall be addressed to the Operator's Project Manager. All such questions and comments received by the Operator shall be responded to within seven days and specifically addressed in the Operator's next monthly report submitted to the County by the Operator.

(D) Remediation. Based on the daily, weekly, monthly or annual operations and maintenance reports submitted by the Operator, the inspections and reviews conducted pursuant to this Section, the County may submit a statement to the Operator detailing any deficiencies found and requiring the Operator to submit a plan of remediation within 15 days. The remediation plan shall be sufficient to reasonably demonstrate that, if implemented, the Managed Assets will be brought into compliance with the requirements of this Article as soon as practicable and in any event within 60 days from the date of the County's statement. If the County accepts the remediation plan, the Operator shall thereupon correct all deficiencies noted in accordance with the agreed upon remediation plan. Failing such timely correction action, the Service Fee shall be reduced by twice the amount of the County's estimated cost of undertaking the necessary remediation using a third party Operator. The Operator shall address all remediation plans, detailing the status of all corrective actions and any scheduled completion dates in their monthly reports (until the item is complete)

and in their annual operations and maintenance report (a synopsis of the year's activities) for that year.

(E) Unscheduled Inspections. Nothing in this Section shall limit the County's right, on an unscheduled basis, at any time to inspect the Managed Assets and relevant records of the Operator to determine compliance with this Article.

SECTION 53.d). COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM. The Operator shall install, utilize, maintain, upgrade, repair and replace, as appropriate throughout the Term, a computerized maintenance management system in accordance with Data Stream 7i or latest approved Version and capable of providing a record of repair and replacement of the Managed Assets on a detailed, item-by-item basis; scheduling, carrying out, monitoring and controlling predictive, preventive and corrective maintenance programs; monitoring routine operations within the Managed Assets; 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 installed and fully functional within 120 days following the Commencement Date, and shall be modified and as when appropriate during the Term to take account of removals from and additions to the Managed Assets. The Operator shall utilize the computerized maintenance management system to meet its maintenance, repair and replacement obligation under this Service Contract and to provide the County with documentation which allows it to efficiently monitor compliance by the Operator with its maintenance obligations hereunder. The County shall have computer-based real time, read-only access to such system. The Operator shall permit all electronic data to be replicated and provided to the County for review by the County.

SECTION 53.e). MAINTENANCE, REPAIR AND REPLACEMENT . Exhibit 3 contains the standards for the maintenance, repair and replacement of the Managed Assets. This plan is intended to establish a minimum standard by which to measure the Operator's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or substandard maintenance, repair and replacement occurs. The Operator shall adhere to the standards except where it can demonstrate to the County that changes are reasonable under Good Industry Practice. The timing and extent of maintenance repair and replacement activities performed by the Operator hereunder with respect to the Managed Assets, taken as a whole, shall equal or exceed the standard set for those activities by Exhibit 3. The Operator shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

SECTION 53.f). DISPOSAL OF SURPLUS EQUIPMENT. The Operator may, at the direction of the County and to the extent permitted by Applicable Law, remove, dispose of and sell, in accordance with Applicable Law, equipment constituting part of the Managed Assets that is unused or obsolete and no longer needed. All proceeds from the sale shall be the property of the County.

SECTION 53.g). WARRANTIES. The Operator must specifically maintain and operate all equipment at all the facilities in such a manner so as not to void any warranties that may be applicable to existing equipment or that may arise with equipment procured by the Operator/County during the term of the O&M Contract. If the Operator's actions are such that any warranty during the term of the O&M Contract is voided, the Operator shall be required, at its own expense to re-procure a conforming warranty equal to or greater than the applicable voided warranty subject to Fulton County approval.

SECTION 53.h). LOSS, DAMAGE OR DESTRUCTION TO THE MANAGED ASSETS. i)Prevention and Repair. The Operator shall use care and diligence, and shall take all appropriate precautions, to protect the Managed Assets from loss, damage or destruction. The Operator shall immediately notify the County and the insurers of any damage or destruction to the Managed Assets and as soon as practicable thereafter shall submit a full report to the County. The Operator shall also submit to the County within 24 hours copies of all accident and other reports filed with, or given to the Operator by, any insurance Operator, adjuster or Governmental Body. The Operator shall immediately repair, replace and restore the Managed Assets to at least the character or condition thereof existing immediately prior to the loss, damage or destruction. The County shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Operator.

ii) 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, the Operator shall assist the County in exercising such rights as it may have to effect such recovery. The Operator shall provide the County with copies of all relevant documentation at no cost to the County, and shall assist the County at the County's request, participating in conferences, negotiations and litigation regarding insurance claims.

iii) Uninsured Costs. The Operator shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Managed Assets 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 Managed Assets shall

be for the account of the County and shall be applied to pay the Operator for undertaking such repair, replacement and restoration; provided, however, that such costs not covered by insurance proceeds or third party payments shall be borne by the County to the extent the loss, damage or destruction was caused by Uncontrollable Circumstances or County Fault.

iv) Repair of County and Private Property. The Operator shall promptly repair or replace all County Property and all private property damaged by the Operator or any officer, director, employee, representative or agent of the Operator in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements shall restore the damaged property to its character and condition existing immediately prior to the damage.

ARTICLE 54. RESIDUALS DISPOSAL

SECTION 54.a). DISPOSAL OF RESIDUALS BY THE OPERATOR. i) Disposal. The Operator shall be responsible for the treatment, transportation and disposal of all Residuals in a safe and environmentally sound manner and in accordance with the Contract Standards.

ii) Avoiding Hazardous Waste Classification. The Operator shall operate the Plants, subject to the terms and conditions of this Service Contract, so as to assure that all Residuals meet at least the minimum quality limits and standards to avoid being classified as hazardous waste under any Applicable Law.

iii) Storage and Loading. The Operator shall not store in any manner Residuals on the Managed Assets Realty or stockpile Residuals off-Site, and shall expeditiously complete all Residuals vehicle and container loading operations indoors (in a building, where applicable designed for associated air, odor and run-off concerns) and shall transport loaded vehicles and containers immediately and directly to the Designated Disposal Site; provided, however, the Operator shall be permitted to store loaded vehicles and containers indoors (in a building designed for associated air, odor and run-off concerns) for up to twelve (12) hours or in the event of Residuals delivery vehicle breakdown, until such vehicle or replacement vehicle can be put into service, but in no event longer than thirty-six (36) hours. Notwithstanding the above, the Operator shall be permitted to store loaded vehicles and containers outdoors for up to twelve (12) hours in the event of Residuals delivery vehicle breakdown, until such vehicle or replacement vehicle can be put into service, but in no event longer than thirty-six (36) hours. The Operator acknowledges that the principal purpose of this provision is to minimize odor.

iv) Service Fee Reductions for Improper Residuals Storage . The Service Fee shall be reduced in the amounts set forth below (as adjusted annually by the Adjustment Factor):

(1) For each additional hour after the first twelve (12) hours following completion of loading of Residuals into any vehicle or container for transportation and disposal that such vehicle or container remains indoors or outdoors on the Managed Assets Realty: $1,000.

v) Transportation Operations. All transportation operations shall be conducted in accordance with Applicable Law by licensed haulers in a safe and reliable manner. In the event of a release, spill, leak or loss of Residuals during transfer or transit, the Operator shall immediately arrange for the clean-up of the material

and transportation to a Designated Disposal Site, pay any resulting fines, assessments, penalties or damages resulting there from, all trailers shall be covered during hauling for odor mitigation.

vi) Residuals Disposal Information. The Operator shall keep and maintain such logs, records, manifests, bills of lading or other documents pertaining to Residuals as are necessary or appropriate to comply with Applicable Law and to monitor and confirm compliance by the Operator with the requirements of this Article, and shall collect and promptly provide the County with a copy of all weights and measures data and information relating to quantities of Residuals generated, transported and disposed of hereunder.

vii) Title and Documentation. The Operator shall assume title to Residuals. The County, only to the extent required by Applicable Law, shall sign all documents required for the handling, transportation or disposal of Residuals.

viii) Indemnity. The Operator shall indemnify and hold harmless the County in accordance with Article 22 from all Loss-and-Expense that may result from the generation, processing, transportation or disposal of Residuals.

SECTION 54.b). ACCEPTABLE DISPOSAL SITE. No Residuals shall be disposed of except at an Acceptable Disposal Site. An Acceptable Disposal Site, as used herein, means either a sanitary landfill, land application site or other waste disposal or management facility, which: (1) is operated in accordance with good engineering practice; (2) is located in the United States; (3) does not appear on any Federal or State list of sites, such as but not limited to the National Priority List or the CERCLIS list under CERCLA, maintained for the purpose of designating landfills or other sites which are reasonably expected to require remediation on account of the release or threat of release of hazardous wastes; (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 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 written agreement of the owner or operator to receive Residuals originating at the Plants; (7) is not under any executive or judicial order (or otherwise subject to any law) barring receipt of wastes similar to the Residuals; and (8) does not otherwise expose the County 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 Operator hereunder. The Operator shall provide evidence satisfactory to the County, prior to the use of any proposed Acceptable Disposal Site and from time to time

as requested thereafter, that the Acceptable Disposal Site conforms with the requirements of this Section.

SECTION 54.c). DESIGNATED DISPOSAL SITE.

i) Required Disposal and County Approval. No Residuals shall be disposed of except at a Designated Disposal Site. A Designated Disposal Site shall be an Acceptable Disposal Site that is approved by the County pursuant to this Section.

ii) Changes in Designated Disposal Site. The Operator shall have the right from time to time to change a Designated Disposal Site subject to the prior written approval of the County, which shall not be unreasonably withheld. The Operator shall make a full information submittal to the County regarding any such proposed change, and fully respond to all due diligence inquiries the County chooses to make in the exercise of its right of approval.

iii) No Service Fee Impact of Site Changes. The Operator acknowledges that the fixed component of the Service Fee has been established based on the inclusion in the Contract Services of the Operator's obligation to handle, transport and dispose of all Residuals during the Term of this Service Contract. In undertaking to perform this obligation, the Operator has assumed the risks, among others, of: (1) the availability and cost to the Operator from time to time of Acceptable Disposal Sites for Residuals; (2) the availability and cost to the Operator from time to time of transportation services for Residuals; (3) the transportation distance from the Plants to any site which may be designated as a Designated Disposal Site hereunder; (4) the business terms, conditions and practices which may prevail at Acceptable Disposal Sites and in the residuals transportation and disposal market generally from time to time; and (5) the performance or non-performance by any Subcontractor of the Operator engaged in Residuals handling, transportation or disposal services.

SECTION 54.d). CHANGES IN LAW AFFECTING RESIDUALS MANAGEMENT SERVICES.

i) Cost Substantiation and Mitigation for Residuals Changes in Law. Cost Substantiation shall be furnished by the Operator to support any requested increase in the Service Fee as a result of a Change in Law affecting Residuals management. The Operator shall bear the burden of proof with respect to the occurrence and cost effect of any Residuals Change in Law affecting Residuals management, notwithstanding the fact that the increased cost was borne by the Subcontractor and is proposed to be passed on to the Operator (rather than being incurred directly by the Operator itself). In connection with any such Cost Substantiation, the Operator shall (1) provide the County with a copy of the

applicable Subcontract in its entirety and (2) the Operator shall provide cost records of the Subcontractor with respect thereto in the same manner as if the Operator were providing Cost Substantiation with respect to its own directly incurred costs as a result of a Change in Law. The County shall not be obligated to pay any such costs (1) which exceed an amount reasonably allocable to the Residuals on a pro rata basis among the total amount of sludge and wastes disposed of at the Designated Disposal Site over the same period, (2) which exceed the costs which would have been payable had the Subcontractor undertaken all commercially reasonable mitigation measures in response to the Change in Law, and (3) except during the period in which the effect of the Change in Law is actually continuing to occur (and not thereafter) and during which deliveries of Residuals to such Designated Disposal Site are actually occurring. Cost Substantiation shall be provided for each month during which the Operator claims and is entitled to receive an adjustment to the Service Fee pursuant to this Section.

ii) Mitigation. The Operator shall use all commercially reasonable efforts to minimize any net incremental costs to the County under this Section, either by (1) causing the Subcontractor to mitigate its costs as contemplated by subsection (A) of this Section, (2) changing practices related to the Residuals management, or (3) proposing a Capital Modification.

iii) Adjustment of Service Fee. Any payment or reimbursement of costs by, or reduction of costs to, the County provided for in this Section shall be reflected in the Extraordinary Items component of the Service Fee, and shall be payable or reimbursable on annual reconciliation and settlement basis.

iv) Changes in Law. Notwithstanding any other provision of this Service Contract, a law change relating to Residuals management which would otherwise constitute a Change in Law hereunder shall not constitute a Change in Law which could afford the Operator relief pursuant to Section 21.2 if: (i) such change was specific to the Operator's Residuals management Subcontractor and not generally to the industry of such Subcontractor (e.g., a consent order requiring the landfill at which Residuals are being disposed to install additional flares in order to meet air quality standards to prevent groundwater contamination), (ii) such change occurs affecting sludge or waste management but not the Residuals management methods and practices which the Operator was undertaking at the time of such change or (iii) such change does not preclude the Operator from disposing of the Residuals at a landfill located in the State.

ARTICLE 55. CAPITAL MODIFICATIONS

SECTION 55.a). CAPITAL MODIFICATIONS GENERALLY.

i) Purpose. The parties acknowledge that it may be necessary due to an Uncontrollable Circumstances, or desirable from the standpoint of either party, to make Capital Modifications. Capital Modifications may be desirable, for example, to improve the performance or increase the capacity of the Managed Assets, to reduce the cost to the Operator of performing this Service Contract or to reduce the Service Fee payable by the County.

ii) County Approval and Change Orders. The County shall have the right, in its sole discretion, to approve all Capital Modifications, except those for which are to be made at the Operator's cost and expense pursuant to this Article and the materials cost for which are reasonably estimated to cost $25,000 or less. The cost of such Capital Modifications shall be determined taking into account the entire amount necessary to effectuate the objective of such Capital Modification in accordance with reasonable conventions. The County shall have the express right to condition its approval of a Capital Modification upon the sharing of net cost savings expected to result therefrom.

SECTION 55.b). CAPITAL MODIFICATIONS AT OPERATOR REQUEST. The Operator shall give the County written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Operator's request. The notice shall contain sufficient information for the County to determine that the Capital Modification (1) does not diminish the capacity of the Managed Assets to be operated so as to meet the Contract Standards, (2) does not impair the quality, integrity, durability and reliability of the Managed Assets, (3) is reasonably necessary or is advantageous for the Operator to fulfill its obligations under the Service Contract, and (4) is feasible. The Operator shall not be entitled to any adjustment in the terms of this Service Contract as a result of any such Capital Modification unless approved by the County or made a condition of approval by the County in its sole discretion.

SECTION 55.c). CAPITAL MODIFICATIONS DUE TO UNCONTROLLABLE CIRCUMSTANCES. Upon the occurrence of an Uncontrollable Circumstance, the Operator shall promptly proceed, subject to the terms, conditions and procedures set forth in this Article to make or cause to be made all Capital Modifications reasonably necessary to permit the Operator to address the Uncontrollable Circumstance. The Operator shall consult with the County concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Operator and the County shall cooperate in order to minimize any delay, lessen any additional cost and

improve the Managed Assets so as to permit compliance with the requirements of this Service Contract. The proposal shall specifically evaluate reasonable alternatives to the combination of Capital Modifications and changed operating and management practices that the Operator is recommending be implemented in response to the Uncontrollable Circumstance. The costs of any such Capital Modification, and any related operation, maintenance, repair and replacement cost shall be borne by the County.

SECTION 55.d). CAPITAL MODIFICATIONS AT COUNTY DIRECTION. The County shall have the right to make Capital Modifications at any time and for any reason whatsoever. All Capital Modifications made at the County's direction under this Section (unless due to Operator fault), and any related operation, maintenance, repair and replacement costs, shall be made at the County's cost. The County shall have no obligation to direct the Operator to make any Capital Modification.

ARTICLE 56. BACKCHARGES

SECTION 56.1 CORRECTIVE ACTIONS BY OPERATOR. If during its performance of services under the O&M Contract, the Operator is notified by County to correct defective or nonconforming services, and the Operator states or by its actions indicates that it is unable or unwilling to proceed with corrective action in a reasonable time, County may correct the non-conforming services and backcharge the Operator for all costs incurred. Furthermore, if County agrees to or is required to perform services for the Operator, County may perform those services by the most expeditious means available and backcharge the Operator for the costs incurred.

SECTION 56.2 BACKCHARGE NOT A RELEASE. County will separately invoice or deduct from payments otherwise due to the Operator any backcharge costs. County's right to backcharge is in addition to any and all other rights and remedies provided in the O&M Agreement or by law. The performance of backcharge services by County will not relieve the Operator of any of its responsibilities under the O&M Agreement, including, but not limited to, express or implied warranties, specified standards for quality, contractual liabilities, indemnifications or meeting of any schedules for the services required by the O&M Agreement.

ARTICLE 57. APPROVAL OF MAINTENANCE PROCEDURES

County shall approve any modifications of major maintenance affecting the operation or appearance of the Facilities. Maintenance expenditures exceeding $25,000 in any one instance will be deemed major.

ARTICLE 58. NO TOTAL FACILITIES SHUTDOWN PERMISSABLE

The Operator shall ensure that the total system is not to be shut down for any period of time due to strikes, lock-outs or labor problems.

ARTICLE 59. STANDARD OF FACILITIES OPERATIONS AND MAINTENANCE

The Operator shall operate and maintain the Facilities according to Good Industry Practices. Good Industry Practices are those practices, methods and acts, as changed from time to time, that are commonly used in the waste water industry to perform or fulfill the services, or any practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time, or the facts which should have been reasonably known at the time through the exercise of due diligence, could be expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition.

V. EXHIBIT C: SCOPE OF WORK

ARTICLE 60

SECTION 60.1**: Scope of Services:** This section describes the scope of services and business structure the County is seeking in this RFP and is intended to provide an overview of the desired arrangements and division of responsibilities between the County and the Operator. The Operator should carefully review the RFP, including the Exhibits and all addenda to determine the best approach to meet the County's objectives.

At the minimum the Contractor must perform the following services:

1. Provide all personnel and other resources to operate and maintain the Facilities in best interests of Fulton County.
2. Provide and/or pay all the benefits and salaries pursuant to approved staffing plan to operate and maintain the Facilities.
3. Provide/ Pay all utilities and consumables, materials/supplies necessary and proper to operate the facilities in accordance with regulatory permit requirements, and maintain the related equipment/facilities pursuant to service levels established in Exhibit 3.

4. Provide and pay all Subcontractors pursuant to Contract.

5. Perform all necessary sampling to ensure that Facilities' performance is in compliance with State, Federal and other Government Regulations. Daily testing/analysis for the purpose of process control are the sole responsibility of the Contractor.

6. Provide local area network administration and CMMS & Process Software. This shall include server(s), individual workstation and printer integration as well as, LAN system preventative maintenance program. The Contractor shall be responsible for maintaining backup copies of all electronic records and work products. All hardware, software, data collect and stored will remain property of Fulton County. All software will be licensed to Fulton County. The County CMMS standard is DataStream version7i or more recent approved versions and process software is OPSWin for all Fulton County Wastewater Facilities. The Contractor will be responsible for software and hardware upgrades. Upgrades shall be installed as necessary or as desired by the County to ensure proper levels of service.

7. Provide SCADA system administration. This shall include server(s), individual workstation and printer integration as well as, overall SCADA system preventative maintenance program. The Contractor shall be responsible for maintaining backup copies of all electronic record work products. Remote monitoring of SCADA must be accessible to the authorized County/Contractor personnel. All software will be licensed to Fulton County.

   The Contractor shall develop and maintain a Document Repository and Delivery System (DRDS) on a server which can be accessed remotely by authorized County and Contractor's staff. All the drawings, design, Manuals, records and reports shall be maintained on DRDS.

8. Provide four laptops with the software loaded to remotely access, via any County data port, SCADA, Security System, CMMS and OPSWin to authorized County personnel and upgrade it when it requires.

9. Provide staffing of sufficient, qualified employees to operate and maintain the Facilities 24-hours per day, 365/366 days year pursuant to the contract.

A staffing plan is attached in Exhibit 4 Table 4.2.

Other than the Project Manager, Maintenance Manage and Plant Manager, vacant positions must be filled within 60 days by qualified personnel. Project Manager, Plant Manger and Maintenance Manager Positions must be filled temporarily immediately and permanently with in ninety (90) days. All personnel classified as Operator In Training (OIT) must work with certified personnel and be licensed by the State of Georgia within twelve (12) months from date of hire. OITs do not count toward the satisfaction of minimum staffing levels. No employee should work more than 16 hrs/ day. Contractor shall provide a monthly staffing summary to the County. The Contractor must provide staffing dedicated solely to the operation and maintenance of each Wastewater Reclamation Facility.

10. Conduct routine and normal maintenance of plant equipment, buildings and grounds. Contractor shall provide all parts and materials necessary for maintenance /repair. Contractor shall be responsible for plant tools, equipment and process lab supplies must be inventoried and replacements provided by the Contractor.

11. Perform all corrective, predictive, preventive and routine maintenance and repair of the system including: the grounds, facilities, buildings and other structures pursuant to Exhibit 3 Operation and Maintenance Standards.

12. Provide, in forms acceptable to Fulton County, monthly accounting, quarterly projections and an end-of-year forecast submitted by August 1st every year as to the status of the Maintenance account. Non-routine Maintenance and Repair items shall be funded via maintenance allowance, pursuant to Section 59.33.

13. The Contractor must specifically maintain and operate equipment at all the facilities in such a manner so as not to void any warranties that may be applicable to existing equipment or that may arise with equipment procured by the Contractor/County during the term of the O&M Contract. If the Contractor's actions are such that any warranty during the term of the O&M Contract is voided, the Contractor shall be required, at its own expense to re-procure a conforming warranty equal to or greater than the applicable voided warranty subject to Fulton County approval.

14. Generate and sign as Operator and provide to the County and Georgia EPD information, notices and reports, including monthly EPD DMR, sampling and testing results, as necessary to enable the County to comply with all reporting requirements imposed upon the County by applicable Law. Assist the County in responding to various external requests including but not limited to:

    A. State and Federal grant audits and information request

    B. State and Local government audits

    C. Audit by independent public accountants

    D. Information requests by users or groups of plant system

    E. Information required for the annual financial audits of Fulton County and financial representation letter

    F. Georgia Open Records Act requests

    G. Report, data and information required by EPA, GA EPD, ARC and other agencies.

    H. Provide County Representative reports and data, hard and electronic copy.

15. Provide an annual list of recommended capital improvements, costs and plans for implementation to the County Representative by July 1st of each year.

16. Provide disposal of dewatered sludge pursuant to Exhibit 3 Operation and Maintenance Standards.

17. Immediately notify the Contract Operations Administrator or duly appointed Fulton County representative of any activity, problem or circumstance that threatens or affects the facilities or health, safety or welfare of citizens. This notification must be made via telephone to the Contract Operations Administrator or duly appointed Fulton County representative immediately, and must be followed up with a detailed written report to the Contract Operations Administrator or duly appointed representative within 24 hours of the occurrence. Voice mail/Email are not acceptable.

18. Coordinate with engineers and construction managers on capital improvement projects and operate the facility to accommodate capital improvement work without any delay.

SECTION 60.2 **Details of Scope of Work**

The Scope of Work includes the complete management, operations, maintenance and repair of the wastewater treatment facilities and pump stations. The selected Contractor shall provide the following:

H. All qualified operation, maintenance and management personnel (on-site, technical support, administrative, corporate, corporate support, professional services etc)
I. All associated salaries and benefits

J. All materials and consumables, including, but not limited to:

12. Chemicals
13. Fuel
14. Lubricants
15. Spare parts
16. Process laboratory supplies, reagents, and associated materials
17. Tools and maintenance equipments
18. Office supplies
19. Office equipment and furniture
20. Computer hardware and software
21. All vehicles and all rolling stock required for the project
22. All safety equipments

K. Services required for the management, operation and maintenance of the treatment facilities and pump stations. These services will include, but are not limited to:

14. Management
15. Process laboratory control sampling and testing
16. Sampling for permit required analyses
17. Computer system operation, maintenance and document management
18. Janitorial and custodial services
19. Upkeep and maintenance of all facility buildings
20. Purchasing

21. Site security
22. Grounds maintenance and landscaping services
23. Calibration and maintenance of all the flow meters
24. Sludge dewatering and disposal
25. Pump Station cleaning and sediment/grease disposal
26. Grit/ refuse disposal.

L. Methods/processes to achieve the effluent quality required under the Performance Guarantees in Exhibit 2.

M. Maintenance of all structures of Managed Assets pursuant to Exhibit 3 which includes:

7. Piping and equipment at the treatment facilities pump stations and managed assets.
8. Mechanical systems at the treatment facilities pump stations and managed assets.
9. Electrical systems at the treatment facilities pump stations and managed assets.
10. HVAC systems at the treatment facilities pump stations
11. All buildings and structures at the treatment facilities and pump stations.
12. All communication, computer and security systems at the treatment facilities pump stations.

N. Provision of utilities, including, but not limited to:

6. Telephone systems and Telephone service including local and distance services
7. Water
8. Energy
9. Natural Gas
10. Cable and Satellite

SECTION 60.3 **Operational Standards:**

The Contractor will be required to provide uninterrupted, economical sanitary sewage treatment; to prevent bypass or overflow of sanitary sewage from the transmission system or Water Reclamation Facilities; to handle and treat the sanitary sewage in accordance with the requirements of the Permit to Discharge and any other applicable regulation or ordinance; and to operate the Water

Reclamation Facilities and Pump Stations to optimize life cycle time and service life.

All proposals must include standards for Water Reclamation Facilities (WRF) Quality Control services sufficient to meet all criteria set forth in this proposal. The Contractor shall provide all services necessary to meet the requirements of the Permit to Discharge; Georgia Department of Natural Resources, Environmental Protection Division (GDNR-EPD); current Consent Orders from the EPD and the U.S. Environmental Protection Agency (EPA), and any other applicable Local, State or Federal guidelines, rules, regulations, code and/or laws.

SECTION 60.4 **Protocol, Policies and Standard Operating Procedures**

The Contractor shall keep the County informed at all times of the status of major projects; non-routine tasks/activities, and major decisions as they are made, and as they relate to the execution of contracted services.

The Contractor shall establish and implement written protocol, policies and procedures that comply with all standards and requirements of the contract, and shall conduct an annual review of its protocol, policies and procedures. All such protocol, policies and procedures shall address the Water Reclamation Facilities and Pump Stations; the management staff, the technical staff and the administrative staff.

A draft of the protocol, policies and procedures shall be submitted to the County for review and approval within sixty (60) days after Notice of the Award and must be implemented within 30 days after the County's approval.

A yearly revision shall be due on 31st of January.

SECTION 60.5 **Continued Educational Training**

The Contractor must provide continued education in modern wastewater treatment plant operation, maintenance and safety standards as described in Exhibit 4.

SECTION 60.6 **Emergency Services**

The Contractor will be responsible for developing Emergency Response and Disaster Preparedness Plan for the Water Reclamation Facilities and Pump Stations pursuant to Exhibit 4.

All emergencies will be reported verbally as per Section 60.1.17 of this section, with particular attention to minimize the elapsed time between the call for assistance and the arrival of trained personnel and the need for corrective action. A written report of any emergency situations shall be submitted to the County Contract Operations Administrator or duly appointed representative within five (5) working days of the incident.

In the event of any personal injury accident in connection with the contract, the Contractor must verbally notify the County immediately and provide all known facts regarding the accident. A written report of any personal injury will be submitted to County Contract Operations Administrator within five (5) working days of the incident per Section 60.1.17 of this section.

The Contractor shall notify Fulton County and all other required Authorities when the quality of the discharge exceeds the discharge limitations as stated in the NPDES Authorization to Discharge or when a sewage spill occurs, and will be responsible for all notifications and all related cost including subsequent monitoring cost. Notification of violation of discharge limitations or sewage spills shall be within one (1) hour of knowledge by the Contractor. Contractor shall review all current permits and consent orders for current monitoring requirements.

SECTION 60.7 **Job Safety**

Contractor shall develop a safety plan and initiate a program to comply with all provisions applicable to the Occupational Safety and Health Act, as enforced by the U.S. Department of Labor and to require all employees to comply with the law and all regulatory State and/or local laws affecting job safety.

SECTION 60.8 **Waste**

The Contractor shall be responsible for transporting excess bio-solid from the Little River WRF to the Big Creek WRF for dewatering; and transporting dewatered and/or non-dewatered bio-solids from the Big Creek WRF, Johns

Creek WRF and Johns Creek Environment Campus (JCEC) for disposal in accordance with applicable regulations and requirements.

The Contractor shall be responsible for transporting refuse, grit, screenings, surplus equipments and other non hazardous wastes from all the WRFs and the pump stations for disposal in accordance with Federal, State and local applicable regulations and requirements.

The Contractor shall be responsible for the proper storage, removal and disposal of all hazardous waste generated during the treatment and /or operation and maintenance of the facilities. Such removal and disposal shall be in accordance with all applicable local, State and Federal rules, regulations and code. The Contractor shall maintain records on all hazardous materials, chemicals and waste products. The records shall contain the material's origins, use, transportation and ultimate distribution and disposal. The Contractor shall provide training and management in accordance with laws and EPA regulations for employees in contact with and/or handling hazardous materials.

The Contractor shall hold the County free of liability for any and all actions relating to waste disposal.

SECTION 60.9 **Laboratory Analyses**

The Contractor shall be responsible for daily analyses performed for the purpose of process control. The County will be responsible for laboratory analysis to determine if WRFs are operating in compliance with NPDES Permits. The Contractor will collect all samples for NPDES permit compliance monitoring.

The Contractor shall be responsible for Storm Water sampling and testing pursuant to General Storm Water permit, MS4 plan and /or any regulatory requirements.

SECTION 60.10 **Fines**

Contractor is responsible for any penalties, fines, suits, etc. as a result of the non compliance of permits, spills and applicable government regulations except to the extent as defined as an Uncontrollable Circumstance.

SECTION 60.11 **Professional/Public Relations**

The Contactor shall be required to develop a Public Relations Plan within 45 days of commencement date.

The Contractor must maintain professional, responsible and responsive working relationship with the staff of Fulton County, State and Federal regulatory authorities; suppliers of materials, utilities and services; the media and the public. The Contractor is required to participate in Public Meetings as required by the County.

The Contractor shall be required to be a Corporate Member of the Georgia Association of Water professionals to foster professional relationships within the industry.

SECTION 60.12 **Sludge Hauling and Dewatering Operations**

The Contractor will be responsible for management and payment of the solids dewatering, transportation and disposal operation at all treatment facilities in accordance with applicable regulations and requirements. The Contractor will be required to develop reports regarding solids removal pursuant to all regulatory permits/regulations.

SECTION 60.13 **Security**

The Contractor shall be responsible for security for all facilities and maintain security systems including system hardware and software. Upgrades to the system shall be installed as necessary or as desired by the County to ensure proper levels of service. The Contractor shall be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism, theft, or malicious mischief of third parties.

The Contractor shall give immediate notice of losses, take timely steps to mitigate extent of damages, i.e. preserve undamaged property, emergency measures; and present to Fulton County an estimated damage repair costs within 30 days.

SECTION 60.14 **Maintenance**

The Contractor shall preserve the Managed Assets and insure long-term reliability and efficiency of the facilities pursuant to Exhibit 3.

The County has allocated a significant maintenance allowance for each year of the Agreement. Repair and replacement expenditures will be funded by the Contractor for all expenses for a single asset per occurrence totaling less than $25,000 dollars. The County through the annual maintenance allowance will fund repair and replacement expenses of more than $25,000 dollars for a single asset per occurrence after $25,000 deductible.

Contractor should take into account the level of commitment envisioned by the County to undertake such repair and replacements. Contractors shall address in their proposals how they intend to apply these budgeted amounts and how such budgets will be used to improve the Facilities.

All maintenance shall be in accordance with the proposed O&M plan and must reflect the provisions for maintenance set forth in Exhibit 3 & 4.

SECTION 60.15 **Odor Control**

The Contractor shall operate and maintain the Managed Assets in a manner that minimizes odors at Managed Assets boundaries and so that odors carried off-site do not prompt public complaints. The Contractor's goal shall be to achieve zero odor complaints for the Managed Assets. The Contractor shall comply with standards listed in Exhibit 3 and guarantees pursuant to Exhibit 2.

SECTION 60.16 **Agreement**

Upon award and formal execution of an Agreement, the Contractor(s) will be bound to the terms and conditions and will perform the Services described in the Agreement. Contractor should understand throughout the duration of the term of agreement, adjustments to the Scope of Services may be necessary.

SECTION 60.17 **Independent Contractor, Subcontractor/Sub-Consultant**

1. Contractor will perform under an awarded Agreement as an independent entity and not as an agent or employee of the County.
2. Contractor must secure written authorization from the County before awarding any contract in excess of $50,000 to any Subcontractor/Sub- consultant. Contractor will be responsible for all aspects of performance under the Agreement and shall exercise the appropriate degree of control of, and accepts responsibility for, the performance of all of its Subcontractors/Sub-consultants and Suppliers.
3. If Contractor deems any Subcontractors/Sub-consultants, e.g. sludge hauling, process chemicals, pump stations/plant maintenance, essential to the execution of the Services requested by this RFP, Contractor must: [i] specifically identify those Subcontractors/Sub-consultants in its response to this RFP by name, address, telephone and facsimile number and individual contact; [ii] provide a detailed description of the portion of the Services each Subcontractor/Sub-consultant will perform; and [iii] provide a detailed explanation as to why each particular Subcontractor/Sub-consultant is essential to this Services.
4. Even if an award of contract is authorized by County, Contractor will be fully responsible for the performance of that Subcontractor/Sub- consultant in every respect. In the event of a default or defective performance by any Subcontractor/Sub-consultant, Contractor is obligated to manage the Services, cure any defects and replace that Subcontractor/Sub-consultant if necessary, at no additional cost to the County.
5. No contractual relationship between the County and any Contractor's Subcontractor/Sub-consultant is created by an authorization of award of the County for use under the Agreement

SECTION 60.18 **Transition of Service**

Proposal shall include a transition plan describing how the Contractor intends to assume the Operation & Maintenance of the facilities. Fulton County anticipates

acceptance of JCEC in November 2009. The successful proposer shall be required to commence services pursuant to agreement by October 1, 2009 at JCEC only. This thirty (30) days transition period is designed to familiarize Contractor with the facility to ensure smooth and uninterrupted transition from Design/Build Contractor. Full O & M should then commence in November 2009.

The successful Contractor shall provide staff onsite to all other Managed assets on April 1, 2010 for two months transition and familiarize with facilities for complete transition on June 1, 2010.

Proposers are required to provide cost proposals for the Johns Creek Environmental Campus (JCEC) transition period, which is anticipated to begin November 2009 until May 31, 2010. Fulton County anticipates awarding contract services initially for the transition period only with award of entire scope of work for the managed Assets to be awarded effective June 1, 2010. Johns Creek Environmental Campus (JCEC) has JCEC Influent Pump Station onsite and it is part of JCEC. The successful Contractor needs to provide an initial transition plan to demonstrate how the Contractor intends to ensure a smooth and uninterrupted transition from the Design/Build contractor to Contractors' team.

The Transition Plan shall also include an Exit Plan in the event of non-renewal or termination of the contract. See Exhibit 6.

SECTION 60.19 **Licenses, Permits, Taxes**.

The price or prices for the Services requested by this RFP shall include full compensation for all licenses, permits and taxes that the Contractor is or may be required to pay to complete this Service. The County is a tax-exempt entity.

SECTION 60.20 **Termination Of Agreement**

The County shall have the right to terminate any Agreement to be made hereunder for its convenience by giving the Contractor 120 days prior Written Notice of its election to do so and by specifying the effective date of such termination. Further, provided an Agreement is awarded, if the Contractor fails to fulfill any of its obligations, the Contractor may, by giving Written Notice to the Contractor, terminate the Agreement with said Contractor for such default. If this Agreement is so terminated, the Contractor will be paid for Services satisfactorily completed.

SECTION 60.21 **Termination for Default**

Reason for Default:

A. Performs Services that fails to conform to the technical requirements of the Agreement;

B. Fails to make progress so as to endanger performance of the Agreement;

C. Abandons or refuses to proceed with any of the Services, including any
changes to the Services made according to Agreement;

D. Fails to comply with any term of the Agreement;

E. Fails to comply with the social programs of the County, including, but not limited to, its Equal Employment Opportunity and Equal Business Opportunity programs;

F. Engages in behavior that is dishonest, fraudulent or constitutes a conflict of interest with Contractor's obligations under the Agreement; or reasonable grounds for insecurity arise concerning Contractor's performance.

SECTION 60.22 **Notice of Default.**

If Contractor defaults, the County will notify Contractor in writing of the nature of the default. If Contractor does not cure that default within fifteen (15) calendar days from receipt of the notice, the County may, by Written Notice to Contractor and without notice to Contractor's sureties, if any, terminate in whole or in part, Contractor's right to proceed with the Services and the County may prosecute the Services to completion by contract of by any other reasonable method deemed expedient by the County. The County may take possession of and utilize any data, designs, licenses, equipment, materials, plan, tools, and property of any kind

furnished by the Contractor and necessary to complete the Services.

SECTION 60.23 **Immediate Termination.**

Agreement shall immediately terminate, without the requirement of any action on the County's part, if the Contractor:

A. voluntarily consents to an order for relief by filing a petition for relief under the laws of the United States codified as Title 11 of the United States Code;

B. seeks, consents to or does not consent the appointment of a receiver, custodian or trustee for itself or for all or any part of its property;

C. files a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws or any State or other competent jurisdiction;

D. admits in writing that it is generally not paying its debts as those debts become due;

E. gives notice to any governmental body of insolvency or pending insolvency, or suspends operations;

F. becomes insolvent as that term is defined under applicable fraudulent transfer or conveyance laws; or

G. makes an assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

SECTION 60.24 **Excess Re-procurement Costs.**

Contractor and its sureties, if any, will be liable for all costs in excess of the Agreement price for all terminated Services reasonably and necessarily incurred by the County in the

completion of the Services, including cost of administration of any contract awarded to others for completion.

SECTION 60.25 **Termination for Convenience**

Fulton County may terminate the O&M Contract for any reason by giving 120 days prior written notice to the Contractor.

SECTION 60.26 **Transition Period after Termination or Expiration of O&M Contract.**

If the O&M Contract is terminated or not renewed, all services shall continue to be provided by the Contractor during a transitional period of up to 12 months, as directed by County. During the transitional period, the terms and conditions of the O&M Contract will apply.

SECTION 60.27 **Professional Responsibility**

A. Contractor shall secure at its own expenses, all personnel required to perform all Services to be completed under the Agreement.

B. All Services required hereunder shall be performed by the Contractor or under the direct supervision of Contractor. All personnel engaged in the Services by the Contractor shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such Services.

- None of the Work or Services covered by this Agreement shall be transferred, assigned, or subcontracted by Contractor without the prior written consent of the County.

SECTION 60.28 **Changes In Scope Of Services**

The County may, from time to time, request changes in the Scope of Services to be performed by Contractor hereunder. No such change, including any increase or decrease in the amount of the compensation, which may be mutually agreed upon by and between the County and

Contractor, shall be effective and enforceable until and unless a written amendment to this Agreement has been executed by both parties and attached hereto

SECTION 60.29 **Reports And Documentation**

All reports, information, data, or other documents given to, prepared by or assembled by the Contractor under this Agreement is the property of the County and shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the County's designated contract administrator. For the duration of this Agreement, all records generated by the Contractor in the course of performing Services accordance with this Agreement shall be open to inspection and audit by County, or any person designated by County. Upon request of County, Contractor shall provide all records and information in a format required by County within reasonable time but not later than five (5 days), except as requested under the Open Record Act as referred to in Section 60.31. Except as required by law, Contractor's obligations hereunder with respect to confidential information shall terminate with respect to any particular portion of the confidential information if and when: (i) it is in the public domain at the time of its communication; (ii) it enters the public domain through no fault of Contractor subsequent to the time of the County's communication to Contractor; (iii) it is communicated by the County to a third party free of any obligation of confidence; or (iv) Contractor has the County's written permission.

SECTION 60.30 **Records And Audit**

Contractor and its Subcontractors shall be responsible for maintaining accurate records of all correspondence, documents, accounting records and other relative evidence. These records shall remain on file for a minimum of five (5) years. All records shall be made available to the County for review upon request. County may examine and request copy, at all reasonable times, with advance notification, of those records and accounts. Contractor shall maintain all records in a central location on plants. County shall conduct O&M Audit as described in Exhibit 3.

SECTION 60.31 **Open Records Act**

The Georgia Open Records Act, O,C,G.A. Section 50-18-70 et seq., applies to this Agreement. The Contractor acknowledges that any documents or computerized data provided to the County by the Contractor may be subject to the release to the public. The Contractor also acknowledges that documents and computerized data created or held by the Contractor in relation to the Agreement may be subject to release to the public, to include documents turned over to the County. The Contractor shall cooperate with and provide assistance to the County in rapidly responding to Open Records Act requests. The Contractor shall notify the County of any Open Records Act requests no later than 24 hours following receipt of any such requests by the Contractor. The Contractor shall promptly comply the instructions or requests of the County in relation to responding to Open Records Act requests.

SECTION 60.32 **Commercial Activities**

Neither Contractor nor its employees may establish any commercial activity or issue concessions or permits of any kind to third parties for establishing activities at the County**.**

SECTION 60.33 **Decreases In Scope Of Services**

County may decrease the Services during the term or any extension or renewal of the Agreement. In the event County decreases the scope of any Services, County will provide Contractor a minimum of thirty (30) days prior written notice, describing in that notice the specific Services decreased. Upon notification of a decrease in any Services, Contractor shall:

A. Immediately discontinue the decreased Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the decreased Services;

a. Inventory, maintain and turn over to County all data, information, documents, work product and property furnished by Contractor or provided by County for performance of the decreased services.

b. Cooperate with the County in the transfer of data, information, documents, work product, and property and disposition of decreased Services in progress so as to mitigate damages;

c. Comply with other reasonable requests from County regarding the decreased Services

d. Continue to perform, in accordance with all of the terms and conditions of this Agreement, that portion of the Services remaining

e. Decrease cost to the County proportionate to the decrease in scope of the service

SECTION 60.34 **Maintenance Allowance**

The County shall fund a County held account for each contract year in the amount of $1,700,000.00, which fund shall be available to the County and to be used by County for payment to the Contractor for the work directed by the County as it determines in its sole discretion.

The Contractor shall not have any right to any funds in such account.
The maintenance allowance shall be used for the repair and/or replacement exceeding $25,000.00 for the following managed assets:

MAINTENANCE ALLOWANCE

Managed Assets

- Plants O&M $1,200,000
- Pump Stations O&M $ 500,000

SECTION 60.35 **Contingency Allowance**

The County shall fund a County held account for each contract year in the amount of $500,000.00 which fund shall be available to the County to pay County share of the costs of uncontrollable Circumstances and to be used by County for payment to the Contractor for the work other than contract services determined by the County in its sole discretion. The Contractor shall not have any right to any funds in such

SECTION 60.36 **FULTON COUNTY WILL BE RESPONSIBLE FOR THE FOLLOWING:**

1. Provide all land, installed equipment, capital improvements, building, Structures, and facilities under its ownership and presently located at the facility sites and all process equipment as specified in the Vendor Information Package. All such item shall be and remain the property of the County. Any and all equipment installed and provided by Fulton County at the beginning of the agreement remains the property of Fulton County.

2. Obtain and maintain existing easements, licenses, and permits.

3. Make capital expenditures for expansion, upgrade, and replacement of Facilities. (Contractor will assist in determining the necessary cost for expenditures, when required.)

4. Maintain the sewer lines to the sites and to other jurisdictions so as to provide necessary transport of wastewater.

5. Perform all functions and retain all responsibilities and obligations related to the sites not expressly assumed by the Contractor.

6. Have title to and right to inspect and copy operation, maintenance, laboratory records, and other related records to include any electronic records developed by the successful Contractor in performance of the Contract.

VI. PROJECT DELIVERABLES

Article 61

	PLAN	DUE DATE
1.	Customer Service Plan	before commencement date
2.	Emergency Response & Disaster Preparedness Plan	before commencement date
3.	Transition Plan	10days after the award of the Contract
4.	Staffing Plan	within 10days after the award of the contract
5.	Training Plan	60 days after the contract date
6.	Operations and Maintenance Plan	60 days after commencement date
7.	Safety & Security Plan	30 days after Contract date
8.	Public Education/Outreach Plan	60 days after commencement date
9.	Equipment Performance Testing Plan	180 days after commencement date
10.	CMMS/ OPSW in software	within 15 days of the award of the contract
11.	Exit Transition Plan	180 days after commencement date

VII. COMPENSATION

ARTICLE 62. SERVICE FEE AND OTHER PAYMENTS

SECTION 62.a). **SERVICE FEE GENERALLY**. From and after the Commencement Date, the County shall pay the Service Fee to the Operator as compensation for the Operator's performing the Management Services under this Service Contract. The Service Fee shall be calculated according to this Article. The amount of certain components of the Service Fee will vary depending upon (i) the Influent parameters designated by the County upon which the Base Fee is determined, as described herein.

SECTION 62.b). **SERVICE FEE FORMULA**. The Service Fee shall be calculated in accordance with the following formula:

ASF = BF + RC ± EI

Where

ASF	=	Annual Service Fee
BF	=	Base Fee
RC	=	Reimbursable Costs
EI	=	Extraordinary Items

Each component of the Service Fee shall be determined in accordance with this Article

SECTION 62.c). **BASE FEE COMPONENTS**. i) Formula. The Base Fee shall be calculated in accordance with the following formula:

BF = FC + VC

Where

BF	=	Base Fee
FC	=	Fixed Component
VC	=	Variable Component

ii) Basis of Fixed Component. The Fixed Component of the Base Fee in any Contract Year shall be one of the fixed amounts set forth in Exhibit 9, Price Proposal Form. Basis of Variable Component. The Variable Component of the Base Fee has been established on a unit basis as set forth in Exhibit 9, Price Proposal Form to compensate the Operator for variations in the Influent loadings in excess of the loadings applicable.

iii) Influent Flow & Characteristics Defined. The Influent Flow & Characteristics are defined in Exhibit 9, Price Proposal Form. Total Suspended Solids (TSS) and Carbonaceous Biological Oxygen Demand ($CBOD_5$), Phosphate, Ammonia, sludge are

each expressed as annual average pounds per day for the Contract Year and Flow (MGD) is expressed as annual average MGD for the Contract Year for all the facilities.

iv) Fixed Component : The Fixed Component of the Service Fee applicable to Managed Assets is set forth in Exhibit 9, Price Proposal Form.

v) Annual Adjustment of Fixed Component. The Fixed Component for the first Contract Year shall be the amount specified in Exhibit 9, Price Proposal Form. The Fixed Component for each subsequent Contract Year shall be determined by multiplying (1) the applicable Fixed Component (including each element thereof) for the previous Contract Year, times (2) the Adjustment Factor.

vi) Adjustment Factor. CPI ADJUSTMENT.
The Service Base Fee will be subject to change only due to changes in the scope of services. The CPI Adjustment will be calculated as follows:

As of January 1 (the "Adjustment Date") of each year of the O&M Contract, the Service Base Fee for the year will become an amount equal to the Service Base Fee which was applicable to the immediately preceding year, plus an amount equal to one-hundred percent (100%) of the percentage increase in the Consumer Price Index (the "Index") for All Urban Consumers for the metropolitan Atlanta area, published by the United States Department of Labor Bureau of Labor Statistics during the calendar year preceding the Adjustment Date, multiplied by the Service Base Fee for the preceding year. The percentage increase in the Index will be determined by comparing the Index for the month of December immediately preceding the Adjustment Date to the Index for the month of December of the preceding year. Until such time as the adjustment has been computed, the Operator will continue to receive payment of the Service Base Fee in the amount in effect for the preceding year, as it becomes payable in accordance with the O&M Contract. When computed, the CPI Adjustment will be retroactive to the Adjustment Date and the additional amount due with respect to the Service Base Fee for which it was paid at the preceding year's rate will be paid to the Operator in accordance with the O&M Contract in the month immediately following the month in which the CPI Adjustment for the applicable term is computed. If the Index is discontinued, such other governmental index or method of computation with which it is replaced or which is substantially comparable to the Index will be used. If the Index is revised such that Indexes for the December comparison dates are computed on different base years, the conversion factor published by the government will be used in making the adjustment computation.

SECTION 62.d). **VARIABLE COMPONENT**. i) The Variable Component of the Base Fee shall be amount specified in service fee variable base component as set for in Exhibit 9, Price Proposal Form. The Variable Component of the Base Fee for initial years shall be the amount specified in Exhibit 9, Price Proposal Form. Subsequent contract years variable component of the base fee shall be adjusted pursuant to Service Fee adjustment rate schedule as specified in Exhibit 9, Price Proposal Form.

Flow and Loadings Adjustment Fees. Each of the service fee adjusted schedule for each Contract Year after the initial Contract year shall be determined based upon the Adjustment Factor.

SECTION 62.e). EXTRAORDINARY ITEMS CHARGE OR CREDIT. i) General. 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 County for increased operation, maintenance or other costs incurred on account of the occurrence of an Upset, the receipt of Excessive Influent, or the occurrence of other Uncontrollable Circumstances which are chargeable to the County hereunder, net of any operation, maintenance or other cost savings achieved by the Operator 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 or the benefits of which accrue to the County, under the provisions of this Service Contract, plus (3) any Service Fee reductions due to Operator non-performance 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 Contract.

ii) County Contingency Fund. The County shall fund a County held account each Contract Year in the amount of $500,000.00 which funds shall be available to the County to pay the County's share of the costs of Uncontrollable Circumstances or emergency circumstances and to otherwise be used by the County for payment to the Operator for work other than the Contract Services which is authorized by the County in connection with the Managed Assets and collection system as it determines in its sole discretion. The Operator shall not have any right to any funds in such account under any circumstances nor shall the failure of the County to fund such account in any Contract Year constitute a breach of the County's obligations to the Operator under this Agreement, or provide the Operator with any additional rights or remedies.

SECTION 62.f). BILLING AND PAYMENT. i) Billing. The County shall pay the Service Fee in monthly installments in an amount equal to the sum of one-twelfth of the annual Service fee.

ii) Payment. The Service Fee for each month shall be for the Management Services rendered during the prior month. If the Operator provides the County 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 County may reasonably require to determine the accuracy and appropriateness of the invoice, then the invoice will be paid within 30 days of receipt.

SECTION 62.g). ESTIMATES AND ADJUSTMENTS. i) 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.

ii) Budgeting. For County budgeting purposes, no later than 120 days preceding each Contract Year, the Operator shall provide to the County a written statement setting forth for such Contract Year its reasonable estimate of the Annual Service Fee, each component thereof and the Adjustment Factor. The estimate shall not be binding on the Operator but shall establish the basis for monthly billing for such Contract Year, subject to annual settlement pursuant to this Article.

iii) Adjustment to Service Fee. If any adjustment to the Service Fee is required pursuant to any express provision of this Service Contract, 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 Contract, any request for adjustment of the Service Fee hereunder shall be accepted or rejected by the party receiving the request within 30 days of receipt. If the receiving party does not notify the requesting party of its rejection and the reasons therefor within such 30 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.

SECTION 62.h). ANNUAL SETTLEMENT. Within 45 days after the end of each Contract Year, the Operator shall provide to the County an annual settlement statement (the "Annual Settlement Statement") setting forth the actual Annual Service Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the County with respect to such Contract Year. The Annual Settlement Statement shall include the cost allocation information pertaining to the Participating Communities required by subsection 50.5(H). The County or the Operator, 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 Operator of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Operator shall file with the County an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

SECTION 62.i). BILLING STATEMENT DISPUTES. If the County disputes any amount billed by the Operator, the County may either (1) pay the disputed amount when otherwise due, and provide the Operator with a written objection indicating the amount that is being disputed and providing all reasons then known to the County for its objection to or disagreement with such amount, or (2) withhold payment of the disputed amount and provide the Operator with written objection as aforesaid within the time when such amount would otherwise have been payable. When any billing dispute is finally resolved, if payment by the County to the Operator of amounts withheld or reimbursement to the County by the Operator of amounts paid under protest is required, such payment or reimbursement will be made within 30 days of the date of resolution, with interest at the Overdue Rate.

SECTION 62.j). COMPLIANCE WITH INTERNAL REVENUE SERVICE REV. PROC. 97-13. Any provision hereof to the contrary notwithstanding, the County and the Operator agree that the County shall be under no obligation to, and shall not, pay compensation for services to the Operator for any Contract Year, if such payment, or any portion thereof, would result in any non-compliance with IRS Rev. Proc. 97-13, including, without limitation, less than 80% of the Operator's compensation for services for such Contract Year being based on a periodic fixed fee or would result in any portion of the Operator's compensation being based on net profit, as such terms are defined in Rev. Proc. 97-13. The County and the Operator further agree that any such payment or portion thereof that is not made by virtue of the preceding sentence shall be paid to the Operator, without interest, during the next annual period in which such payment will not result in less than 80% of the Operator'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 County and the Operator that this Service Contract 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 County within the meaning and intent of Rev. Proc. 97-13.

SECTION 62.k). TAX EXEMPTION OF MANAGED ASSETS. It is the intent of the parties that the Managed Assets shall continue to be municipally owned property and not subject to property taxation. The parties acknowledge that the Annual Service Fee is based upon the assumption that all materials and supplies acquired by the Operator or any Subcontractor in connection with the Management Contract are subject to State sales and use taxes. In the event (i) any such construction materials and supplies can legally and permissibly be acquired by the Operator or any Subcontractor in connection with the Management Contract or any Capital Modification in accordance with Applicable Law without the payment of State sales or use taxes, and does not pay such taxes, or, (ii) an exemption from the payment of such sales or use taxes is available to the Operator under Applicable Law and the Operator fails to take advantage of such exemption, then in either case, the County shall be entitled to a credit from the Annual Service Fee in the amount of the sales or use taxes which the Operator legally and permissibly did not pay or in the amount to which such exemption would have been applicable under Applicable Law.

VIII. EXHIBIT F: OFFICE OF CONTRACT COMPLIANCE FORMS

IX. EXHIBIT G: INSURANCE AND RISK MANAGEMENT FORMS

X. EXHIBITS

EXHIBITS

Exhibit 1	**Required Submittal Check List**
Exhibit 2	**Performance Guarantees**
Exhibit 3	**Operation and Maintenance Standards**
Exhibit 4	**Facilities Plans**
Exhibit 5	**Sampling and Testing Standards**
Exhibit 6	**Exit Transition Plan**
Exhibit 7	**Septage Handling Protocol**
Exhibit 8	**Municipal/Industrial Pretreatment Program**
Exhibit 9	**Price Proposal Forms**
Exhibit 10	**Job Specifications**
Exhibit 11	**Equipment and Chemical Inventory**
Exhibit 12	**Building, Ground Maintenance and Painting**
Exhibit13	**NPDES Permits, Storm Water Permits, Sewer Use Ordinance, Fulton County Business plan, Last 12 months energy consumptions, Minimum Equipment standards on CD**
Exhibit 14	**Public Education and Community Out Reach Plan**
Exhibit 15	**Minimum Financial Criteria**
Exhibit 16	**Proposal Security**
Exhibit 17	**Payment Bond**

EXHIBIT 1

Required Proposal Submittal Check List for Request to Proposal (RFP)

The following submittals shall be completed and submitted with each proposal (see table below "Required Bid Submittal Check List."). **Please check to make sure that the required submittals are in the envelope before it is sealed. Failure to submit all required submittals may deem your proposal non-responsive.**

Submit one (1) Original proposal and ____ ( ) **complete** copies of the Original Proposal including all required documents.

It	Required Proposal Submittal Check List	Check ()
1	One (1) Proposal marked **"Original"**, _____( ) copies	
2	Technical Proposal	
3	Cost Proposal (submitted in a separate sealed envelope)	
4	Acknowledgement of each Addendum	
5	Technical Evaluation Factors • Executive Summary • Qualifications of Key Personnel • Relevant Project Experience • Financial Information (1) Annual Report and financial statement for last 3 yrs, income statements, balance sheets, change in financial position. (2) Latest quarterly financial report, description of material, change in financial position since last the last annual report. (3) Most recent Dun & Bradstreet and/or Value Line Reports. (4) Documentation and discussion of the financial condition and capability of the Proposer(s). (5) Statement regarding Proposer's team filing for bankruptcy, insolvency, reorganization, receivership, moratorium, or assignment of benefits of creditors. a. Availability of Key Personnel b. Location of Firm	
6	Purchasing Forms Form A - Certificate Regarding Debarment Form B - Certificate of Acceptance of Request for Bid/Proposal Requirements Form C - Non-Collusion Affidavit of Prime Bidder/Offeror Form D - Disclosure Form & Questionnaire Form E - Declaration of Employee-Number Categories Form F - Georgia Security and Immigration Contractor Affidavit and Agreement Form G - Georgia Security and Immigration Subcontractor Affidavit	
7	Office of Contract Compliance Requirements Exhibit A - Promise of Non-Discrimination Exhibit B - Employment Record Exhibit C - Schedule of Intended Subcontractor Utilization Exhibit D - Letter of Intent to Perform as Subcontractor Exhibit E - Declaration Regarding Subcontractor Practices Exhibit F - Joint Venture Disclosure Affidavit Exhibit G - Prime Contractor/Subcontractor Utilization Report Equal Business Opportunity Plan (EBO Plan)	
8	Risk Management Insurance Provisions Form	
9	***Any additional requirements that the User Department would like to include should be added to this check list.***	

EXHIBIT 2

PERFORMANCE GUARANTEES

2.1 RESPONSIBILITIES FOR PERFORMANCE GUARANTEES

The Contractor shall be responsible for meeting all NPDES Permit Requirements and Federal, State and local Laws & Ordinances relating to the Operation & Maintenance of the Managed Assets. The Contractor shall operate, maintain, and manage the Plants and Pump Stations to insure there are no odor complaints. Failure to meet the Performance Guarantees may constitute a breach of obligations of the Service Contract and may be subject to penalties pursuant to the Terms and Condition of the Service Contract.

No determination or other action taken by the County pursuant to this Section shall be subject to judicial challenge.

2.2 WATER RECLAMATION FACILITIES PERFORMANCE GUARANTEES

2.2.1 Plants Effluent Performance Guarantees

The Contractor shall operate the facilities in a manner that will ensure full compliance with all NPDES Permit requirements

EFFLUENT GUARANTEE:

A. Applicable Law Limits. Except to the extent relieved as provided in sub Section 52.6 of the Contract, the Contractor shall operate the Managed Assets on a continuous, uninterrupted 24-hour per day, 7-day per week, 52 weeks per

year basis so as to receive and treat all Influent flowing to or received at the Plants and discharge Effluent in compliance with the requirements of Applicable Law.

B. Service Fee Reductions for Permit and Reporting Violations: Contractor shall be responsible for all regulatory penalties and cost related to violations. Except to the extent the Contractor is relieved as provided in Section 52.6, the Service Fee shall be reduced in the amounts set forth below for the Permit Violations and reporting violations indicated:

(1) For each violation of an NPDES Permit Requirement: $5000

(2) For each unauthorized Influent discharge due to pump station failure: $5,000.

(3) For each pass-through of pollutants which causes or has the potential to cause a water quality problem (such as fish kills or oil sheens) or health problems (such as beach closings, fishing bans or other restrictions on beneficial uses): $15,000.

(4) For each failure of the Contractor to report any Permit Violation/ Spill: $1000.

(5) Contract shall be responsible for (a) all the fines, regulatory penalties and other related cost for the first offense, (b) fines, regulatory penalties and related cost for second offense along with 5% of the total service fee reduction for three consecutive months; (c) fine, regulatory penalties and notice of default for the third offence.

C. Adjustment of Service Fee Reduction. All dollar amounts specified in this Section pertain to the Contract Year ending on December 31, 2008, and shall be adjusted for each subsequent Contract Year by multiplying the amount applicable in the prior Contract Year by the Adjustment Factor (CPI).

i) Indemnity for Loss-and-Expense from Non-Complying Effluent. In the event that any Effluent discharged by the Contractor fails to comply with the requirements of subsections (A) of this Section ("Non-Complying Effluent"), except to the extent such failure of compliance is caused by an Uncontrollable Circumstance, the Contractor shall indemnify, defend and hold harmless the County and the County Indemnitees in accordance with ARTICLE 22 from the Loss-and-Expense of any tort, environmental or other liability resulting from the discharge of such Non-Complying Effluent. 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 person from exposure to such Non-Complying Effluent based on any theory of recovery, including theories of toxic tort or environmental impairment. The Loss-and-Expense to which the indemnity provided in this Section extends shall not be construed to constitute consequential or other damages as set forth in Section 6.8, as to which both parties have waived any rights of recovery.

ii) Change in Law Affecting Effluent. The parties acknowledge that a Change in Law may affect Effluent standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Contract Date. In the event a Change in Law occurs, the Contractor shall not be entitled to performance relief or additional compensation hereunder unless (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Effluent characteristic or parameter which is more stringent or burdensome to comply with than the Contract Standards applicable to such characteristic or parameter, or requires equipment or processes not then in place or practiced at the Managed Assets, and (2) the Contractor is unable, after taking all mitigation measures required under Sub Section 21.2 of the Contract with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation.

D. Failure to Meet Effluent Requirements. Failure to meet NPDES Effluent Requirements for two consecutive months constitute an event of default by the Contractor unless cause by unconditional circumstances or County fault.

2.2.2 Odor Control

The Odor Control Guarantee is comprised of an equipment component and a fence line component. Each component shall be satisfied at all times. In general, the Contractor shall operate, maintain, and repair the Managed Assets to minimize off-site impacts. Odor complaints related to WRF shall be considered a Breach of Responsibilities pursuant to Exhibit 2.1. Contractor shall operate, maintain, and repair the Managed Assets to meet Hydrogen sulfide concentration of 5 D/T, or other criteria required by the State, or other controlling regulatory agency at the site boundary. In no case Hydrogen sulfide concentration shall exceed 20 ppb at facilities fence line.

2.2.2.1 Equipment Odor Control

Specific requirements of the equipment components are as follows:

- Collect and treat odorous air to remove a minimum of 99.95 percent of hydrogen sulfide, with performance to be determined by comparison of concentration of H_2S in the inlet and outlet of the odor treatment equipment, as measured in parts per billion (ppb) per equipment design.

- Ventilate and treat odor of enclosed non-manned tank headspace, channels and/or within equipment enclosures at a rage of either 6 air changes per hour or sufficient to maintain a negative pressure within these spaces of at least 0.10 inches water column (not to exceed 0.25 inches) per design.

- Ventilate and treat odor in process areas where personnel perform operations and maintenance duties to provide safe working environment .

- Ensure all odor control equipment and systems are operated and maintained per its manufactures O & M manual at all time.

- Ensure Continuous monitor and data recording.

- Sludge Hauling – Sludge trailer shall not stored onsite in a manner that causes the generation of odor within the facilities.

2.2.2.2 Housekeeping

Housekeeping shall be maintained not to contribute any odor. All chemicals and sludge spills shall be cleaned in a timely manner. All trash and grit shall be removed to minimize the likelihood of the odor generation.

2.2.2.3 Pump Station Odor Guarantees

The Contractor shall operate, maintain, and manage the Pump Stations to insure there are no odor complaints. In the event there are complaints, the Contractor shall take all steps necessary to eliminate the odor and odor complaints.

2.2.2.4 Odor Citation & Penalty

The County shall have right to order citations to Contractor for sustain odor conditions. Service fee shall be reduced by up to $5,000 for first citation order, $5000 to $10,000 for second citation and $10,000 to $20,000 for third. After third odor citation, County shall have the right to terminate the contract for odor.

2.2.2.5 ODOR GUARANTEE & SERVICE FEE REDUCTION

i) Applicable Law Limits. Except to the extent relieved as provided under definition of excessive Influent, in operating the Managed Assets the Contractor shall comply with all limits and requirements established by Applicable Law with respect to odor control.

ii) Contract Limits. In addition to its obligation to comply with odor limits and requirements imposed by Applicable Law and except to the extent relieved as provided in Section 52.6, the Contractor shall operate and maintain the Managed Assets in compliance with the Odor Guarantee as set forth in Exhibit 2. In no event shall there be any odor degradation from the standards achieved by the County prior to the Commencement Date.

iii) Odor Control Practices Report. The Contractor shall submit, as part of the monthly operations report, a monthly odor control practices report to the County which includes: (1) a listing of all odor complaints received during the month, with name, address, and nature of complaint; (2) all investigations conducted and actions taken or planned in response to such complaints; (3) evidence showing compliance with the odor control operating practices required by this Service Contract; (4) the quantity of odor control chemicals used during the month; (5) the duration of time that each load of Residuals remained on the Site after being produced; (6) the health of the microbes in the aeration system components of the Managed Assets; and (7) such other matters pertaining to odor control as the County may require from time to time.

iv) Preventing Recurrence of Violations. With respect to odor particularly, the parties acknowledge the extreme sensitivity of this issue to the general public and the difficulties in establishing meaningful monetary remedies for odor control violations. By making its proposal and by executing this Service Contract, the Contractor assumed the risk that the Managed Assets were capable of controlling odor to a level required by the Contract Standards. Accordingly, in the event the Contractor fails to comply with its odor control obligations set forth or referred to in this Section, and is not excused by Uncontrollable Circumstances or County Fault, the Contractor shall be obligated to implement such changes in operating, maintenance, repair, replacement and management practices as the County shall determine to be necessary, in light of the nature, extent and repetitiveness of such non-compliance, to assure that the odor violation will not recur.

v) Odor Incident. An "Odor Incident" for purposes of this Service Contract is an odor condition of limited duration emanating from the Managed Assets, to the extent not caused by Uncontrollable Circumstances or County Fault, which by its intensity is offensive and repulsive to members of the surrounding community with a normal sense of smell.

vi) Sustained Odor Condition. A "Sustained Odor Condition" for purposes of this Service Contract is an odor condition emanating from the Managed Assets, to the extent not caused by Uncontrollable Circumstances or County Fault, which by its intensity is offensive and repulsive to members of the surrounding community with a normal sense of smell on a sustained basis, either due to (1) the extended duration for a period of at least three (3) consecutive days of a single odor condition, or (2) the repetition of a single odor condition, or occurrence of varied odor conditions, in close succession, provided, however, that no more than one odor condition may be deemed to have occurred in a single day for purposes of determining whether a Sustained Odor Condition has occurred.

vii) Indicator of an Odor Condition. Factors which may be relevant to the determination of an odor condition which may constitute an Odor Incident or a Sustained Odor Condition include without limitation, the number, frequency, legitimacy and forcefulness of odor complaints logged, non-compliance with the requirements contained in Exhibit 2.2.2, the size of the area or magnitude of the number of individuals affected, and the degree of impact on the individuals affected, with consideration being given to the Contractor's recent record of performance of managing the Managed Assets to control odor.

viii) Citations for Odor Incidents. The County shall have the right to issue Odor Citations to the Contractor upon a determination by the County that an Odor Incident or Sustained Odor Condition has occurred. Prior to issuing an Odor Citation, (1) the County shall give written notice of the proposed issuance of the Odor Citation to the Contractor, together with a written statement as to the Managed Asset involved and the basis of the determination.

ix) Service Fee Reductions for Odor Citations. The Service Fee shall be reduced, for each Odor Citation issued by the County in the following amount: (1) for the first Odor Citation, $0 to $5,000; (2) for the second Odor Citation , $5,000 to $10,000; and (3) for the third and each subsequent Odor Citation, $10,000 to $20,000. Reduction in service fee shall remain in place unless Contractor demonstrates compliance for three consecutive months. After the third violation, the contract may be

subject to default provision under the terms and conditions of the contract. The County shall have the right in its discretion to set the Service Fee reduction with such parameters. Each such dollar amount shall be escalating based on the Adjustment Factor.

x) Elimination of Prior Odor Citations. In the event that a period of 270 or more days elapses following the issuance of an Odor Citation without any further Odor Citations being issued by the County, all previous Odor Citations regardless of number shall be eliminated for the purpose of termination and determining Service Fee reductions under subsection (I) of this Section, and the next Odor Citation, if any, which occurs shall be deemed to be the "first Odor Citation" for such termination and Service Fee reduction purposes.

xi) Sustained Odor Condition Determination. The County shall have the right to make a determination that a Sustained Odor Condition has occurred. Prior to making a Sustained Odor Condition Determination, (1) the County shall give written notice of the proposed determination to the Contractor, together with a written statement as to the Managed Asset involved and the basis of the determination.

xii) County Termination Rights Based on Odor Citations or a Sustained Odor Condition Determination. The County shall have the right, but not the obligation, to terminate this Service Contract based upon Odor Conditions or upon a Sustained Odor Condition Determination by the County. The rights of the County to reduce the Service Fee based upon Odor Conditions or to terminate this Service Contract based on upon Odor Conditions or a Sustained Odor Condition Determination as provided in this Section, shall not be exclusive, and the County shall have all of the other remedies provided herein in the event of a breach of this Service Contract relating to odor, including without limitation the right to require the Contractor to prevent the recurrence of odor violations

xiii) Judicial Challenge to County Action. No determination or other action taken by the County pursuant to this Section shall be subject to judicial challenge.

2.3 DEWATERING AND SLUDGE PERFORMANCE GUARANTEES

All Sludge processing shall meet at a minimum 40 CRF Part 503, Subparts C and D, Method 9095 Paint Filter Liquid Test as described in "Test Methods for

Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW-846), and any Georgia regulations applicable to landfill disposal of Sludge.

The dewatering system shall meet the following Performance Guarantee:

- The Contractor will be required to demonstrate periodically that the dewatering system is capable of meeting the dewatering Performance Guarantee of 22% cake solids with Centrifuge and at least 15% with current BFP at Big Creek WRF.

- The Contractor will be required to demonstrate that the dewatering system is achieving the dewatering Performance Guarantee of 95% capture.
- Dewatering Equipment availability must be maintained pursuant to Exhibit 2, Section 2.4 Maintenance Guarantee and Penalty.
- Plant Mass Balance shall not exceed 20% of the design limits.

2.3.1 Non-Compliance Penalties

- Failure to meet solid limits for two consecutive months shall constitute non compliance of performance guarantees.

- Failure to meet the Mass Balance requirements for two consecutive months, twice in six month period may result in reduction in service fee in an amount up to 5% of the total contract amount. The reduction in service fee shall continue until the mass balance limits have been met for three consecutive months.

- Failure to meet the Mass Balance for two consecutive month requirements, three times in twelve months may result in default of terms and conditions of the contract.

2.4 MAINTANANCE GUARANTEE & PENALTY

Contractor shall maintain each Managed Asset to ensure a minimum of 90% equipment availability for each individual system, e.g.: pumping system, bio system, solid dewatering system, disinfectant system and grit removal etc. All the equipments must be repaired/ replaced and placed back in service within 60 days.

- Failure to meet the minimum limits for two consecutive months shall constitute non compliance of performance guarantees.

- Failure to meet the requirements for two consecutive months, twice in six month period may result in reduction in service fee in an amount up to 5% of the total contract amount. The reduction in service fee shall continue until the minimum limits have been met for three consecutive months.

- Failure to meet the limits for two consecutive months, three times in twelve months may result in default of terms and conditions of the contract.

- Failure to comply with in 60 days limit for repair/ replaced may result in reduction of service fee equal to 25% reasonable repair cost for each month equipment is out of service. Failure to restore equipment with in 120 days may result in remediation and reduction in service fee two times of the cost of repair for the equipment out of service. Service reduction fee shall be prorated for the equipment out of service period.

- Failure to clean pump stations wet wells quarterly may result in service fee reduction equal to 150% reasonable cost of cleaning and a minimum of 25-50 mg/l TSS and BOD loadings in variable fee components calculation for each plant.

2.5 Building and Ground Maintenance Guarantee

Contract shall maintain the aesthetic quality of the managed assets. Failure to meet building, lawn maintenance and painting requirements shall constitute a breach in contract and shall result in service fee reduction of $1000 for the first, $ 5,000 for the second and $ 10,000 for the third citation. After third citation, contract may result in default of the terms and conditions of the contract and subject to termination.

2.6 Noise Guarantee

Contract shall maintain the noise level as per design of the Plant & Pump Stations at the Fence line. Failure to meet the noise guarantee shall constitute a Breach of Contract and shall result in service fee reduction of $1,000 for each incident.

EXHIBIT 3

OPERATION AND MAINTENANCE STANDARDS

3.1 GENERAL

The Contractor shall operate, maintain and repair/replace the Managed Assets in accordance with the terms and provisions set forth in the Service Contract. The decision-making shall be based on the following overall objectives:

- Protection of health and welfare
- Protection of the environment
- Preservation of the long-term capability of the Managed
- Maximization of the reliability of the Managed Assets
- Maximization of the Managed Assets operational efficiency
- Minimization of operational costs to the County

3.2 OPERATIONS AND MAINTENANCE

The Contractor shall maintain the Managed Assets in good working order and in a neat and orderly condition. The Contractor shall maintain the aesthetic quality of the Managed Assets as originally constructed and subsequently modified. The Contractor shall maintain on behalf of the County all manufacturers' warranties on new equipment purchased, and shall fully cooperate and assist the County, at the Contractor's sole cost and expense, in enforcing existing equipment warranties and guaranties relative to the Managed Assets.

The Contractor is responsible for the operation and maintenance (O&M) of the Managed Assets components set forth in subsequent sections, which are intended to address the major activities required. The following sections, however, are not intended to include all specific activities necessary for meeting the requirements set forth in the Service Contract. The Contractor shall understand and implement O&M requirements, as stated in the O&M manuals, manufacturer's references, and in accordance with Good Industry Practices. The Managed Assets shall be operated, controlled, and supervised by a qualified manager with supervisory authority capable of responding immediately and effectively to any and all anticipated and unanticipated circumstances pursuant to the staffing plan. (See Exhibit 4.2 and Table 4.2)

3.2.1 Septage Receipt

The Contractor shall assume Septage receipt responsibilities. These responsibilities include receiving Septage from registered haulers, analyzing Septage as necessary to verify it will not harm facility processes and/or equipment, collecting and forwarding Septage discharge tickets to the County, and maintain a Septage receipt manifest. The County shall remain responsible for issuing Septage discharge permits, registering haulers, and collecting revenue for Septage disposal.

The Contractor shall have the right to refuse any Septage not in compliance with the hauler's registration or in the opinion of the Contractor potentially harmful to

the Managed Assets. If any Septage receipt is refused, the Contractor shall immediately notify the County and submit a written report detailing the date, hauler's name, and reason for refusal.

The Contractor shall recognize the County's authority and will enforce the County's decision to revoke, suspend or otherwise restrict the access of a Septage hauler to the Managed Assets. The Contractor shall also maintain an up to date manifest of Septage deliveries, which records the date, hauler, origin of Septage, Septage composition, and Septage volume.

The Contractor is not authorized to make separate arrangements for receipt of Septage.

Septage is not accepted at Big Creek, Johns Creek/JCEC and Little River WRFs at this time.

3.2.2 Equipment Maintenance

The Contractor shall keep all equipment in good operating condition and maintain adequate replacement equipment and spare parts in inventory to facilitate the maintenance, repair, and replacement of the Managed Assets in a timely fashion to ensure system reliability. The computerized maintenance management system (CMMS) shall be used to track and administer Managed Assets maintenance and spare parts inventories. Maintenance activities shall be, at a minimum, categorized as follows:

- Routine aesthetics and inspections and maintenance
- Safety inspections and maintenance
- Predictive maintenance
- Preventive maintenance
- Corrective maintenance

The Contractor shall operate all Managed Assets and perform all tests and testing as may be required or recommended pursuant to applicable warranties, commercial or industrial standards and federal, State, and local laws, regulations and Permits. The Contractor shall be responsible for promptly notifying the County in the event of any critical equipment failure. The Contractor shall ensure that all protective shields, screens, and other safety devices are in place and fully functional at all times for the protection of the employees and the equipment.

All equipment shall be maintained in an operational condition and shall, at all times, meet the applicable Minimum Equipment Performance Standards pursuant to Exhibit 13. Repairs and replacements shall be conducted within a period of time consistent with Good Industry Practices, or no more than 60 days, whichever is less, unless specifically authorized in writing by the County. Repairs or replacements shall be scheduled in a manner that will not impact the ability of the Managed Assets to meet Performance Guarantees. Repair and replacement activities shall not indemnify the Contractor from penalties resulting from the failure to meet Performance Guarantees or other permit requirements.

3.2.2.1 Predictive Maintenance

Predictive maintenance shall be conducted consistent with good industrial practices to minimize the likelihood of equipment failure and preserve the long-term capability of the Managed Assets. The Contractor shall use diagnostic tools including, but not limited to:

- Vibration analysis
- Tribology (lubrication)
- Infrared Thermography
- Motor current analysis
- Acoustic emission analysis

Process variables such as temperature, vibration, and amperage shall be tracked using the CMMS to identify statistical trends that predict equipment failure. These analyses will identify present and potential problems and predict when corrective action should be taken.

3.2.2.2 Preventive Maintenance

Preventative maintenance shall be conducted consistent with good industrial practices to minimize the likelihood of equipment failure and maximize the reliability of the Managed Assets. Preventive maintenance shall include, but not be limited to:

- Lubrication
- Maintenance of proper oil levels
- Drainage of condensate
- Air filtration cleaning/replacement
- Verification of proper operation
- Inspection and replacement of normal wearing parts
- Overhauls required by manufacturer
- A plan to minimize emergency repair costs

The maintenance program shall provide the following:

- Accurate cost projections
- Maintenance schedule
- Safety requirements
- A plan to ensure the reliability of redundant equipment not in service

3.2.3 Repair & Replacement of Equipment

In the event that the replacement of equipment is required, such replacement shall be at least equal to or better than the equipment being replaced in relation to performance service life, durability and functionality. Replacement equipment shall not compromise existing warranties. Equipment renewal shall restore the equipment's performance to a level equal to or greater than its original level. Equipment replaced or renewed shall

also meet, at a minimum, the original engineering design specification, the requirements defined in the O&M Manual, and Good Industry Practices, unless otherwise authorized in writing by the County. Disposal of equipment permanently taken out of service shall conform to the requirements specified and all disposal services provided by the Contractor shall be included in the Service Fee.

The objectives of the repair and replacement activities are to maintain the Minimum Equipment Standards including the following:

- Develop the most economical life-cycle cost approach to repair and replacement.
- Provide operational flexibility and minimize inconveniences and other impacts to the operation of the Managed Assets.
- Complete the projects on time and under budget.
- Decrease long-term maintenance costs.
- Maximize the benefit of new and emerging technologies on the operation and maintenance of the Managed Assets.
- Maintain the Managed Assets to preserve the integrity of the facilities.

For repairs or replacements that are estimated to be equal to or greater than $25,000 (excluding on-site labor), the Contractor shall submit a request to the County prior to undertaking any repair or replacement activities. The request shall include a detailed justification of the proposed repair or replacement that presents a life-cycle cost-benefit analysis as to why the proposed action is the most effective means of meeting the repair and replacement standards. Specifically, the justification shall include and/or demonstrate the following:

- Design specifications of proposed replacement equipment as compared to the existing equipment.
- A description and cost assessment of how the change will impact operational flexibility, maintenance, redundancy and emergency planning.

- An analysis of the capital cost, operational cost, and maintenance cost of the change over the useful life of the equipment or system as compared to the existing equipment.
- A justification as to why the balance of factors listed above is the most
- advantageous for the County.
- A detailed description of all the disadvantages of the proposed change.

3.2.3.1 System Replacement:

System Replacement shall comply with sound engineering design, construction and improvements practices. All design, construction and improvements shall be certified by state of Georgia licensed Professional Engineer.

The County may reject such request if the proposed repair or replacement does not comply with the Contract Standards.

3.2.4 Odor Control

The Contractor shall operate and maintain the Managed Assets in a manner that minimizes odors at the facility boundaries to minimize the likelihood of public complaints. The contractor's goal shall be to achieve no odor complaints for the Managed Assets. The odor control efforts, at a minimum, shall include:

- Managed Assets O&M procedures to minimize the likelihood of odor generation.
- Operation & Maintenance of all odor control equipment consistent with its intended use and design.
- Procedures for certifying and documenting odor complaints.

The Contractor shall be responsible for controlling odors within the Managed Assets through the continuous O&M of the odor control equipment in accordance with Manufacturer recommended operating performance criteria for the various systems and equipment.

3.2.4.1 Odor Complaint Records

The Contractor shall provide capabilities for 24/7 odor complaint notification & response. A record of the number of calls received and documenting information of the odor complaints shall be maintained using a log form that shall include, at a minimum, the following information:

- Nature of complaint
- Contact Information
- Date, time of complaint and location
- Wind speed and direction, temperature, relative humidity (odor complaints only)
- Action taken in response
- Source of complaint (cause)

The Contractor shall be responsible for notifying county immediately after receiving an odor complaint. Summary of complaints shall be included with each monthly report

3.2.4.2 Odor Response Plan

The Contractor shall investigate and respond to all odor complaints. The odor response plan shall at minimum include the following:

- Odor measurement at facility boundaries in ppb level
- Odor measurement at inlet and out let of air scrubbers
- Weather conditions/ wind direction/ humidity/ ambient temperature
- Process control data including flow, mix liquor total suspended solid and dewatering operations
- Pump station wet well level controls
- Frequency of wet well cleaning/ grease removal
-

If complaints and subsequent investigations establish the continued presence of odorous compounds, then the Contractor shall (1) review and, as appropriate, adjust current O&M practices regarding odor control, and (2) in connection

therewith, make reasonable efforts to determine and implement a corrective action plan within a reasonable time period.

Contractor shall recommend necessary capital improvement and give the county opportunity to review and comment upon any capital modification proposed. The notice shall contain sufficient information for the County to determine that the capital modification is reasonably necessary or advantageous to the County. County will pay when cost exceed $ 25,000.00

If odor complaints persist, and if the Contractor, in the County's opinion, fails to correct an odor situation as agreed to in a corrective action plan, an Independent Engineer and/or odor consultant will be selected by the County, and paid for by the Contractor, to confirm or deny whether the Contractor has fulfilled such obligations. The consultant will compile its findings into a report to be submitted to the County. Such report shall include samples from potential odorous sources from the Managed Assets ranked based on their total odor and/or dilution-to-threshold. The maximum impact of each significant odor source will be determined by dispersion modeling. The modeling impacts will be displayed graphically and numerically. Odor control requirements will be developed from the graphical modeling impacts and source rankings.

3.2.5 Analytical Services

The Contractor shall perform all applicable testing related to process control and Storm Water at its own expense. All testing and analytical procedures related to NPDES permit compliance and Industrial Pollution Prevention administration shall be performed by the County. All of the County testing result will be provided to the Contractor within a reasonable timeframe. **(See Exhibit 5)**

The Contractor shall collect all samples required by applicable regulations, permits and operating reports. The County, at its sole expense, will conduct the necessary analytical tests and may also perform additional testing, requiring the Contractor to take additional samples, as the County deems necessary at no additional charge. To the extent additional testing, sampling, and analytical procedures are required by a Change in Law

applicable to the Managed Assets including, but not limited to, any revisions to the NPDES permit or other enforceable instrument, the Contractor shall be responsible for sampling activities and related costs at no additional charge.

Under no conditions shall the Contractor conduct analytical procedures for non-County entities without prior written approval by the County. Furthermore, the County reserves the right to test Contractor's laboratory equipment performance. The County or a County representative shall be given access to the Contractor's laboratory and equipment at anytime to perform analytical activities provided that these activities do not impede the Contractor's ability to perform the responsibilities defined in the Service Contract. The County shall reimburse the Contractor for any Contractor-owned materials used.

3.2.6 Buildings and Grounds Services

The Contractor shall perform buildings and grounds services to maintain the condition of the Managed Assets and relative to this Agreement throughout the Term pursuant to Exhibits 12. The Managed Assets shall be maintained at a level adequate for the long-term preservation of the capital investment. The Contractor shall at a minimum, perform the following activities relevant to the buildings and grounds:

- Maintain the buildings, including repair and restoration of damaged or deteriorated exterior and interior finishes. Structural damage shall be repaired immediately as required to maintain the integrity of the structure.
- Maintain grounds and landscaping in an aesthetically attractive and clean condition.
- Wash all windows twice a year. Keep windows free from dust, dirt and other debris. At a minimum clean and pressure/steam wash parking area and buildings exteriors once a year and as required to keep area free from dust, dirt & debris.
- Inspect and clean/repair roof drains and gutter as needed.

- Inspect the roofs regularly to identify any potential leaks. In the event that a leak is detected or observed, the lead shall be repaired within 10 days. If the Contractor fails to repair roof leaks within 10 days; the contractor will be responsible for all damages resulting from the leak, even if the damage exceeds $25,000.
- Implement, upon approval of Fulton County, a pest control program
- consistent with best industry practices and respond immediately to potential pest infestation.
- Repair plumbing immediately.
- Maintain and repair electrical, HVAC, Ice Machines and security systems.
- Damp mop applicable floors as needed with a cleaning solution appropriate for use in the Managed Assets. Immediately clean all spills.
- Strip applicable floors and apply new floor finish.
- Wash down wall tiles and clean all other walls.
- Clean offices and restrooms daily Monday through Friday.
- Provide paper products and soap for restrooms and break room.
- Provided for rubbish removal/recycling.
- Clean any discharges of sludge or other spills immediately.
- Shampoo carpet once a month and more if required.

3.2.7 Painting:

Contractor shall have a year round program to paint all the facilities and buildings pursuant to exhibit 12 and maintain the aesthetic value. All corrosive area shall be coated with protective paint/coatings.

3.2.8 Pavement

The Contractor shall maintain the roadways/parking lots/sidewalk in a manner to ensure safe driving & walking conditions. Paving and restoration work shall be performed in accordance with the current American Association of State Highway

and Transportation Officials (AASHTO), Georgia and/or Fulton County Department of Public Works, and Georgia Highway Department standards.

3.2.9 Utilities

The Contractor shall be responsible for supplying and paying for all utilities for the Managed Assets, including but not limited to electricity, natural gas, fuel oil, telephone, and water. The County shall be notified and approve any changes in utility services or service providers prior to any actions taken by the Contractor.

3.2.10 Treatment of Industrial Wastewater

The Contractor shall provide Wastewater Services to the County's industrial users pursuant to the Agreement between Fulton County & the customer. The Contractor shall be responsible for monitoring the Managed Assets influent and identifying sources of industrial wastewater that may disrupt the treatment process. The County will consider the information provided by the Contractor and respond accordingly.

The County and appropriate regulatory agencies shall remain responsible for approving any new industrial dischargers. The County shall notify the Contractor if a request to connect to the collection system is received by a new industrial site. The Contractor shall be responsible for treating such wastewater without increase in the Service Fee unless influent flow and loadings result in a variable cost adjustment. **(See Exhibit 9)**

3.2.11 Sludge and Residuals Management and Disposal

The Contractor shall be responsible for all activities relating to sludge management and disposal and shall be responsible for the collection and disposal of all residuals generated by the Managed Assets operations (i.e. grit, screenings, trash etc.). The Contractor shall schedule pick-up and delivery of dumpsters and tank trucks in a manner that eliminates the storage of full or empty dumpsters or tank trucks on-site. All tank trucks and dumpsters shall be sealed or remain covered to the extent practical at all times. The Contractor will apply odor reduction chemicals to all sludge transport containers prior to covering the containers with a tarp for off site disposal.

The Contractor shall also be responsible for the collection and disposal of rubbish generated by Managed Assets operations and the South Fulton Maintenance and Operations Center. All rubbish shall be stored in a covered receptacle and emptied to avoid overfilling and/or the generation of odor. The Contractor will comply with the current level of recycling services provided for paper, plastic, and glass. The Contractor shall be responsible for providing and managing recycling receipt.

3.2.12 Pump Stations

The Contractor shall operate and maintain the related Pump Stations to provide uninterrupted, flow of wastewater through the collection system. The Contractor shall be responsible for inspecting and conducting maintenance of the Pump Stations to ensure their reliability.

The Contractor shall ensure the Pump Stations are up to full operating status, in compliance with all existing laws, ordinances, codes etc. If the Contractor desires to modify existing equipment, operations procedures, or other aspects of the Pump Stations, the Contractor will be required to submit the proposed alternative to the County for review and approval prior to any modification activities. Contractor shall clean thoroughly wet well for grit, solid and grease quarterly and more frequently if required.

3.2.13 Maintenance of Georgia Power Generators

The Contractor will assume the responsibility for those County obligations required under the operation and maintenance Agreement with GA Power. Fuel shall be Contractor's responsibility.

3.3 MANAGED ASSETS AUDITS AND INSPECTIONS

3.3.1 Managed Assets Audit

The County will conduct a complete Managed Assets audit to determine the condition of the Managed Assets, once a year and at the end of the contract

period. The County may also at its sole discretion, conduct additional periodic audits of the Managed Assets at other times in order to document that the Managed Assets are being maintained consistent with the terms and conditions of the Service Contract. During the audits, equipment performance tests will be conducted on all or selected equipment and the results of the test will be compared to the Minimum Equipment Performance Standards pursuant to Exhibit 13 and Manufacturer performance standards for the new equipments.

The Contractor shall provide a detailed description of developing an Equipment Performance Testing Plan in the proposal for evaluation by the County 6 months from commencement date.

If a piece of equipment is found to be operating at a level less than 80% of the minimum equipment performance standard level, the Contractor shall provide the County with an explanation for the deviation in performance and actions being taken to restore performance to the accepted performance standard level.

3.3.2 Managed Assets Periodic Inspections

During the term, the County will conduct periodic inspections, at its discretion, to determine the condition of the Managed Assets. The periodic inspection will serve as a quick visual inspection of the equipment's condition, operational parameters, housekeeping and grounds maintenance. Should any piece of equipment appear to not be properly maintained or not be able to meet the performance standard the county may require the Contractor to produce adequate documentation to establish the performance level of the equipment.

3.4 CMMS

The Contractor shall install and utilize DataStream's 7i or latest approved version computerized Maintenance Management System, including the following applications.

- Inventory of equipment and facility assets configured into the database.
- Configure database with real-time equipment usage hours, equipment signatures of vibration, temperature, alignment and wear particles, and performance verification algorithms.
- Automatic initiation of work orders.
- Obtain predictive and preventive data through facilities automation and monitoring.
- Track equipment life cycle cost and repair history.

- Track repair v/s replacement
- Continuously maintain spare parts inventory.
- Tracking of equipment warranties.
- All applications applicable to waste water industry

Contract shall maintain all the functionalities in DataStream CMMS Module i.e. Asset Management, Work Management, Material Management, Purchasing Management, Inspection Management, Budget Management and Reports. All the annual performance test data shall be incorporated in CMMS.

Contractor's maintenance management program shall consist of preventive, predictive, corrective maintenance and breakdown maintenance each containing standard maintenance protocols for all activities. Software shall be fully integrated with SCADA. License shall be in county name and have full access.

EXHIBIT 4

FACILITIES PLANS

As part of this procurement, the Contractor shall be required to prepare several comprehensive plans which document the Contractor's and County objectives of improving Facilities performance. This Schedule outlines the various plans that shall be required. It is recognized that information may not be available to provide all of the details necessary to develop a complete plan. Therefore, the Proposer shall develop comprehensive draft plans that outline the Proposer's approach for the items specified. The customer service and emergency response plans shall be completed prior to the Commencement Date.

- Customer Service Plan
- Emergency Response & Disaster Preparedness Plan
- Transition Plan
- Staffing Plan
- Training Plan
- Operations and Maintenance Plan

- Safety Plan
- Security Plan
- Odor Control Plan
- Public Education/Outreach Plan
- Equipment Performance Testing Plan

4.1 CUSTOMER SERVICE/ EMERGENCY RESPONSE & DISASTER PREPAREDNESS PLAN

The Contractor shall respond promptly (within one (1) hour and in a reasonable manner to all customer complaints pertaining to the Facilities in accordance with this Agreement. The Contractor shall notify the County of any activity, problem, or circumstance of which it becomes aware and threatens the safety, health, or welfare of the customers of the Facilities. The Contractor shall maintain a complete log with the start and end date and time of all problems and emergencies identified and measures and response time taken by the Contractor to remedy such problems and emergencies.

The Contractor shall develop emergency operations procedures, including on-call backup capability to be utilized during an emergency event based on EPA Vulnerability Assessment Plan. As part of the Emergency Response Plan, emergency operations procedures shall be developed to address at a minimum:

- Chemical spills
- Personal emergencies
- Fires and explosions
- Pipe, valve or pump failure
- Equipment and process failure
- Power failure

- Acts of God (i.e., hurricane, wind storms and floods)
- Wastewater bypass discharges
- Emergency telephone numbers
- Emergency equipment inventory
- Records preservation
- Coordinating instructions with public safety agencies
- Consent Agreement(s) operational requirements.

4.2 STAFFING PLAN

The Contractor shall provide staff qualified and experienced in the operation, maintenance, and management of wastewater treatment systems similar in nature and character to the Facilities in accordance with the terms and conditions defined in the Agreement. The Contractor shall also provide additional third party support, on an as needed basis, to perform its duties and obligations of this Agreement. Such third parties shall be equally qualified for the specific services to be performed. The Contractor is responsible for maintaining the required number of staff and third party contractors as deemed appropriate to operate, maintain and manage the Facilities in accordance with the provisions and terms of this Agreement. The Contractor's organizational structure must include an overall project manager to whom all plant Manager's report. The Contractor's Project Manager will be the primary liaison between the County and the Contractor. Staffing Standards are included in Table 4.2. The Contractor shall provide:

- Qualified management, supervisory, technical, operations, and maintenance personnel.
- Properly licensed and certified personnel hired or contracted by the Contractor to perform the services required.
- Specialists, as necessary, for process control, instrumentation, troubleshooting, emergency management, and other similar activities,
- Office and clerical support staff.
- Technical support to provide on-call backup and process expertise for process control, management, maintenance, and Facilities repair, as necessary, to support operations and management staff in performing the services of this Agreement.

Table 4.2

Minimum Staffing Requirements

Project Manager- 1

Maintenance Manager - 1

Office Assistant – 1

North Fulton Operations:

Big Creek WRF and JCEC

- Georgia WW Certified Class I Plant Manager-1 per plant
- Georgia WW Certified Class I Assistant Plant Managers – 1 per plant
- Georgia WW Certified Operators- 3 operators 12 hours per day 5 days per week , 2 operators remaining time and days

Little River WRF:

- Georgia WW Certified Class I Chief Operator-1
- Georgia WW Certified Operator -2

Minimum 2 operators 8 hrs per day 7 days a week

Maintenance Staff: North Fulton WRF & Pump Stations

- Maintenance Supervisor- 3
- High Voltage Electrician -2
- Instrumentation Tech – 3
- SCADA Tech - 2
- Mechanical Maintenance – 3
- General Duty Mechanic – 3
- CMMS Specialist -1
- Painter- 1
- Laborer-5

Johns Creek Environmental Campus (JCEC) may require extra housekeeping staff to maintain Educational Center. Events will be organized in the evenings as well as during the day. Contractor shall maintain the Education Center, JCEC Park & Walking Trail 7 days/week in neat and orderly fashion. Lab in Education Center may be used for research and other educational purposes. Contract shall be required to coordinate and facilitate such work as part of their community outreach program.

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All Maintenance staff requires having GA Waste Water collection system License.

4.2.1 Job Specification – See Exhibit 10

4.2.2 Staffing Plan

Proposed Project Director, Project Manager, Plant Managers, and Maintenance Manager shall be submitted in the proposal.

Within 10 workings days after Award of Contract, the Contractor shall submit to the County, for approval, a complete staffing plan for the personnel requirements during both the transition phase and full scale operations. The Contractor shall include, at a minimum, the following information, in accordance with the provisions of this Agreement:

- Organization chart
- List of all personnel required for the Facilities, with contact telephone numbers
- Job classifications and wage rates (including benefits, Profits &Overhead)
- Number of staff required for the transition phase and full scale operations.
- Resumes of personnel employed within the Facilities to demonstrate qualifications to perform assignment.

The Contractor shall notify the County of any changes in personnel within 10 days prior to the effective date of such personnel change. Fulton County shall participate in the selection and approval of the Project Manager, Plant Manager and Maintenance Manager. Furthermore, Fulton County shall have the right to direct the replacement of the Project Manager or Plant Manager or Maintenance Manager at any time, and have the right to refuse the hiring of proposed candidates for all other positions.

On an annual basis, the Contractor must provide the County a list of current employees, assigned to Fulton County Facilities pursuant to the Contract with a summary of their qualifications and current certifications. It is the responsibility of the Contractor to have all certified employees maintain their certification throughout the duration of the Contract.

After the County's approval of the Contractor's staffing plan, any vacancies that occur must be refilled within 30 days. If the vacancy is not refilled within 30 days, the County will deduct from subsequent invoices the value of the vacant position's salary, fringes and overhead for a period of up to 90 days. If the position has not been filled at the end of 90 days, the Contractor will be considered in violation of the terms of the Agreement. If the position is left unfilled for 90 days, it will be considered a permanent reduction in staff. Any permanent reduction in staff must be approved by the County and will result in a permanent reduction in cost to the County equal to the eliminated position's salary, fringes and overhead.

4.4 TRAINING PROGRAMS

The Contractor shall provide relative training programs for all personnel employed. Such training, shall include, but not be limited to, modern wastewater process control, equipment operations, repair, and maintenance, sampling and analytical procedures, regulatory requirements, supervisory skills, and safety and occupational health procedures. The Contractor shall maintain records of all training programs. Storm Water and Defensive Driving training shall be included in the training program. The Contractor will provide training opportunities for Fulton County employees as part of its in-house training program. These opportunities must be offered at least semi-annually and be pre-approved for re-certification points by the Georgia State Board of Examiners.

No later than 60 days after the Contract Date, the Contractor shall submit five copies of a draft Operator Training Plan (Training Plan) for review and comment by the County. The Training Plan shall clearly define the classroom and hands-on training curriculum for each position.

Calendar dates and milestones shall be assigned to each portion of the training schedule.

The County will review the draft Training Plan and provide comments within 30 days of the submittal. The Contractor shall submit five copes of a final version of the Training Plan incorporating changes relative to County comments 30 days following the return of the draft version. A summary of all training activities must be updated annually and documented to the County in the Annual Operating Report. The proposed annual training program shall be submitted to the County in each January outlining all training programs for the entire year.

4.5 OPERATIONS AND MAINTENANCE PLAN

The Contractor shall prepare and submit to the County for approval a comprehensive Operation and Maintenance Plan (O&M Plan) within 60 days after Commencement Date. The O&M Plan shall specify all procedures and tests to be conducted for the operation and maintenance of the Managed Assets, inclusive of all facilities and Equipment. The O&M Plan shall be a comprehensive manual organized into separate sections addressing each of the facilities, unit processes and auxiliary Facilities equipment. Grounds and building maintenance shall also be included. At a minimum, the O&M Plan shall include the following:

- Preventive & Predictive (P & P) maintenance schedule for all major equipment, schedule of expected shutdowns relative to major system P & P maintenance.

- Copies of all permits, licenses, and other regulatory documents relative to the O&M of the Managed Assets.
- Standard Operating Procedures (SOP's) for all major equipment within the Facilities during start-up, normal, alternate and emergency operation modes.
- Equipment and Facilities manufacturers, suppliers O&M manuals.
- Forms and checklists to be used to monitor O&M of the Managed Assets.
- Monitoring and reporting requirements.
- Updates to the O&M Plan.
- Wet well periodical cleaning plan.
- Corrective Maintenance Plan for major equipment.
- Painting Plan

The O&M Plan shall include a detailed written explanation of the following:

- All plant processes and pump stations including its purpose and normal operating parameters.
- Equipment summary including nameplate data, supplier/local representative, and manufacturer.
- Description of instrumentation and control system, including an alarm summary.
- Description of normal operations including startup and shutdown, adjustment of variable functions and settings, interface with other plant systems, routine monitoring checklists and record keeping forms.

- Maintenance, including predictive and preventative maintenance for process functions such as cleaning and hose down, flushing and inspection; mechanical functions, such as changing lubricating fluids and filters, checking rotating equipment balance, and changing valve seals and packing; electrical functions, such as checking tightness of wiring terminal connections, exercising breakers, and recalibrating meters; instrument and control

functions, such as sensor calibrations; and structural maintenance, such as crack repairs and restoration of surface corrosion protection Systems.

- Troubleshooting Facilities malfunctions.

The County will review the draft O & M Plan and provide comments within 30 days of the submittal. The Contractor shall submit five copes of a final version of the O & M Plan incorporating changes relative to County comments 30 days following the return of the draft version. The O & M Plan must be updated annually and earlier if required.

4.6 SAFETY AND SECURITY PLAN

The Contractor shall provide for and maintain a secure and safe within all Managed Assets. The Contractor shall develop and submit to the County a safety and security plan within 30 days after the Contract Date. The Contractor shall be responsible and obligated to enforce all safety, security, and health laws, rules, regulations, and/or procedures. Any and all persons entering the facilities shall be identified and provide appropriate documentation of authorization to have access to the Facilities. The Contractor is responsible for providing the appropriate procedures to maintain a log of any and all persons accessing the Facilities.

The structural integrity of the fences shall be maintained and kept in neat order. Gates access points, and doors to the facilities and structures in the Facilities shall be kept secured. Entrance to such facilities and structures shall be protected against unauthorized entry. The Contractor is responsible for maintaining security alarms in working order.

The Contractor shall have the sole responsibility for the security of the Managed Assets.

5.1 SAMPLING AND TESTING OVERVIEW

The County considers maintaining regulatory compliance requirements, the most critical objective regarding operations of the Managed Assets. The Contractor will establish a Sampling Plan for the purpose of maintaining regulatory compliance. The Contractor will conduct a comprehensive regulatory compliance audit of the wastewater facilities to become familiar with all regulatory compliance and contractual requirements. The Contractor will consult County management personnel to clarify issues as necessary. The audit results will be used as the basis for finalizing comprehensive regulatory compliance procedures. The compliance sampling procedures will be integrated with other related procedures, to form the comprehensive operations and maintenance management strategy for the Managed Assets.

5.2 SAMPLING AND TESTING LOCATIONS

The County has identified the following minimum compliance and related sampling and testing locations regarding the Managed Assets.

- Influent, sampled at a location representative of all flows entering the Facility from each of the inlet channels prior to primary treatment, leachate and septage accepted for treatment at the Facility and at a location designated pursuant to NPDES permit.

- Effluent – sampled at a location pursuant the NPDES permit.

- Process Control – sampling and testing at locations and frequencies determined by operations personnel and general industry practice to ensure consistent efficiency and effectiveness of treatment system.

- Trucked-in Material – Each truckload of septage received at the Facility shall be sampled. The samples shall be tested for pH prior to discharge. Additional analysis will be considered on an individual truckload basis.

- Sludge – dewatered mixed primary and waste activated sludge will be sampled prior to final transportation. Testing will be performed in accordance with regulatory requirements.

- Other – additional sampling and testing may be required at locations as determined by the Contractor or requested by the County.

5.3 LABORATORIES SERVICES

County laboratories operate in-house and/or use the services of independent outside laboratories to conduct process control and various regulatory analyses. Various compliance, process control and contract related analyses are conducted in the County's laboratories. The laboratory maintains State certification for a number of specific parameter analyses. The Contractor shall provide all required samples to the County Laboratories for testing in compliance with NPDES permit requirements. Strom Water permits sampling and analysis shall be contractor responsibility.

5.3.1 Use of County Lab

The use of the County Lab for NPDES testing is required unless the County desires to use an independent outside laboratory to provide such services. All the test results will be reported normally within 48 hours but not to exceed 8 business days.

5.3.2 Independent Out-side Lab

In the event that the Contractor desires to conduct testing of laboratory results provided by the County, of any material from the managed assets for purposes of

confirmation, all test performed at an outside laboratory will be at the Contractor's expense unless -

5.4 SAMPLING AND TESTING STANDARDS

A written Quality Assurance (QA) plan covering all Sampling Operations shall be developed by the Contractor and shall be in full compliance with the County Laboratory & NPDES Directives and will be available for inspection by the County and EDP. Copies of the QA Plan will be readily available at all process and County laboratories.

At a minimum, the QA Plan should maintain detailed information on the following:

1. A description of sampling protocols, sample chain of custody procedures, sample preservation, storage and holding times for sample analysis. These standards shall match the standards required by the County.

2. A statement of policies covering the following:
   a. Sampling Instrument and equipment maintenance.
   b. Operations service logs.

Specific quality control acceptance criteria and corrective action procedures shall be contained in written methods of analysis or standard operating procedures (SOPs). These and other sampling and testing SOPs shall be maintained by the Contractor.

5.5 SAMPLING AND TESTING REPORTS

Contractor will provide the County with periodic reports as identified under the Operations and Maintenance Standards section of the Service Contract, Exhibit 3.2.5 The periodic reports shall include the following:

- A monthly summary of all sampling, testing and laboratory result related to all material from the managed assets;

- A monthly summary of the quantities and characteristics of Influent and Effluent.

- An annual summary of the information contained in the monthly sampling, testing & laboratory reports.

EXHIBIT 6
EXIT TRANSITION PLAN

At the end of the Service Contract the Contractor shall provide all services necessary for a smooth, uninterrupted transition of service to the County or its new contractor. The Contractor shall prepare an Exit Transition Plan describing such services and provide the Plan to the County within 180 days after the Commencement Date. Contract shall also provide a Transition Plan with in 15 days from award of the contract for smooth transition of services from current contractor. The objectives of the Exit Transition Plan are to:

- preserve and protect the Managed Assets and all related equipment and tools;
- leave the Managed Assets in a neat and orderly condition;
- provide the County all material documentation, books, and records that are relevant to the continued operation and maintenance of the Managed Assets;
- minimized transition costs for the Contractor and the County; and
- Full cooperation with the County to ensure the efficient and effective transfer of the Managed Assets.
- Full financial reconciliation of the Contractor's response pursuant to the terms and conditions of the Service Contract.

The Exit Transition Plan shall include at a minimum:

- weekly meetings with the County to discuss operations and maintenance activities at least three months prior to the end date;
- list of all documents developed by the Contractor during the Term of the Service Contract to perform the Management Services;

- list of all reports, records and tests prepared by the Contractor in relations to the O&M of the Managed Assets.
- list of equipment vendors, equipment under warranty and vendor manuals
- Account information for all utility relative to the O&M of the Managed Assets.
- list regulatory permits;
- A list of all capital improvements/modifications.
- Inventory of chemicals, consumables and spare parts available to the Contractor at the commencement date.
- List of software and hardware relative to the O&M of the Managed Assets.
- A description of the process for transitioning the Managed Assets including equipment status, chemical/supplies procurement.

The Exit Transition Plan shall be updated annually to reflect changes in any of the services and information.

EXHIBIT 7
SEPTAGE HANDLING PROTOCOL

7.1 ACCEPTANCE OF TRUCKED-IN MATERIAL

The materials that may be received at the Plant, via truck, for disposal consist of Trucked-In Material which includes, but is not limited to, Septage, landfill leachate and contaminated ground water. All Trucked-In-Material shall be discharged into the septage receiving station.

No Trucked-In Material will be accepted for disposal without: (1) the prior approval of the County; (2) a consummated agreement with either the generator or transporter of the Trucked-In Material and the County; (3) pre-arranged appointment set up with the Contractor for each hauler to discharge Trucked-in-Materials at a designated time.

The Contractor reserves the right to refuse acceptance of any such Trucked-In Material that does not meet the criteria established in Exhibit 7 or as directed by the County.

The generator or transporter shall perform sampling and testing of the Trucked-In Material prior to disposal at the Plant. The generator or transporter shall provide the Contractor with a copy of all required data/records prior to the disposal of the Truck-In Material. The data/records provided to the Contractor shall be certified by the generator or transporter by affidavit, signed under penalty of perjury. The Contractor shall perform any sampling and analysis required immediately prior to authorize disposal.

At a minimum the contractor shall check each load temperature not greater than 140 F and pH between 5.0 to 11.0; and the hauler's manifest. If the Contractor has determined that the disposal has caused an upset to the plant, the Contractor shall notify the County immediately.

Fulton County has and approved Sewer Use Ordinance included in Exhibit 13. All material delivered at water reclamation facilities must meet Sewer Use Ordinance.

EXHIBIT 8
MUNICIPAL/INDUSTRIAL PRETREATMENT PROGRAM

The County shall be responsible for the administration and enforcement of all aspects of Industrial Pretreatment Program in accordance with the law.

In the event the Contractor determines that an Upset has occurred or Excessive Influent has been received at the Plants due to an IPP violation, or the Contractor otherwise has knowledge or reasonably believes that the IPP is being or has been violated, the Contractor shall immediately notify the County, commence an investigation to reasonably determine whether a violation of the IPP has occurred and, if such a violation has occurred, the identity of the source.

Managed Assets
BIG CREEK, JCEC transition & JCEC, LITTLE RIVER
and NORTH FULTON PUMP STATIONS

PRICE PROPOSAL FORM
MANAGED ASSETS OPERATIONS PERIOD
SERVICE FEE COMPONENT

Baseline Flow and Loadings combine all facilities	Annual Amount
Flow (MGD)	26 MGD
Ammonia Nitrogen	5,421 lbs/day
Phosphate	1,518 lbs/day
CBOD**5**	54,210 lbs/day
TSS	54,210 lbs/day
Sludge (Dry Tons)	32.5 tons/day

Service Fee Fixed Base Components- BIG CREEK WRF		Annual Amount
1	Labor (Including wages, benefits, etc.)	$
2	Plant Operation, Maintenance and Repair	$
3	Chemicals and Fuels	$
4	Utilities Cost	$
5	Sludge Hauling/Disposal	$
6	Building & Grounds Maintenance	$
7	Odor Control	$
8	Performance Testing	$
9	Public Education	$
10	Letter of Credit	$
11	**TOTAL** Fixed Base Service Fee **Component (1-10)**	$

Service Fee Fixed Base Components- JCEC		Annual Amount
1	Labor (Including wages, benefits, etc.)	$
2	Plant Operation, Maintenance and Repair	$
3	Chemicals and Fuels	$
4	Utilities Cost	$
5	Sludge Hauling/Disposal	$
6	Building & Grounds Maintenance	$

7	Odor Control	$
8	Performance Testing	$
9	Public Education	$
10	Letter of Credit	$
11	**TOTAL** Fixed Base Service Fee **Component (1-10)**	$

Service Fee Fixed Base Components- LITTLE RIVER WRF		**Annual Amount**
1	Labor (Including wages, benefits, etc.)	$
2	Plant Operation, Maintenance and Repair	$
3	Chemicals and Fuels	$
4	Utilities Cost	$
5	Sludge Hauling/Disposal	$
6	Building & Grounds Maintenance	$
7	Odor Control	$
8	Performance Testing	$
9	Public Education	$
10	Letter of Credit	$
11	**TOTAL** Fixed Base Service Fee **Component (1-10)**	$

Service Fee Fixed Base Components- Pump Stations		**Annual Amount**
1	Labor (Including wages, benefits, etc.)	$
2	Pump Station Maintenance, Repair and Replacement less than $ 25, 000.	$
3	Chemicals & Fuels	$
4	Utility Cost	$
5	Grit Hauling/Disposal	$
6	Building & Grounds Maintenance	$
7	Odor Control	$
8	Performance Testing	$
9	Public Education	$
10	Letter of Credit	$
11	**Total** Fixed Base Service Fee **Component (1-10)**	$

Total Service Fee (Big Creek, JCEC, Little River and Pump stations) = $----------

Service Fee Adjustment Rate Schedule for excess loadings	**Annual Amount**
Ammonia Nitrogen	$ lbs/day
Phosphate	$ lbs/day
CBOD**5**	$ lbs/day
TSS	$ lbs/day
Sludge (Dry Tons)	$ tons/day

Notes:

1. Itemized components are for evaluating purpose only.

2. Sludge hauling & disposal cost shall be paid per dry ton of solid hauled and disposed.

3. The Contingency Allowance Fund will be used by the County to finance unforeseen and variable expenses during the Term at the County's sole discretion.

4. The service fee adjustment pursuant to the service fee rate schedule shall be based on the average daily loading for a Contract Year. The service fee adjustment shall be applied in excess of 110 percent of the annual average daily baseline influent loadings set forth in Exhibit 9 and the actual loadings for the Contract Year times the number of days in the contract year. A service fee reduction shall be applied when the annual average daily loading is < 90% of the baseline.

5. Utility cost will be adjusted with increase in public published rates. CPI increase shall be deducted from public published rate with in the same calendar year.

6. CPI Adjustments applies to variable cost.

7. Maintenance Allowance (See Section 3)

8. Contract Year shall be calendar year January 1st - December 31st.

EXHIBIT 10
Job Specifications

The contractor shall maintain the minimum staffing level, their qualification and license requirement described in Exhibit 4.2.1 and Table 4.2. Job specification related to various positions is as follows:

<u>Project Manager</u>

Supervises: Plant Managers, Maintenance Managers and multiple Operations and Maintenance Supervisors,

General Statement

The Project Manager is responsible for the operation of a large project that may have multiple facilities.

Essential Duties and Responsibilities

- Meets all contractual and regulatory requirements on a very large project, typically meaning a complex project that is larger than five million dollars a year
- Responsible for the overall management and leadership of the project
- Responsible for the planning, organization, operations, maintenance, and improvement of the facility or facilities
- Responsible for maintaining the operation process control including compliance with regulatory agencies
- Directs the development and administration of a large, complex project budget and financial plan
- Provides leadership in the quality process
- Develops the annual Project Business Plan
- Provides leadership and management for all personnel functions including staffing, compensation, training and development, progressive discipline, rewards and recognition and termination in accordance with Standard Policy
- Communicates effectively, both written and verbally with supervisors and subordinates
- Administers and monitors operational budgets to attain financial objectives
- Establishes and monitors objectives for subordinate salaried personnel and performance objectives for treatment plants within his or her responsibility
- Maintains technical operational skills at the highest level and remains informed of the latest developments in the field
- Establishes cooperative relationships with subordinates, vendors, contractors, and all others contacted during work assignments

- Provides primary client relationship with client management and technical personnel and report regularly as to client confidence, satisfaction, and/or problems
- Implements training programs to develop all levels of associates at regional sites, recommends new training requirements, undertakes to advance professional skills,

- mentors new project managers and those of the contract operating teams with a written plan
- Reviews monthly contract service reports for each installation, advising management as to project status, regulatory agency permit compliance, and technical/plant management attitudes
- Creates interest and support in the development of cost/savings programs
- Performs other duties as required

Basic Qualifications

- High school diploma or GED
- GA waste Water Class I license
- 10 years of experience in the operations and maintenance of a wastewater facility
- 5 years experience at a supervisory level
- Possess a valid driver's license

Preferred Qualifications

- A.A. or A.S., B.A. or B.S. degree
- Proficient use of computer software including but not limited to Microsoft Word, Excel, and Outlook
- Proficiency in SCADA, CMMS DataStream and Operations OPSWin software
- Demonstrated interpersonal relations and personnel management skills

Working Conditions & Physical Requirements

The work area can involve a working environment indoors as well as outdoors, which could cause exposure to outdoor elements; proper environmental attire will be required. Some areas can have loud noise, active machinery, high pressure fluid systems, electrical equipment, confined spaces, heights and depths, fumes, air borne particles,

noxious gases, pathogens and various chemicals. The use of appropriate safety equipment will be mandatory in these areas to prevent hazardous contact.

Must be able to sit, stand, stoop, twist and bend at the waist, turn, kneel, squat, raise arms above shoulder height, grasp, reach, perform repetitive hand movements and fine coordination when preparing reports and using a computer keyboard, have vision

sufficient to read computer screens, printed documents and operate office equipment, have hearing in the normal range with or without correction. Must be able to transport self across the facility and infrequently lift and/or move up to 25 pounds.

Assistant Project Manager

General Statement

The Assistant Project Manager assists with planning, organizing and directing the operation, maintenance, modification and improvement of one or more water/wastewater treatment plants and appurtenant facilities.

Essential Duties and Responsibilities

- Analyzes operational process control procedures, maintenance procedures, and institutes changes when necessary to achieve full compliance with all regulatory agency water quality and solids disposal requirements as defined in the service contract with the client
- Assists with planning, organizing, and directing the operation, maintenance modification, and improvement of one or more water/wastewater treatment plants and appurtenant facilities
- Responsible for accurate operational records and prepares reports required by the client, all regulatory agencies, and facility manager
- Communicates effectively, both written and verbally, with supervisors and subordinates
- Assumes responsibility of facility management in the Project Manager's absence

- Inspects facilities, analyzes and evaluates O&M functions, reviews records and data, interviews and selects new O&M personnel, initiates or recommends new or improved O&M methods or practices
- Develops plans and procedures to ensure that facilities operate within permit limits as an integrated system
- Recommends additions or improvements to the treatment facilities and analyzes his/her cost effectivenes
- Prepares O&M compliance monthly reports for the client as well as all regulatory agencies and prepares, reviews, and approves operations reports and budget requests from subordinate department heads
- Assists in the preparation of specifications for major equipment and material purchases
- Performs personnel evaluations and initiates personnel actions such as progressive discipline, hiring, terminations, promotions, etc.
- Establishes and monitors objectives for subordinate salaried personnel and performance objectives for treatment plants within his or her responsibility
- Maintains effective communications and working relationships with employees, the client, consultants, and the general public
- Performs other duties as required

Basic Qualifications

- High school diploma or GED
- GA Waste Water operator Class I License
- Five years experience in the operation and maintenance of water/wastewater treatment plants
- Five years experience at the supervisory level
- Possess a valid driver's license

Preferred Qualifications

- A.S. or A.A. or B.S. degree in engineering, environmental science, or business administration

- Level of certification at the highest level at which the plant is permitted as required by the State in which the project is located; a one year grace period to attain certification is acceptable
- Understanding of the technical aspects of the facility to be managed
- Demonstrated interpersonal relations and personnel management skills

- Proficient use of computer software including but not limited to Microsoft Word, Excel, Outlook, DataStream and OPSWin.
- Able to operate and program SCADA systems and other computerized equipment

Working Conditions & Physical Requirements

The work area can involve a working environment indoors as well as outdoors, which could cause exposure to outdoor elements; proper environmental attire will be required. Some areas can have loud noise, active machinery, high pressure fluid systems, electrical equipment, confined spaces, heights and depths, fumes, air borne particles, noxious gases, pathogens and various chemicals. The use of appropriate safety equipment will be mandatory in these areas to prevent hazardous contact.

Must be able to transport self across the facility; must be able to wear and use appropriate safety equipment.

Operations Manager

Reports to: Project Manager
Supervises: Plant and Maintenance managers

General Statement

Assists with startup and development of operational guides, and performs training and performance evaluations for new facilities. Manage multiple plants/ pump stations operations and maintenance.

Essential Duties and Responsibilities

- Provides client and business development support.
- Implements operator and operations management training programs

- Establishes cooperative relationships with coworker, operations staff, vendors, contractors, and all others contacted during work
- Evaluates and directs the process of the treatment plant
- Analyzes operational process control procedures and makes recommendations to the Project Manager
- Performs project follow up reviews to determine client satisfaction with past service and to develop recommendations on the need for future service
- Maintains accurate operational records and prepare reports as required by the Project Manager
- Monitors records; keeps computer data updated and maintain laboratory data
- Maintains technical operational skills at the highest level and remains informed of the latest developments in the field including EPA regulations as they pertain to water/wastewater treatment
- Communicates effectively, both written and verbally with supervisors, coworkers, and clients
- Prepares or assists in the preparation of O&M manuals
- Performs plant startup and operations consulting services
- Prepares, consults on, or reviews operations cost and staffing estimates
- Conducts or assists in conducting performance evaluations and operator assistance programs
- Prepares or assists in the preparation of proposals
- Becomes involved in operator organization activities through membership and committee participation
- Provides technical and management assistance to projects on an "as requested" basis including temporary assignment to project supervisory positions

- Reviews all plant operating records
- Controls activated sludge system and pretreatment
- Monitors and optimizes energy use
- Administers right-to-know program
- Monitors all chemical usage and evaluates polymers for solids handling
- Manage the maintenance of all the facilities in the project
- Performs other duties as required

Basic Qualifications

- High school diploma or GED
- GA Waste Water Class I License
- Four years experience in the operation and maintenance of water/wastewater treatment plant facilities
- Four years experience at a supervisory level
- Possess a valid driver's license

Preferred Qualifications

- Operator certification at the second highest level required by the State in which the project is located. A six-month grace period to attain that certification is acceptable if reciprocity relocation is involved.
- Knowledge of quality processes
- Knowledge of computer software including but not limited to Microsoft Word, Excel, Outlook, SCADA, DataStream & OPSWin

Working Conditions & Physical Requirements

The work area can involve a working environment indoors as well as outdoors, which could cause exposure to outdoor elements; proper environmental attire will be required. Some areas can have loud noise, active machinery, high pressure fluid systems,

electrical equipment, confined spaces, heights and depths, fumes, air borne particles, noxious gases, pathogens and various chemicals. The use of appropriate safety equipment will be mandatory in these areas to prevent hazardous contact.

Must be able to sit, stand, stoop, twist and bend at the waist, turn, kneel, squat, raise arms above shoulder height, grasp, reach, perform repetitive hand movements and fine coordination when preparing reports and using a computer keyboard, have vision

sufficient to read computer screens, printed documents and operate office equipment, have hearing in the normal range with or without correction. In an 8-hour shift must be able to transport self across the facility**,** ascend and descend stair steps, lift objects up to 50 pounds from floor level to waist height and wear and use appropriate safety equipment.

Wastewater Plant Manager

JOB SUMMARY: Incumbent in this class performs process duties related to overseeing all wastewater treatment plant functions and ensuring compliance with environmental and other applicable regulations. Responsibilities include managing assigned staff, developing and monitoring assigned area budget, approving operating expenditures, and serving as a liaison to the general public.

DISTINGUISHING CHARACTERISTICS: Wastewater Plant Manager manages assigned staff, exercises full budget and purchasing approval authority for assigned area, and assumes responsibility for maintaining operational compliance with regulations.

ESSENTIAL DUTIES: (This list is a representative sample: position assignments may vary.)

- Manages assigned staff, including establishing workloads, prioritizing work assignments, evaluating employee performance, interpreting and enforcing policies and procedures, resolving staff conflicts, and administering disciplinary action as required.

- Develops and monitors assigned area budget.
- Serves as a liaison to the general public to ensure positive community relationships and responds to inquiries from the public and media.
- Approves purchases and procures parts and supplies.
- Analyzes waste water sample reports, determines necessary flow and other changes, and directs procedural and operational changes as required.

- Oversees the maintenance of electrical, instrumentation and mechanical equipment and determines effective solutions for repair or replacement of problem equipment.
- Provides instruction to assigned staff on policies, procedures, and regulations governing treatment plant operations.
- Prepares bid specifications for new collection or services and oversees construction services.
- Prepares statistical reports.

Reviews engineering design for new facilities and recommends changes needed for operational efficiency and safety.

KNOWLEDGE: (position requirements at entry):

- Principles and practices of management and supervision;
- Principles and practices of budget development and administration;
- Federal, state, and local laws, rules, and regulations governing wastewater treatment plant operations;
- Principles and practices of basic procurement and contract administration;
- Pumping and control procedures related to area of assignment;
- Belt press and centrifuge operations;
- Occupational hazards and safety precautions related to area of assignment;
- Mechanical, electrical, and hydraulic equipment related to area of assignment;
- Methods and techniques used in testing wastewater and implementing odor controls;
- Principles and practices of basic engineering;

- Principles and practices of basic biology and chemistry;
- Billing practices and procedures related to area of assignment;
- Personal computers and related software.
- CMMS DataStream and Operations OPSW in software

SKILLS: (position requirements at entry):

- Managing and supervising assigned staff;
- Organizing and prioritizing work;
- Developing and managing budgets;
- Monitoring and approving expenditures;
- Performing water sampling and analysis;
- Operating personal computers, including spreadsheet, database, word processing, and presentation software;
- Resolving problems;
- Performing preventative maintenance of mechanical, electrical, or hydraulic equipment;
- Preparing technical and statistical reports;
- Reading plans and blueprints;
- Writing bid specifications;
- Developing effective community relations;
- Conducting effective presentations;

Communication and interpersonal techniques as applied to interaction with coworkers, supervisor, the general public, etc., sufficient to exchange or convey information and to receive work direction

EXPERIENCE AND TRAINING: (position requirements at entry):

Completion of course work equivalent to the academic requirements of a High School diploma or G.E.D. equivalent; and Five (5) years experience as a Wastewater Operator Senior; and five (5) years supervisory experience; or, an equivalent combination of education and experience sufficient to successfully perform the essential duties of the job such as those listed above.

LICENSING REQUIREMENTS: (position requirements at entry):

- Valid State of Georgia Driver's License;
- State of Georgia Certification as a Wastewater Operator I.

PHYSICAL REQUIREMENTS:

Positions in this class typically require sitting, standing, walking, grasping, fingering, lifting, carrying, bending, crouching, kneeling, reaching, twisting, pushing, pulling, using foot controls, driving, talking, hearing, and seeing. Work in this class also involves working outside; exposure to adverse weather conditions, odors, moving mechanical parts, chemicals, and diseases; and safety and security risks.

Medium Work: Exerting up to 50 pounds of force occasionally, and/or up to 20 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.

Waste Water Assistant Plant Manager

JOB SUMMARY: Incumbent in this class performs process duties related to assisting the Wastewater Plant Manager with overseeing administrative plant functions and ensuring regulatory compliance. Responsibilities include managing assigned staff, overseeing budgeting and purchasing functions, and coordinating plant and pump stations operations & maintenance to ensure compliance with Federal, state, and local regulations.

DISTINGUISHING CHARACTERISTICS. Wastewater Assistant Plant Manager is distinguished from Wastewater Plant Manager in that the former manages assigned staff and oversees plant & pump stations operations and maintenance functions, whereas the latter manages the entire plant operation, exercises full budget and purchasing approval authority for assigned area, and assumes responsibility for maintaining operational compliance within established regulations.

ESSENTIAL DUTIES: (This list is a representative sample: position assignments may vary.)

- Oversees plant and pump stations operations and maintenance functions.
- Manages assigned staff, including establishing workloads, prioritizing work

- assignments, evaluating employee performance, interpreting and enforcing policies and procedures, resolving staff conflicts, and administering disciplinary action as required.
    - Supervises the operation of belt filter presses/ centrifuges.
    - Performs chemical analysis on wastewater samples to ensure levels comply with Federal, state, and local regulations.
    - Oversees the maintenance of electrical and mechanical equipment and determines effective solutions for the repair or replacement of problem equipment.
    - Coordinates staff schedules to ensure adequate shift coverage.
    - Schedules certification training for workers requiring professional certification.
    - Prepares statistical reports.
    - Coordinates plant operations with other support agencies to ensure permit compliance with Federal, state, and local regulations.
    - Prepares bid specifications for new services and equipment.
    - Performs the duties of the Wastewater Plant Manager in his/her absence.

- **KNOWLEDGE:** (position requirements at entry):
- Knowledge of:
- Principles and practices of management and supervision;
- Principles and practices of budget development and administration;
- Federal, state, and local laws, rules, and regulations governing wastewater treatment plant operations;
- Pumps and control procedures related to area of assignment;

- Methods and techniques used to conduct water sampling and analysis;
- Belt press and centrifuge operations;
- Occupational hazards and safety precautions related to area of assignment;
- Mechanical, electrical, and hydraulic equipment related to area of assignment;
- Methods and techniques used in testing wastewater and implementing odor controls;
- Principles and practices of basic engineering, biology, and chemistry;
- Personal computers and related software.
- CMMS DataStream and Operations OPSWin software.

SKILLS: (position requirements at entry):

Skills in:

- Managing and supervising assigned staff;
- Organizing and prioritizing work;
- Developing and managing budgets;
- Analyzing and resolving mechanical or operational facility problems;
- Conducting water sampling and analysis;
- Preparing and producing technical and statistical reports;
- Operating personal computers, including spreadsheet, database, word processing, presentation , CMMS DataStream & Operations OPSWin software;
- Writing bid specifications;
- Establishing and maintaining effective working relationships with other County personnel, officials, and the general public;
- Communication and interpersonal techniques as applied to interaction with coworkers, supervisor, the public, etc., sufficient to exchange or convey information and to receive work direction.

EXPERIENCE AND TRAINING: (position requirements at entry):

Completion of course work equivalent to the academic requirements of a High School diploma or G.E.D. equivalent; and two (2) years experience as a Wastewater Operator,

Senior; or, four (4) years experience in wastewater plant operations, including two (2) years lead or supervisory experience; or, an equivalent combination of education and experience sufficient to successfully perform the essential duties of the job such as those listed above

LICENSING REQUIREMENTS: (position requirements at entry):

- Valid State of Georgia Driver's License;
- State of Georgia Certification as a Wastewater Operator I.

PHYSICAL REQUIREMENTS:

Positions in this class typically require sitting, standing, walking, grasping, fingering, lifting, carrying, bending, crouching, kneeling, reaching, twisting, pushing, pulling, using foot controls, driving, talking, hearing, and seeing. Work in this class also involves working outside; exposure to adverse weather conditions, odors, moving mechanical parts, chemicals, and diseases; and safety and security risks.

Medium Work: Exerting up to 50 pounds of force occasionally, and/or up to 20 pounds of force frequently, and/or up to 10 pounds of force constantly to move objects.

Maintenance Manager

Reports to:	Project Manager
Supervises:	Maintenance Supervisors
	Electrician
	Mechanic
	Utility Worker
	SCADA Technician
	Instrumentation Technician
	CMMS Specialist

General Statement

Supervises all preventive and corrective maintenance of water/wastewater treatment plant facilities

Essential Duties and Responsibilities

- Plans, schedules, and directs maintenance of a wide variety of specialized mechanical and electrical equipment including buildings, structures and grounds

- Assigns, coordinates and supervises personnel and materials required in the maintenance and repair of wastewater treatment facilities
- Estimates cost and time for all aspects of maintenance, repair and construction work
- Diagnoses malfunctions and determines effective courses of action for correcting them
- Inspects buildings and equipment for needed maintenance and repair
- Prepares rough sketches of maintenance, repair and construction jobs
- Ensures the proper use and care of tools, materials, and safety equipment involved in maintenance and repair work
- Reads, interprets, and works from blueprints, drawings, sketches, plans, specifications, and mechanical illustrations
- Performs skilled mechanical repair work on wastewater treatment plant engines, pumps, and other equipment
- Consults with Project Manager in planning workload and assignments
- Reviews work projects in progress and at completion
- Develops, implements, and enforces safety regulations and procedures
- Keeps records of all maintenance work done on equipment, and prepares routine and special reports
- Determines remedial action in emergency situations
- Provides training to less experienced employees
- Establishes and maintains cooperative relationships with those contacted during the course of work
- Performs other duties as assigned

Basic Qualifications

- High school education or GED
- Five years experience at a supervisory level
- Possess a valid driver's license
- GA Waste Water Collection System Licensed.
- Thorough knowledge of DataStream CMMS and SCADA system.

Preferred Qualifications

- Knowledge of the methods, materials, equipment, and tools used in the construction, repair, and operation of engines, pumps, and other mechanical equipment related to wastewater treatment plant operations and procedures
- Knowledge of the principles and practices of an effective mechanical, structural, and grounds preventive maintenance program and operations of internal combustion engines and electrical pump motors
- Basic electrical knowledge involved in working on pumps, motors, and other equipment; equipment, tools, and materials used in maintaining and repairing wastewater treatment plant and related equipment
- Knowledge in the principles of supervision and training, safety principles and practices, and related state and federal laws and regulations
- Proficient in the use of computer software including, but not limited to Microsoft Word, Excel, Outlook and Power Point
- Ability to work independently and as part of a team

Working Conditions & Physical Requirements

The work area can involve a working environment indoors as well as outdoors, which could cause exposure to outdoor elements; proper environmental attire will be required. Some areas can have loud noise, active machinery, high pressure fluid systems, electrical equipment, confined spaces, heights and depths, fumes, air borne particles, noxious gases, pathogens and various chemicals. The use of appropriate safety equipment will be mandatory in these areas to prevent hazardous contact.

Must be able to perform repetitive hand movements and fine coordination when preparing reports and using a computer keyboard; have vision sufficient to read computer screens, printed documents and operate office equipment; have hearing in the normal range with or without correction. Must be able to transport self across the facility and lift and/or move up to 50 pounds.

Electrician

General Statement

Responsible for electrical maintenance and emergency repairs of electrical equipment at the facilities; proposes, prepares, makes modifications, and executes the preventive maintenance program designed for the facilities.

Essential Duties and Responsibilities

- Reviews or prepares proposed plans and specification for new or replacement equipment
- Makes recommendations for improvements to existing equipment and facilities
- Works with management to keep all equipment and buildings in compliance with electrical codes
- Provides training and supervision to others in the replacement or installation of existing or new equipment
- Repairs and maintains all facility electrical wiring and fixtures in accordance with blueprints, manuals, and building codes using appropriate hand and electrician's tools
- Installs and repairs electrical fixtures, apparatus, and control equipment
- Repairs and maintains major equipment such as motors, generators, and electrical control systems
- Tests defective equipment to determine the cause of malfunction or failure using standard electrical test equipment
- Observes functioning of installed facility equipment to detect hazards and need for adjustment, relocation, or replacement

- Inspects circuits and wiring for specified shielding and grounding and repairs or rewires plant equipment systems according to state building codes and safety regulations
- Plans layout of new wiring installations
- Inspects all equipment on a regularly scheduled basis; meets all requirements of the established preventive maintenance program; inspects, maintains, and

- repairs solid state boiler control systems and electrical switch gear and electric motors
- Adjust, calibrates, and repairs electrical-pneumatic control systems; inspects electrical-pneumatic systems for emergency repairs; reports and logs all findings
- Maintains the files necessary to support all maintenance activities
- Performs other duties as required

Basic Qualifications

- High school diploma or GED
- Possess certification as a licensed electrician with at least 3 years of experience as a commercial and/or industrial journeyman electrician
- GA Waste Water Collection System License
- Possess a valid Driver's License

Preferred Qualifications

- Knowledge of the methods, materials, equipment and tools used in the maintenance and repair of advanced mechanical and/or electrical systems
- Ability to use computers and computer software including, but not limited to Microsoft Word, Excel, and Outlook and to enter data into computerized management systems to compose and complete computer reports.

Working Conditions & Physical Requirements

The work area can involve a working environment indoors as well as outdoors, which could cause exposure to outdoor elements; proper environmental attire will be required.

Some areas can have loud noise, active machinery, high pressure fluid systems, electrical equipment, confined spaces, heights and depths, fumes, air borne particles, noxious gases, pathogens and various chemicals. The use of appropriate safety equipment will be mandatory in these areas to prevent hazardous contact.

Must be able to sit, stand, stoop, twist and bend at the waist, turn, kneel, squat, raise arms above shoulder height, grasp, reach, perform repetitive hand movements and fine

coordination to work on electrical equipment; have vision sufficient to perform electrical maintenance; have hearing in the normal range with or without correction. In an 8-hour shift must be able to transport self across the facility**,** ascend and descend stair steps, lift objects up to 50 pounds from floor level to waist height, climb and work off of a ladder or scaffold and climb into and out of vehicles having high ground clearance; use arms and back to tighten and loosen nuts and bolts; carry a 50 pound tool box up a flight of stairs; work in confined spaces and wear and use appropriate safety equipment. Night and weekend shift rotation may be required.

Wastewater Mechanic

JOB SUMMARY: Incumbent in this class performs operational duties related to repairing wastewater mechanical equipment. Responsibilities include troubleshooting wastewater equipment; determining schedules and equipment repair requirements; performing preventative maintenance; and installing new and rebuilt pumps, motors, augers, gear drives rollers, controllers, blowers, and heat-exchangers etc.

DISTINGUISHING CHARACTERISTICS: Wastewater Mechanic repairs wastewater equipment, inventories materials and provides lead direction to assigned staff in addition to repairing wastewater equipment. Incumbent in this class performs shift work as required.

ESSENTIAL DUTIES: (This list is a representative sample: position assignments may vary.)

- Performs preparatory work, including ensuring all required materials and equipment are available.
- Performs mechanical duties, including troubleshooting wastewater equipment problems; performing preventative maintenance; inspecting work sites for potential problems; determining scheduling and equipment repair requirements; and installing new and rebuilt pumps, motors, augers, gear drives, rollers, controllers, blowers, and heat-exchangers.

- Inventories materials and equipment to ensure adequate supply levels.
- Performs cleanup duties, including cleaning up spills and debris, picking up tools, cleaning work area, and performing touchup work as needed.

KNOWLEDGE: (position requirements at entry):

Knowledge of:

- Various types of wastewater mechanical equipment;
- Methods and techniques used in repairing wastewater mechanical equipment;
- Tools and equipment used in maintaining/repairing wastewater mechanical equipment;
- Theories and principles of basic mathematics;
- Occupational hazards and safety regulations governing wastewater mechanical equipment maintenance/repair activities.

SKILLS: (position requirements at entry):

Skills in:

- Maintaining and repairing wastewater mechanical equipment;
- Applying proper lifting techniques;
- Performing basic mathematical computations;
- Using tools and equipment related to wastewater mechanical equipment repair/maintenance;
- Establishing and maintaining effective working relationships with other County personnel, officials, and the general public;
- Communication and interpersonal techniques as applied to interaction with coworkers, supervisor, the general public, etc., sufficient to exchange or convey

information and to receive work direction.

EXPERIENCE AND TRAINING: (position requirements at entry):

Completion of course work equivalent to the academic requirements of a High School diploma or G.E.D. equivalent; and two (2) years experience operating and repairing wastewater equipment; or an equivalent combination of education and experience sufficient to successfully perform the essential duties of the job such as those listed above.

LICENSING REQUIREMENTS: GA Waste Water Collection System License

- Valid State of Georgia Driver's License *(as required by position assignment).*
- GA Waste Water collection System License

PHYSICAL REQUIREMENTS:

Positions in this class typically require climbing, balancing, stooping, kneeling, crouching, crawling, reaching, standing, mobility, pushing, pulling, lifting, fingering, grasping, feeling, driving, talking, hearing, seeing, and repetitive physical motions. Work in this class also involves exposure to moving mechanical parts.

Very Heavy Work: Exerting in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20 pounds of force constantly to move objects.

Painter

JOB SUMMARY: Incumbent in this class performs operational duties related to painting activities. Responsibilities include painting a variety of surfaces using rollers, brushes, and spray guns; refurbishing and refinishing furniture; power washing, scraping, burning, and sanding surfaces; and performing cleanup work.

DISTINGUISHING CHARACTERISTICS: Painter performs a variety of painting duties in accordance with standard trade practices, provides lead direction to assigned staff

and monitors assigned area to perform standard painting duties. Incumbent in this class performs shift work as required.

ESSENTIAL DUTIES: (This list is a representative sample: position assignments may vary.)

- Performs preparatory work, including ensuring all required materials and equipment are available.
- Inspects work sites for potential problems.
- Performs various painting activities, including laying out drop cloths; mixing and matching paint; power washing, scraping, burning, and sanding surfaces; performing minor repair work, such as puttying wood, plastering holes, and finishing surfaces; and applying paint to buildings, walls, ceilings, furniture, equipment, and vehicles.
- Inventories materials and equipment to ensure adequate supply levels and submits supply requests to supervisor
- Performs cleanup at the end of the workday or when jobs are completed, including cleaning up paint spills and other debris, picking up tools and drop cloths, cleaning work areas, and performing touchup work as needed.
- Meets with supervisor to discuss work assignments and priorities.

KNOWLEDGE: (position requirements at entry):

Knowledge of:

- Materials, tools, and equipment used in the painting trade;
- Painting methods, practices, and procedures;
- Methods and techniques used to prepare surfaces for painting;
- Occupational hazards and safety regulations related to the painting trade;
- Building/structural trades related to painting, such as carpentry.

SKILLS: (position requirements at entry):

Skills in:

- Mixing and matching paints and blending colors;
- Preparing surfaces for painting;

- Using painting tools and equipment;

- Working from high ladders and scaffolds;
- Applying proper lifting techniques;
- Troubleshooting and correcting paint defects in interior and exterior surfaces and equipment;
- Establishing and maintaining effective working relationships with other County personnel, officials, and the general public;
- Communication and interpersonal techniques as applied to interaction with coworkers, supervisor, the general public, etc., sufficient to exchange or convey information and to receive work direction.

EXPERIENCE AND TRAINING: (position requirements at entry):
Completion of course work equivalent to the academic requirements of a High School diploma or G.E.D. equivalent; and two (2) years experience as a trade painter; or an equivalent combination of education and experience sufficient to successfully perform the essential duties of the job such as those listed above.

LICENSING REQUIREMENTS: (position requirements at entry):
- Valid State of Georgia Driver's License *(as required by position assignment)*.

PHYSICAL REQUIREMENTS:

Positions in this class typically require climbing, balancing, stooping, kneeling, crouching, reaching, standing, mobility, pushing, pulling, lifting, talking, hearing, seeing, and repetitive physical motions. Work in this class also involves working outside and exposure to noxious odors and fumes.

Heavy Work: Exerting up to 100 pounds of force occasionally, and/or up to 50 pounds of force frequently, and/or up to 20 pounds of force constantly to move objects.

Field Instrument Technician

Minimum Qualifications:

1. ISA Certified Control Systems Technician (CCST) registration or completion of the relevant core courses in the ISA technical skills program.

3. Minimum 5 years experience installing, starting up, calibrating, and troubleshooting instruments commonly used in wastewater treatment facilities, including but not limited to pressure transmitters, flow switches, dissolved oxygen analyzers, pH analyzers, nutrient analyzers, thermal flow meters, pressure transmitters, magnetic flow transmitters, and combustible gas sensors. Skills shall include troubleshooting electrical control and signal circuits.

SCADA System Technician

Minimum Qualifications:

1. ISA Certified Control Systems Technician (CCST) registration or completion of the relevant core courses in the ISA technical skills program.

2. Successful completion of manufacturer training courses for programming and maintaining PLCs by Allen-Bradley (ControlLogix platform), General Electric (PAC System platform), or Modicon (Quantum) and successful completion of manufacturer training courses for programming HMI software by Intellution.

3. Minimum of 5 years of field experience programming, installing, starting up and troubleshooting networked PLC-based control systems, performing field programming modifications, and programming HMI software by Intellution or Wonderware.

EXHIBIT 11

EQUIPMENT AND CHEMICALS INVENTORY

Within 60 days after Commencement Date, the Contractor shall conduct a physical inventory and prepare an up-to-date report of Equipment and chemicals located throughout the System. The inventory report shall be attached to this Exhibit 6 and contain, but is not limited to, the following information relative to the equipment and chemicals of the System:

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

All inventories are to be considered as part of the project. At the end of the Term of Agreement, an inventory will be replenished to levels equal to the levels at the beginning of the Agreement.

EXHIBIT 12

Ground Maintenance and Painting

Contract shall maintain buildings, grounds pursuant to Exhibit 3.2.6. The landscaping and painting at minimum shall meet the criteria in this section.

1. LANDSCAPE MAINTENANCE

1.1. GENERAL

A. The maintenance of the project shall be of the highest quality possible. All work to be performed shall be accomplished by experienced personnel.

B. The section shall cover the requirements for the maintenance of the installed plant materials and irrigation system. It shall set the responsibilities of the Contractor for the maintenance activities.

1.2. SCOPE OF WORK

A. Landscape maintenance shall include the complete care and guarantee of all planted trees, shrubs, groundcovers and lawn areas within the limits of work shown on the landscape plans and irrigation plans. The owner shall be insured that the maintenance program will be complete and will result in the maintaining of the quality of the installed plantings and irrigation system.

B. Contractor shall take every precaution to prevent saturation of the plant materials during the maintenance period. If necessary he shall create diversion swales, install under drains, and remove tree saucers, etc. in order to insure the proper drainage of the planted areas.

1.3. EXECUTION

A. PLANTED TREES

1. **Watering:** While the site will be partially irrigated it is the responsibility of the Landscape Contractor to be sure that all trees are receiving adequate water. Should the irrigation system be inoperative the soil around the ball of the tree should be checked at a depth of 12-15" and if no

moisture is apparent the tree shall be hand watered. The tree shall be saturated to insure that the root ball is thoroughly wet. Apply reuse water where applicable.

2. **Mulch**: A 3" layer of clean pine straw mulch shall be placed around each tree. The Landscape Contractor shall re-mulch the trees at least twice during the one year maintenance period.

3. **Abnormal Conditions**: Each week the trees shall be inspected for any abnormal conditions such as insects, web worms, Japanese beetles, etc. Such conditions shall be corrected at once.

4. **Sucker Growth**: All sucker growth shall be removed from the tree three times per year.

5. **Dead Wood**: At least twice per year, preferably in the spring and fall, all trees will be inspected for dead wood and any such wood observed shall be removed from the tree.

6. **Insect Control**: Insecticides shall be applied as necessary to control insects. Any chemicals applied shall be done in accordance with the manufacturer's instructions and shall be used in strict accordance with the requirements of the State, County, and the federal Environmental Protection Agency.

7. **Leaning Trees**: Any trees that are leaning from the proper vertical alignment shall be straightened. They may be straightened by pulling the trees into proper vertical alignment. If they cannot be straightened by pulling, the Landscape Contractor shall dig around the root ball and straighten the tree. When this is done the contractor shall follow all applicable instructions for guying, staking, etc. on the drawings or in Section I of this Specification.

8. **Pruning:** Plants shall be pruned in late winter and again in mid summer to maintain the proper crown appearance of the trees.

9. **Tree Wrapping:** Tree wrapping shall be maintained about the tree for the first year after its installation. Should insects or other problems require the removal of the tree wrap the appropriate treatment shall be applied and the tree shall be re-wrapped.

10. **Tree Saucers:** All tree saucers shall be maintained as per the landscape details.

11. **Fertilization:** All trees shall be fertilized in accordance with the fertilization chart which follows this section.

B. SHRUBS AND GROUNDCOVERS

1. **Pruning:** Shrubs shall be pruned and/or thinned a minimum of two times per year to adequately maintain the shape and character of the plants. Landscape Contractor shall prune each type of plant at the time most appropriate for its growth cycle.

2. **Mulching:** All shrub and groundcover beds shall be re-mulched at least twice per year. The re-mulching shall be accomplished using fresh clean pine straw applied to a depth of 3".

3. **Fertilization:** All shrubs shall be fertilized in accordance with the chart at the end of this section.

4. **Insecticide**: All plants shall be inspected for insects at least every two weeks. Should any insects be found, the Landscape Contractor is directed to determine a plan of action to eliminate the insects and to carry it out immediately. All

applicable local, state and federal laws concerning the use of insecticides shall be complied with.

5. **Edging**: All shrub and groundcover beds shall be edged and trimmed so that a manicured appearance is maintained at all times.

6. **Watering:** The property will be provided with an irrigation system but it is the responsibility of the Landscape Contractor to monitor the plants and to determine that they are receiving proper moisture.

7. **Policing:** All trash shall be removed from the shrub and groundcover beds during the routine scheduled maintenance of the site.

C. LAWN MAINTENANCE

1. **Mowing:** The Landscape Contractor shall mow and edge the lawn areas on a 7 days schedule during the months of March through November. During the months of December through February, he shall mow and edge the lawn areas as needed or as requested by the County. Mowing shall be accomplished when the lawn areas are free from excessive moisture. Should rain cause a delay in the scheduled mowing, the Landscape Contractor shall mow the lawn on the first day that the turf is dry enough to allow mowing. The Contractor shall remove from the lawn areas all excess clippings at each mowing.

2. **Edging:** The curb and plant beds shall be edged at each mowing.

3. **Policing:** All trash and other foreign matter shall be removed from the lawn and adjacent parking areas at each mowing.

4. **Aeration:** All lawn areas shall be aerated in the spring and fall of the year utilizing a mechanical aerator.

5. **Fertilization:** All lawn areas shall be fertilized in the spring prior to the grass beginning to green, once in the summer during vigorous growth, and once in the fall just prior to dormancy. The spring and summer applications shall be a commercial grade fertilizer with an ingredients ratio of 3-1-2. The spring fertilization shall also include a pre-emergent weed killer. The fall application shall have an ingredient ratio of 1-1-3. The fertilizer used shall be a commercial fertilizer approved by the Landscape Architect.

6. **Weed Control**: The Landscape Contractor shall take all necessary measures to insure that any weed growth is controlled. Any chemical methods utilized shall be applied in conformance with all local, state, and federal regulations.

D. FERTILIZER

Commercial fertilizer shall be a complete fertilizer; 50% of nitrogen of which is derived from natural organic sources. Fertilizer shall be delivered to the site in sealed containers which show the weight, chemical analysis, and manufacturers name. It shall always be stored in a weatherproof area so that it will remain dry. Fertilizer for trees, shrubs and groundcovers shall be a slow release type and shall be applied as follows:

Trees and Shrubs	Rate of Application	
March-May	10-10-10	trees-1lb/caliper inch
May-October	6-10-10	shrubs 1/2 lb/ft. in ht.
October-March	6-12-12	

E. POLICING

The Landscape Contractor shall police all grounds, plant beds, parking areas, and sidewalks after each mowing of the lawn during the months of March-November. During the months of December-February the contractor shall police the site every 14 days by blowing clean all parking areas, streets, and sidewalks and removing any and all trash from the shrub beds.

1.4. IRRIGATION SYSTEM

A. The irrigation system shall be in full operation prior to any planting operations beginning on the site.

B. The Contractor shall set up the initial watering cycles and the proper operation of the system. It shall be the responsibility of the Contractor that the system is operating normally.

C. Should there be a problem with the system the Contractor shall repair the system within forty-eight (48) hours of such notification.

D. The Contractor shall be responsible for any damage to the system.

E. The Contractor shall see that the system is fully winterized by November 1st of the year.

1.5. Drought shall not be an Uncontrollable Circumstance if reuse water is available.

2. Painting

Contract shall develop a year round painting plan to protect the structure from moisture and corrosion. All the piping shall be color coded and labeled. Protective coating must be applied to protect walls from erosion and corrosion. Paint shall meet the standards for the specific area. All the facilities shall maintain its aesthetic value. The plan shall be approved by County and revised yearly.

EXHIBIT 13 (ON CD)

- **NPDES Permits and Storm Water Permits**
- **Process Report (2004- current)**
- **Annual Energy Consumption Report (Last 12 months)**
- **Fulton County Business Plan**
- **Sewer Use Ordinance (SUO)**
- **Minimum Equipment Standards**

EXHIBIT 14

PUBLIC EDUCATION AND COMMUNITY OUTREACH PLAN OUTLINE

15.1 COMMUNITY OUTREACH PLAN APPROACH

A final community outreach plan will be developed that will serve as the blueprint for on-going communications during the life of the contract. This plan will be scheduled and coordinated to coincide with major milestones and other accomplishments related to the Managed Assets including periodic public information meetings to be held in the community.

15.2 COMMUNITY OUTREACH PLAN COMPONENTS

The principal components of the public education and community outreach efforts will include but not be limited to:

- **Stakeholders Directory.** The Contractor will develop a directory of stakeholders made up of surrounding neighborhoods, public officials and media representatives. The information will be organized in a directory format and will serve as the primary contact list for Fulton County.

- **Communication Tools.** A variety of public information and education tools will be developed including existing neighborhood newsletters, fact sheets, press releases, brochures, Fulton County web-site link, and the Fulton County Cable Access.

- **School Program.** The Contractor will present information to local schools on water and wastewater treatment. Programs such as this have been implemented at other projects and are rewarding for both the contractor and the students involved.
- **Public Information Display.** The Contractor will install a public information display at the facility. The displays will be filled with educational materials from the Water Environment Federation, the Georgia WPCA, and plant- specific information such as brochures, fact sheets, site maps, and process schematics.

- **Plant Tours.** Tours will be offered for school, community, and professional groups. The tours are designed to increase awareness of the value and importance of water and waste water treatment by allowing these groups to witness the process first-hand.

- **Speakers Bureau.** A speaker's bureau for public meetings or school career days will be established. Presentations will be tailored to suit the individual interests of each group.

- **Media Relations Program.** A media relations package will include strategic announcements positioned to effectively communicate in a proactive, open and responsible manner. All levels of media will be included in the plan, particularly those at the community level. All media announcements will be pre-qualified with Fulton County

EXHIBIT 15
MINIMUM FINANCIAL CRITERIA

The term "Minimum Financial Criteria" as used in the Service Agreement means compliance with the following covenants:

Financial Covenants of Guarantor

The Guarantor will not, and it will not cause or permit any subsidiary to, incur or assume or become liable with respect to any Indebtedness, and it will not cause or permit any Subsidiary to issue any Preferred Stock, except as follows:

1. Indebtedness of a Subsidiary to the Guarantor, or of a Subsidiary to another Subsidiary, or of the Guarantor to a Subsidiary, or Preferred Stock of a Subsidiary issued to the Guarantor or another Subsidiary, which, in each case, would be eliminated in a consolidated balance sheet of the Guarantor and its Subsidiaries prepared in accordance with Accepted Methods of Accounting, whether heretofore or hereafter incurred, assumed or issued or for which it hereafter becomes liable; and

2. Indebtedness of the Guarantor and its Subsidiaries of any kind, heretofore or hereafter incurred or assumed or for which they become liable, or Preferred Stock of a Subsidiary heretofore or hereafter issued, provided that:

2.01 At the time when the Guarantor or any Subsidiary incurs, assumes or becomes liable for any Indebtedness (of the character referred to in this Section 2.) or any Subsidiary issues any Preferred Stock:

a) the total amount of Indebtedness then outstanding (including any Indebtedness then to be incurred or assumed or for which they are then to become liable) of the Guarantor and its Subsidiaries (other than Indebtedness of the character permitted without limit as to amount under Section 1.); plus

b) the total of the involuntary liquidating value of the Preferred Stock then outstanding (including any Preferred Stock then to be issued) of all Subsidiaries (other than such Preferred Stock owned by the Guarantor or a Subsidiaries which, in each case, would be eliminated in a consolidated balance sheet of the Guarantor and its Subsidiaries prepared in accordance with Accepted Methods of Accounting); plus

c) the total of the book value of the common stock then outstanding (including any common stock then to be issued) of all Subsidiaries (other than such common stock owned by the Guarantor or a Subsidiary which, in each case, would be eliminated in a consolidated balance sheet of the Guarantor and its Subsidiaries prepared in accordance with Accepted Methods of Accounting): shall not be in excess of 85% of the Consolidated Capitalization of the Guarantor and its Subsidiaries; and

2.02 At the time when the Guarantor incurs, assumes or becomes liable for any *Indebtedness* the total amount of Indebtedness then outstanding (including an *Indebtedness* then to be incurred or assumed or for which it is then to become liable) of the Guarantor (other than Indebtedness of the character permitted without limit as to amount under Section 1.) shall not be in excess of 65% of the Capitalization of the Guarantor.

On or before one hundred and twenty (120) days after the last day of each fiscal year, Guarantor will furnish to the County an Officers' Certificate stating as of the last day of such fiscal year:

(i) the sum of the amounts referred to in clauses (a), (b) and (c) of paragraph 2.01;

(ii) the Consolidated Capitalization of the Guarantor and its Subsidiaries determined as provided in paragraph B of this Financial Covenants;

(iii) the percentage obtained by dividing the amount shown responsive to item (i) hereof by the amount shown responsive to item (ii) hereof;

(iv) the total amount of Indebtedness then outstanding of the Guarantor (other than Indebtedness of character permitted without limit as to amount under Section 1.);

(v) the Capitalization of the Guarantor determined as provided in paragraph C of this Financial Covenants; and

(vi) the percentage obtained by dividing the amount shown responsive to item (iv) hereof by the amount shown responsive to item (v) hereof.

In the even that the percentage stated in such Officers' Certificate responsive to item (iii) above is in excess of 85% or the percentage stated therein responsive to item (vi) above is in excess of 65% the Guarantor will not thereafter declare or pay any dividend on any shares of its capital stock of any class (except (i) the regular cash dividends required to be paid on Preferred Stock of any class according to its terms (other than Preferred Stock issued initially as a stock dividend) and (ii) dividends payable in stock of the Guarantor) or make any other distribution on any shares of its capital stock) other than (i) purchases, redemptions or acquisitions made in an amount not exceeding the net proceeds from the issue of shares of its capital stock issued after December 31, 1976, (ii) through the operation of any sinking, amortization, purchase or other analogous fund with respect to shares of such Preferred Stock of any class of the Guarantor (other than Preferred Stock issued initially as a stock dividend) and (iii) in connection with the exchange or conversion of any shares of its capital stock of any class for or into other shares of its capital stock), unless and until percentages, as

evidenced by a similar Officers' Certificate made as of a subsequent date (which need not be the last day of a fiscal year) and filed with the Trustee, shall not exceed 85% and 65% respectively. The provisions of this paragraph are not intended to excuse a default for violation of any other provision of these financial covenants.

For the purposes of these financial covenants, the following terms when italicized shall have the following meanings:

A. "Accepted Methods of Accounting" means, as to a particular corporation, accounting in accordance with generally accepted accounting practices (modified as required to comply with the rules and regulations of regulatory commissions having jurisdiction where applicable) as currently in effect: provide that for the purposes of the financial covenants contained herein, such practices shall include, where applicable, the principles of the equity method of accounting as promulgated in Accounting Principles Board Opinion No, 18 dated March 18 dated 1971 as amended or superseded.

B. "Consolidated Capitalization of the Guarantor and its Subsidiaries" means the sum of (i) the par of stated value of all outstanding capital stock of the Guarantor and all paid-in premiums thereon; (ii) all paid-in surplus, capital surplus, earned surplus and other surplus accounts of the Guarantor; (iii) all common stocks of Subsidiaries not owned, directly or indirectly, by the Guarantor or one or more Subsidiaries, taken at their respective involuntary liquidating values; and (v) all Indebtedness of the Guarantor and of any Subsidiaries not owned, directly or indirectly, by the Guarantor or one or more Subsidiaries. In determining all surplus for clause (ii) of this definition, no additions shall be made for any credits to surplus made after December 31, 1976 for the write-up of any assets, and no deductions shall be made for any charges to surplus made after December 31, 1976 for the write-down or write-off of the excess of the carrying value of any

assets over the original cost of such assets when first devoted to public use. Any such Indebtedness,

Preferred Stock or common stock which would otherwise be included in clauses (a), (b) or (c) or paragraph 2.01 and which is to be irrevocably refunded, discharged or otherwise retired with the proceeds of or in connection with the issuance of any new Indebtedness or other securities shall not, for the purposes of paragraph 2.01, be deemed to be outstanding. The acquisition by the Guarantor of a Subsidiary which has Indebtedness (other than Indebtedness of the character permitted without limit as to amount under Section 1. above) outstanding shall for the purpose of this Financial Covenants be deemed equivalent to the incurring or assuming of, or becoming liable for, such outstanding Indebtedness by such Subsidiary. All calculations of Consolidated Capitalization of the Guarantor and its Subsidiaries shall be on the basis of the Most Recently Available Consolidated Balance Sheet of the Guarantor and its Subsidiaries.

C. "Capitalization of the Guarantor" means the sum of (i) the par or stated value of all outstanding capital stock of the Guarantor and all paid-in premiums thereon; (ii) all paid-in surplus, capital surplus, earned surplus and other surplus accounts of the Guarantor and (iii) all Indebtedness of the Guarantor. In determining all surplus for clause (ii) of this definition, no additions shall be made for any credits to surplus made after December 31, 1976 for the write-up of any assets, and no deductions shall be made for any charges to surplus made after December 31, 1976 for the write-down or write-up of the excess of the carrying value of any assets over the original cost of such assets when first devoted to public use. Any such Indebtedness which would otherwise be included in making the calculation contemplated otherwise retired with the proceeds of or in connection with the issuance of any Indebtedness or other securities shall not, for the purposes of paragraph 2.02. be deemed to be outstanding. All

calculations of Capitalization of the Guarantor shall be on the basis of the Most Recently Available Balance Sheet of the Guarantor.

D. "Indebtedness" means Long Term Debt and all guarantees thereof.

E. "Long Term Debt" means any obligation for money borrowed maturing by its terms more than one year from the date incurred or assumed, or renewable or extendible by its terms beyond such one year, excluding any serial, sinking fund or the required payment due on or to be made in respect of any such obligation within such year, but Long Term Debt shall not include any advances or deposits made by customers.

F. "Most Recently Available Balance Sheet" means a balance sheet prepared in accordance with Accepted Methods of Accounting as the end of or for the 12 month period ended with the last quarterly fiscal period ended at least 60 days prior to the date of the transaction in respect of which such balance sheet or income statement is prepared.

G. "Preferred Stock" means any stock ranking prior to common stock as to dividends and limited as to amount payable thereon upon liquidation, dissolution or winding up of the issuing corporation.

H. "Subsidiary" means a corporation more than 50% of the voting stock of which is at the time owned, directly or indirectly, by the Guarantor or by one or more Subsidiaries of the Guarantor. For purposes of this definition, the term "voting stock" means stock entitled under ordinary circumstances to vote for the election of directions, trustees, or persons performing similar functions and does not mean or include stock so entitled to vote only upon failure to pay dividends thereon or upon some other contingency or for the some special purpose or purposes.