



**Water and Sewer**  
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July 28, 2015

To: All Prospective P3 Partners

Re: **Design-Build-Finance-Operate-Maintain Services for South Miami Heights Water Treatment Plant Program**

Dear Sir/Madam:

Miami-Dade County, through the Miami-Dade Water and Sewer Department (WASD) hereby solicits public comments in connection with the attached draft RFP Volume II: Draft Service Contract document. WASD is currently in the process of implementing a comprehensive Capital Improvements Plan (CIP) for numerous water and wastewater projects. One of the significant projects in the CIP is the South Miami Heights Water Treatment Plant (SMH WTP) Program. The SMH WTP seeks to improve WASD's reliability in water service and quality by allowing for the decommissioning of small satellite plants with many years of service. Implementation of the SMH WTP Program will benefit the consumers in the south Miami-Dade area and will bolster water treatment production capacity.

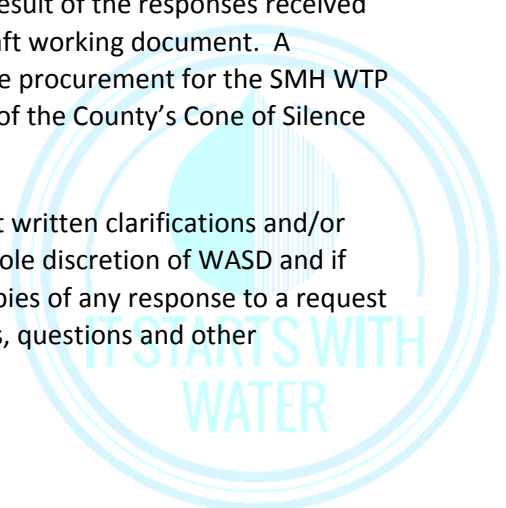
WASD is releasing this Request for Proposals (RFP) Volume II draft working document for the SMH WTP Program for the sole purpose of eliciting and gathering industry comment as an important stakeholder in the program. The comments received will be used by WASD in finalizing the RFP. WASD will not be responsible for any cost incurred by the respondents in furnishing the information being requested herein.

All information being submitted is subject to Chapter §119 of the Florida Statutes, commonly known as the "Public Records Laws". Accordingly, do not submit any information the respondents consider to be a trade secret, proprietary, confidential or that violates any intellectual rights. WASD may make use of any information, materials, data and concepts disclosed by any recipient without limitation.

Respondent's response explicitly entails a waiver of any claim it may have on the use by the County or its agents of any information, materials, data and concepts disclosed.

This is not a procurement solicitation and no award will be issued as a result of the responses received from the industry. WASD is merely soliciting industry comment to a draft working document. A response to this request is not mandatory for future participation on the procurement for the SMH WTP Program. Because this is not a procurement solicitation, the provisions of the County's Code of Silence do not apply.

Respondents to the RFP Volume II draft working document may request written clarifications and/or interpretations from WASD. A response to any request shall be at the sole discretion of WASD and if deemed beneficial to our purpose. WASD shall endeavor to provide copies of any response to a request issued to any proposer requesting in writing to be copied. All submittals, questions and other



correspondence to WASD must include a letter of transmittal that identifies a key contact person, address, telephone number, fax number and e-mail address. Electronic submittals will be accepted and encouraged.

All submittals shall be made to:

Miami-Dade Water and Sewer Department  
Juan Carlos Arteaga, AIA, NCARB, CBO, CGC, LEED®AP  
Deputy Director  
3071 SW 38 Avenue  
Miami, Florida 33146  
Email: [JCArteaga@miamidade.gov](mailto:JCArteaga@miamidade.gov)

With copy to:

CDM Smith Inc.  
Daniel R. Maher, P.E.  
Senior Project Manager  
800 Brickell Avenue, Suite 500  
Miami, Florida 33131  
Email: [MaherDR@cdmsmith.com](mailto:MaherDR@cdmsmith.com)

For purposes only of this informational stage, the submittal deadline of September 14, 2015 has been established to allow the County sufficient time to consider the submittals in preparation of the final RFP. Submittals received after that deadline will be considered only in the County's discretion. No submittal in response to this informational request will be considered following issuance by the County of the formal RFP for the Project.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Juan Carlos Arteaga', with a horizontal line underneath.

JC Arteaga, AIA, NCARB, CBO, CGC, LEED®AP  
Deputy Director

Encl. Draft Service Contract Volume III  
cc: File

# REQUEST FOR PROPOSALS (STEP 2)

ISD Project No. 14-DBFO-WASD-01

Design-Build-Finance-Operate-Maintain Services  
For  
South Miami Heights Water Treatment Plant Program

Volume II: Draft Service Contract

Issued Date: [\_\_\_\_\_]

Miami-Dade County, Florida

111 NW 1st Street, 17th Floor, Suite 202

Miami, Florida 33128

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## **LIST OF EXHIBITS**

- A. Assumed Raw Water Conditions
- B. Base Case Financial Model
- C. Company and Project Management Plan
- D. County Permits and Approvals
- E. Financial Close Adjustments
- F. Financing Plan
- G. Guaranteed Performance Standards – include guar elec
- H. Guaranty Agreement
- I. Project Handover Requirements
- J. Operation and Maintenance Requirements
- K. Operations Procol
- L. Preliminary Design Drawings
- M. Project Sites
- N. Renewal Work Schedule
- O. Required Insurance
- P. Termination Payment
- Q. Design and Construction Requirements
- R. Startup and Performance Testing
- S. Quality Management
- T. Health and Safety
- U. Project Sites Security
- V. Project Work Schedule
- W. Emergency Response Plan Requirements
- X. Project Asset Registry
- Y. Reimbursable Costs
- Z. Performance and Payment Bonds
- AA. Contract Measures
- BB. Conflict of Interest Affidavit

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## **PUBLIC PRIVATE PARTNERSHIP SERVICE CONTRACT**

This Service Contract is effective as of [insert date] (Service Contract Date) between Miami-Dade County Florida, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners (County) and [insert legal name and place of formation] (Company). The County and Company may be referred to in this Service Contract individually as “party” and collectively as “parties.”

The project that is the subject of this Service Contract is the permitting, design, construction, financing, operation and maintenance of South Miami Heights Water Treatment Plant Program consisting generally of raw water supply wells and transmission mains, drinking water treatment and storage facilities and deep well injection system (Project).

The County and Company agree as set forth herein:

### **ARTICLE 1 – DEFINITIONS AND INTERPRETATION**

#### **1.01 Definitions**

- A. Wherever used in this Service Contract or in any other Contract Document, a term with initial capital letters, including the term’s singular and plural forms, shall have the meaning indicated in the definitions below.
  - 1. **Affiliate** means any entity or person effectively controlled by or controlling another entity or person, under common control or ownership, or defined as such under the Florida Administrative Code.
  - 2. **Applicable Law** means any statute, law, code, rule, regulation, ordinance, common law, permit or governmental approval, judgment, judicial or administrative order, decree, directive, guideline, policy requirement or other government requirement or restriction (including those resulting from the initiative or referendum process) or any similar form of decision or determination by, or any interpretation or administration of, the forgoing by any Governmental Agency, which is applicable to the Project, the Work, the O&M Services or other obligations of a party under this Service Contract, whether in effect as of, or taking effect after, the Contract Date.
  - 3. **Assumed Raw Water Conditions** means the quality and flow rate conditions for the Raw Water, including the BA Raw Water and the UFA Raw Water, assumed by the parties with respect to the Company’s performance of its obligations under this Service Contract, as more particularly described in Exhibit A.
  - 4. **Base Case Financial Model** the Excel®-based computer model set forth in Exhibit B that has been audited by an independent auditor and includes projections, formulas and calculations of revenue, costs and expenses (including income taxes), repayment and coverage of debt, distributions to Equity Participants and the internal rate of return on Equity based on certain cost and other assumptions as of the Contract Date.
  - 5. **Baseline Project Asset Registry** means [Insert text]
  - 6. **BA Raw Water** means water extracted from the Biscayne Aquifer by the Raw Water Supply Facilities for treatment by the Water Treatment Facilities.

7. **Change in Law** means (i) adoption of any law, (ii) change, amendment to, repeal or revocation of any law, or (iii) change in the interpretation or application of any law by a Governmental Agency, in each case on or after the Contract Date, whereby “law” means any statute, law, code, rule, regulation, ordinance, common law, permit or governmental approval, judgment, judicial or administrative order, decree, directive, guideline, policy requirement or other government requirement or restriction (including those resulting from the initiative or referendum process) or any similar form of decision or determination by, or any interpretation or administration of, the foregoing by any Governmental Agency, which is applicable to the Project, the Work, the O&M Services or other obligations of a party under this Service Contract and provided that any change in tax law of general application shall be excluded.
8. **Company** means [Insert name], a [Insert form of legal entity] organized and in good standing under the laws of the State of Florida, including its officials, successors, legal representatives and assigns, as more particularly described in Exhibit C.
9. **Company Fault** means failure or delay to perform a material obligation of the Company under this Service Contract, unless excused by a Compensation Event, Relief Event or other circumstance or event expressly set forth in this Service Contract excusing Company performance.
10. **Company’s Representative** means the person designated as such by the Company in Article 3 and is authorized to represent the Company in connection with this Service Contract in accordance with Article 3.
11. **Compensation Event** means the occurrence of any one or more of the following events or circumstances, provided that such event or circumstance is not due to Company Fault and unavoidably impacts the Company’s cost or time of performance in a material and adverse manner:
  - a. Change in the Work or O&M Services or a Capital Improvement directed by the County;
  - b. County Fault, except to the extent included as a Relief Event;
  - c. Change in Law, except to the extent included as a Relief Event;
  - d. Variation in the Raw Water outside of the Assumed Raw Water Conditions;
  - e. Issuance of a temporary restraining order or other form of injunction or legal order by a court prohibiting performance of the Work or O&M Services, provided that in the case of the Work only if such prohibition is for more than thirty (30) days;
  - f. Discovery of Unknown Archeological, Paleontological or Cultural Resources at the Project Sites;
  - g. Discovery of Unknown Endangered Species at the Project Sites;
  - h. Discovery of an Unknown Site Condition at the Project Sites;
  - i. Discovery of Unknown Contaminated Materials at the Project Sites;
  - j. Release of Contaminated Materials by the County or a third-party affecting the Project Sites;
  - k. Interference with Company performance of the Work or O&M Services by a County contractor working at or near the Project Sites;

- l. Delay or other nonperformance by a third-party provider of necessary utility services, provided that in the case of the Work only if such delay or nonperformance is for more than thirty (30) days;
  - m. Natural events, but not including Force Majeure Events or normal weather conditions for the Project Sites.
- 12. **Computerized Maintenance Management System** means the computer-based system required to be provided and maintained by the Company with respect to maintenance and repair of the Project in accordance with Article 9.
- 13. **Constituent of Concern** means asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- 14. **Contaminated Materials** means materials at the Project Sites containing one or more Constituent of Concern.
- 15. **Constructor** means any person or entity performing or supporting construction activities relating to the Project, including but not limited to Company, contractors, subcontractors, suppliers, utility companies, construction managers, testing firms, equipment rental companies, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- 16. **Contract Date** means the date first above written when this Service Contract goes into effect as a legally-binding agreement between the parties.
- 17. **Contract Documents** means those items so designated in this Service Contract and which together comprise the Service Contract, including without limitation this Service Contract, the Exhibits and the Company’s submittals (such as the construction plans and specifications for the Work, samples and shop drawings for the Work, and plans for the O&M Services).
- 18. **Contract Measures** means the Community Business Enterprise Goal and the Community Small Business Enterprise Goal established by the County for this Project under Applicable Law.
- 19. **Contract Year** means each County’s fiscal year starting on the Service Date and continuing throughout the Term, provided that the first Contract Year shall be less than a full fiscal year to coincide with the period of time from the Service Date until the last day of the fiscal year within which the Service Date occurs.
- 20. **County** means Miami-Dade County, Florida, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, including its officials, successors, legal representatives and assigns.

21. **County Fault** means failure or delay to perform a material obligation of the County under this Service Contract, unless excused by a Relief Event or other circumstance or event expressly set forth in this Service Contract excusing County performance.
22. **County Permits and Approvals** means the Permits and Approvals that shall be obtained by the County, as more particularly described in Exhibit D.
23. **County's Representative** means the person designated as such by the County in Article 3 and is authorized to represent the County in connection with this Service Contract in accordance with Article 3.
24. **Design and Construction** means the entire design and construction, or the various separately identifiable parts thereof, required to be provided by Company under the Service Contract, including and resulting from performing or providing all professional services needed to produce the design; the labor, services (including but not limited to professional services), documentation to produce the construction; furnishing, installing, and incorporating all materials and equipment into such construction; providing all other things necessary to complete the construction; and related services and standards, such as equipment and systems testing, start-up, commissioning and performance testing, all as required by the Contract Documents.
25. **Design-Build Cost** means the amount payable by Company to its Subcontractor or Subcontractors as of the date of Financial Close for Design and Construction.
26. **Direct Damages** means and includes and all of the costs to completely perform all of the obligations of the Company under this Service Contract through expiration of the Initial Term, including without limitation any fines, penalties and judgments and, where applicable, liquidated damages.
27. **Equity Participant** means a firm or person contributing, or committed to contributing, equity capital to the Company for the Project.
28. **Extended Term** means the additional period of time beyond the Initial Term during this Service Contract may be continue to be in effect, as provided in Article 2.
29. **Extra Work** means design services and construction work added to the Work as a result of a County-directed change or a Compensation Event.
30. **Final Completion** means completion of the Work in accordance with the requirements set forth in Article 8.
31. **Financial Close** means the satisfaction or waiver of all conditions precedent to the first draw of funds under the Financing Agreements.
32. **Financial Close Adjustments** means those adjustments to the Service Fee in effect as of the Contract Date that shall be made by the parties as of the Financial Close Date in accordance with the methodologies and factors set forth in Exhibit E.
33. **Financial Close Date** means the date that Financial Close has been achieved.
34. **Financial Close Deadline** means the number of days after the Contract Date within which Finance Close must be achieved by the Company.
35. **Financial Model Update** means any update of the Base Case Financial Model prepared by the Company and approved by the County.

36. **Financing Agreements** means (i) any loan agreement, funding agreement, equity contribution agreement, intercreditor agreement, subordination agreement, trust indenture, hedging agreement, swap agreement, credit insurance policy, guaranty, indemnity agreement, reimbursement agreement, or other agreement by, with or in favor of an Lender pertaining to or evidencing Project Debt, except for Security Documents, (ii) any note, bond or other negotiable or non-negotiable instrument evidencing Project Debt, and (iii) any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.
37. **Financing Plan** means the Company's plan for arranging the debt and equity financing necessary to provide funding of the costs of the Work to achieve the Scheduled Service Date and funding for certain costs of the O&M Services during the Initial Term, including without limitation the Renewal Work, as more particularly described in Exhibit F.
38. **Finished Water** means Raw Water that has been conveyed to, treated by the Water Treatment Facilities and delivered to the County according to the requirements of this Service Contract.
39. **Finished Water Demand** means the volumes and flow rates of Finished Water requested by the County for delivery by the Company in accordance with Article 11.
40. **Fixed Renewal Charge** means the component of the Service Fee to provide funds for the Company's costs of the Renewal Work.
41. **Force Majeure Event** means the occurrence after the Contract Date of (i) war, civil war, invasion, violent act of foreign enemy or armed conflict, (ii) any act of terrorism or sabotage, (iii) nuclear, chemical or biological contamination, unless the source of cause of the contamination is due to Company Fault, or (iv) riot or civil commotion on, in or near the Project Sites.
42. **Governmental Entity** means any federal, State or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity, other than the County.
43. **Guaranteed Maximum Electricity Utilization** means the maximum amount of electricity demand and consumption utilized by the Company for performance of the O&M Services for the Project during a Contract Year, as set forth in Exhibit G.
44. **Guaranteed Performance Standards** means those standards that shall be met by the Company during performance of the O&M Services, as more particularly described in Exhibit G.
45. **Guaranty Agreement** means the agreement set forth in Exhibit H whereby the guarantor provides an unconditional guarantee to the County of the Company's performance of its obligations under this Service Contract.
46. **Handover Requirements** means the condition, performance and other requirements that shall be satisfied by the Company upon expiration or termination of this Service Contract, as more particularly described in Exhibit I.
47. **Handover Reserve Account** means the account established during the last five years of the Term in accordance with Article 10.

48. **Initial Term** means the initial period of time during this Service Contract is in effect as of the Contract Date as provided in Article 2.
49. **Key Personnel** means those positions and individuals designated as such in Exhibit C.
50. **Lender or Lenders** means each financial institution, bank, issuer of private activity bonds or other party that provides Project Debt or any guaranty or credit enhancement related thereto and any trustees and agents together with their respective successors and assigns.
51. **Milestone** means a principal event in the performance and progress of this Service Contract, which the Service Contract requires one of the parties to achieve, or which must occur or will occur, by a specific intermediate date, as expressly indicated in this Service Contract or subsequently determined by mutual agreement of the parties.
52. **O&M Manual** means the electronic manual setting forth instructions, protocols and requirements for the operation and maintenance of the Project.
53. **O&M Services** means the services required to be performed by the Company starting as of the Service Date and continuing throughout the Term with respect to the operation and maintenance of the Project in accordance with the requirements set forth in this Service Contract, including without limitation Exhibit I.
54. **Operations Protocol** means the communications and other procedures that shall be followed by the parties with respect to Company performance of the O&M Services, as more particularly described in Exhibit K.
55. **Performance Testing** means the conduct of testing by the Company prior to the Service Date in accordance with the approved Performance Testing Plan and subject to the requirement of Exhibit R.
56. **Performance Testing Plan** means the plan for the Company's testing of the Project upon Physical Completion and before the Service Date as approved by the County and subject to the requirements of Exhibit R.
57. **Performance Testing Standards** means the standards set forth in Exhibit R that must be demonstrated by the Company to achieve the Service Date.
58. **Permits and Approvals** means any permit, license, consent, grant, authorization, waiver, variance or other approval required or provided by a Governmental Entity with respect to the Project.
59. **Physical Completion** means compliance with the applicable conditions set forth in the Contract Documents, including without limitation completion of design and construction of the Work, with the exception only of Punch List items, such that the Work is fully operable and ready for Performance Testing.
60. **Plant Site** means the parcel of real property owned in fee simple by the County and upon which the Company shall construct, operate and maintain the Water Treatment Facilities, as more particularly described in Exhibit M.
61. **Plans and Specifications** means the for-construction final drawings and technical specifications prepared by the Company and accepted by the County without objectionable comment.



62. **Project** means the South Miami Heights Water Treatment Plant Program facilities, including the Raw Water Supply System and the Water Treatment Facilities, as more particularly described in Exhibit L.
63. **Project Debt** means bona fide indebtedness (whether senior, mezzanine and subordinated indebtedness) for funds borrowed by the Company for the Project, the repayment of which is secured by one or more Security Documents, including principal (including accreted principal), accrued interest (including capitalized interest), customary and reasonable lender, agent, trustee and monoline fees, costs and expenses payable to Lenders with respect thereto, premiums or reimbursement obligations with respect to any insurance or financial guaranty with respect thereto, payment obligations under hedging agreements with respect thereto, including current-pay and accreting swaps, lease financing obligations and breakage costs.
64. **Project Management Plan** means the plan, documented by the Company and approved by the County, describing in detail how the Company shall manage the Project, including without limitation the following components for performance of the Work and the O&M Services: (i) Company management and control, (ii) Key Personnel, (iii) Subcontractors, (iv) Contract Measures, (v) training program, (vi) document control system, and (vii) ethical standards of conduct.
65. **Project Sites** means the lands, rights-of-way, easements and permitted areas designated by the County where construction, operation and maintenance of the Project is to be performed by the Company, including the Raw Water Supply Sites and the Plant Site, as more particularly described in Exhibit M.
66. **Punch List** means the list of incomplete or other Work that is outstanding as of the date of Physical Completion.
67. **Raw Water** means water extracted from the Biscayne Aquifer and the Upper Floridan Aquifer by the Raw Water Supply System, including the BA Raw Water and the UFA Raw Water.
68. **Raw Water Supply Facilities** means the wells, pumping stations, transmission lines and related facilities for extracting raw water from the Biscayne Aquifer and the Upper Floridan Aquifer and conveying such extracted water to the Plant Site, as more particularly described in Exhibit L and Exhibit Q.
69. **Raw Water Supply Sites** means the permitted land areas designated by the County upon which the Company shall construct, operate and maintain the Raw Water Supply Facilities, as more particularly described in Exhibit M.
70. **Refinancing** means any amendment, supplement or replacement of the initial Project Debt or issuance of any Project Debt other than the initial Project Debt.
71. **Refinancing Gain** means the net amount of economic benefit to the Company in connection with a Refinancing of the initial Project Debt calculated in accordance with Exhibit B.
72. **Refinancing Plan** means the plan to implement Refinancing prepared by the Company and approved by the County.
73. **Reimbursable Costs** means those costs outside of the Service Fee that are incurred by the Company and payable by the County for a Compensation Event, as more particularly described in Exhibit Y.

74. **Relief Event** means the occurrence of any one or more of the following events or circumstances, provided that no such event or circumstance is due to Company Fault and provided that such event or circumstance unavoidably impacts the Company's time of performance in a material and adverse manner:
- a. Force Majeure Event;
  - b. Delay in obtaining one or more Permits and Approvals beyond the assumed duration for issuance set forth in this Service Contract;
  - c. Labor dispute, such as strike, stoppage, slowdown or other action;
  - d. Delay caused by County Fault that is less than thirty (30) days in the aggregate in any Contract Year;
  - e. Change in Law that does not impose additional costs on the Company.
75. **Renewal Work** means the repair, reconstruction, rehabilitation, restoration, renewal or replacement of equipment and other components of the Project not normally performed on a recurring annual basis.
76. **Renewal Work Fund** means the fund established and maintained by the Company to pay the costs of Renewal Work.
77. **Renewal Work Schedule** means the schedule for the Company's performance of Renewal Work planned for the Project during the Initial Term as of the Contract Date, as set forth in Exhibit N.
78. **Required Insurance** means the insurance policies required to be obtained and maintained by the Company and the related obligations of the Company during performance of the Work and the O&M Services, as more particularly described in Exhibit O.
79. **Scheduled Service Date** means the date [insert] days after the Contract Date by which the Company shall complete Design and Construction and shall satisfy all the conditions set forth in this Service Contract to achieve the Service Date.
80. **Security Document** means any mortgage, deed of trust, pledge, lien, indenture, trust agreement, hypothecation, assignment, collateral assignment, financing statement under the Uniform Commercial Code or any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender as security for Project Debt or Company's obligations pertaining to Project Debt and encumbering the Company's interest or an interest in the Company.
81. **Service Contract** means this entire and integrated written agreement between the County and the Company concerning the Project, including all the Exhibits and other Contract Documents.
82. **Service Date** means the date when all of the Company's obligations and conditions relative to completion and testing of the Work are achieved, as evidenced by the County's written consent, and the Company shall begin to perform the O&M Services in accordance with Exhibit G and other applicable provisions of this Service Contract.
83. **Service Fee** means the compensation payable by the County for the O&M Services, as calculated in accordance with Article 12.
84. **Subcontract** means a contract between the Company and a Subcontractor.

- 85. **Subcontractor** means a firm or person under contract with or otherwise retained by or in privity with the Company for performing any element or aspect of the Work or the O&M Services, including any subcontractor at any tier and including without limitation engineering and other consultants, general contractors, design-builders, trade subcontractors, equipment and materials suppliers, and other firms or persons retained by the Company or a Subcontractor.
- 86. **Term** means the period of time during which this Service Contract is in effect.
- 87. **Termination Fee** means the fee payable by the County as a component of the Termination Payment in accordance with the applicable provisions of Exhibit P.
- 88. **Termination Date** means the date of termination of this Service Contract set forth in a notice of termination delivered by a party.
- 89. **Termination Payment** means the total amount payable by the County upon early termination of this Service Contract in accordance with the applicable provisions of Exhibit P.
- 90. **UFA Raw Water** means water extracted from the Upper Floridan Aquifer by the Raw Water Supply Facilities for treatment by the Water Treatment Facilities
- 91. **Unknown Archeological, Paleontological or Cultural Resources** means archeological, paleontological or cultural resources discovered at the Project Sites after the Contract Date, excluding those resources disclosed in the Contract Documents.
- 92. **Unknown Contaminated Materials** means Contaminated Materials discovered at the Project Sites after the Contract Date, excluding those Contaminated Materials disclosed in the Contract Documents.
- 93. **Unknown Endangered Species** means endangered species discovered at the Project Sites after the Contract Date, excluding those endangered species disclosed in the Contract Documents.
- 94. **Unknown Site Conditions** means subsurface conditions discovered at the Project Sites after the Contract Date, excluding those conditions disclosed in the Contract Documents.
- 95. **Water and Sewer Department or WASD** means the Water and Sewer Department of Miami-Dade County, Florida, with offices at 3071 S.W. 38<sup>th</sup> Avenue, Miami, Florida.
- 96. **Water Treatment Facilities** means those facilities located at the Plant Site for treatment of the Raw Water to produce Finished Water, as more particularly described in Exhibit L and Exhibit Q.
- 97. **Work** means the design, construction and testing of the Project in accordance with the Contract Documents, including without limitation the preliminary drawings set forth in Exhibit L and the requirements for design and construction set forth in Exhibit Q and the requirements for startup and testing in Exhibit R.

## **1.02 Interpretation**

- A. Documents comprising the Service Contract, including the Exhibits and other Contract Documents, are intended to be complementary and to indicate the scope and requirements for the Work and O&M Services and related obligations of the Company and the County with respect to the design, permitting, construction/installation, testing, commissioning,

operation and maintenance. Anything mentioned in the one document shall be of like effect as if shown or mentioned in both.

- B. Where “as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to the Contract Documents, unless stated otherwise.
- C. References to Articles or Sections include all Sections under the Article referenced or all Subsections under the Section referenced. For example, a reference to Article 8 is also a reference to Sections 8.01 through 8.16 inclusive and a reference to Section 6.03 is also a reference to Subsections 6.03 A through 6.03 D inclusive.
- D. Material and workmanship specified by the number, symbol, or title of a referenced standard shall comply with the latest edition or revision thereof and amendments and supplements thereto in effect on the Contract Date except where otherwise indicated. In case of conflict between referenced standards, the stricter standard shall govern. In case of conflict between the referenced standard and other requirements of the Service Contract Documents, the stricter requirements shall govern.
- E. In order to ensure that the Service Contract is administered in conformity to the laws and regulations governing the same, questions concerning or arising out of or in connection with the performance of the Service Contract, as they may involve the construction and interpretation of this Service Contract and performance thereunder, will be governed by and decided according to the laws and regulations of Miami-Dade County, the State of Florida, and the United States of America. Any litigation which may arise out of this Service Contract shall be commenced in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida.
- F. When words, which have a well-known technical or trade meaning, are used to describe design, construction work, materials, equipment or services, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the standard specification, manual, code, laws or regulations in effect as of the Contract Date, except where otherwise indicated.
- G. The headings and titles to provisions in the Contract Documents are descriptive only, and shall be deemed not to modify or affect the rights and duties of parties to this Service Contract.

It is the intent of the Contract Documents to result in the design and construction of a fully complete, fully functional Project, ready in all aspects to be put to its intended use, that is designed and constructed by the Company in accordance with the County-reviewed and fully-permitted Contract Documents prepared by Company and accepted by the County. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result will be supplied whether or not specifically called for.

## **ARTICLE 2 – TERM**

### **2.01 Initial Term**

- A. This Service Contract shall take effect on the Contract Date and shall remain in effect for thirty (30) years from the earlier of the (i) Scheduled Service Date or (ii) Service Date (Initial Term), unless extended or earlier terminated in accordance with the terms of this Service Contract.

### **2.02 Extended Term**

- A. **County Election.** The County may elect to extend the Initial Term for an additional term of five (5) years or an additional term or terms of one or more years aggregating up to a maximum of five (5) years (Extended Term). Any such extension or extensions shall become effective upon the County's delivery to the Company of written notice not later than ninety (90) days before the last day of the Initial Term or any Extended Term. During any Extended Term, the terms and conditions of this Service Contract shall remain in effect, except that the Availability Charge shall not be payable during any Extended Term unless otherwise provided for a Relief Event or Compensation Event.
- B. **Relief Event.** The Initial Term may be extended due to a Relief Event in accordance with the applicable provisions of this Service Contract.

## **ARTICLE 3 – ADMINISTRATION OF SERVICE CONTRACT**

### **3.01 Authorized Representatives**

- A. **County’s Representative.** For the purpose of acting on behalf of the County in all matters pertaining to this Service Contract and subject to limitations on the authority of the County’s Representative, the following individual is hereby designated as the County’s Representative:

[Insert name and contact information]

By written notice delivered to the Company’s Representative, the County at any time may change the person designated as the County’s Representative. The supervision of the performance of this Service Contract is vested in the Director of County acting through his representative, the County’s Representative, and his instructions shall be carried into effect promptly and efficiently. If the decision of the Director or the Director’s designee, would result in the amounts payable to the Company in excess of that approved by the Board of County Commissioners, the Director shall request and receive approval for additional funding from the Board of County Commissioners prior to his approving such additional spending.

- B. **Company’s Representative.** For the purpose of acting on behalf of and with the authority to bind the Company in all matters pertaining to this Service Contract, the following individual is hereby designated as the Company’s Representative:

[Insert name and contact information]

By written notice delivered to the County’s Representative, the Company at any time may change the person designated as the Company’s Representative.

### **3.02 Notices and Communications**

- A. **All Notices and Communications.** Any notice, consent, approval or other communication in connection with this Service Contract shall be in writing and shall be sufficiently given if delivered by hand or transmitted electronically to the physical address or email address, respectively, as follows:

1. If to the County: [insert name, physical address, email address]

2. If to the Company: [insert name, physical address, email address]

- B. **Certain Notices.** In addition to Subsection (A) of this Section, any notice required under Articles [x, y and z] of this Service Contract shall also be delivered by hand or transmitted electronically to the physical address or email address, respectively, as follows:

1. If to the County: [insert name, physical address, email address]

2. If to the Company: [insert name, physical address, email address]

- C. **Receipt of Notices and Communications.** Any notice or communication under this Service Contract shall be deemed to have been received:
1. If delivered by hand during business hours, upon receipt by an authorized representative of the receiver; and, if not delivered during business hours, at the start of business hours on the next business day.
  2. If transmitted electronically during business hours, upon receipt at the receiver's email address; and, if not delivered during business hours, at the start of business hours on the next business day, subject to (i) written acknowledgement of receipt by the receiving party via email or hand delivery to the notifying party, or (ii) hand delivery of a copy of the notice or communication to the receiving party within twenty-four (24) hours of sending the electronic transmission.
- D. **Electronic Communications.** It is the intent of the Parties that email be utilized to the maximum extent possible as the means of communication with respect to all matters in connection with this Service Contract.
- E. **Response to Notices and Communications.** Unless otherwise required under this Service Contract, each Party shall respond to notices and communications from the other Party as soon as reasonably possible, but in no event more than five (5) business days after receipt or such longer period that may be necessary to prepare and deliver a response.

### **3.03 Notice of Potential Claims**

- A. **Condition Precedent.** The Company shall not be entitled to additional compensation (otherwise payable) or additional time (otherwise provided) for any act or failure to act by the County, the happening of any event or occurrence, or any other cause included in this Service Contract as a Compensation Event or Relief Event, unless the Company shall have given the County's Representative a written notice of a potential claim therefore as specified in Article 13. The Company understands and agrees that the filing of a notice of a potential claim in accordance with Article 13 is a condition precedent to recovery of any additional time and/or money as a result of any Compensation Event or Relief Event and that the failure of the Company to strictly comply shall be deemed a waiver of all claims.
- B. **Early Notification.** It is the intention of this Article that differences between the parties arising under and by virtue of the Service Contract shall be brought to the attention of the County's Representative at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken.
- C. **Additional Notice.** The notice requirements of this Article are in addition to those required under other provisions of this Service Contract.
- D. **Cost Segregation.** The Company shall segregate all costs associated with each claim. Failure to segregate costs shall be grounds for the County's rejection of the claim.

- E. **No Waiver.** If the County decides to pay all or part of a claim for which notice was not timely made, the County does not waive the right to enforce the notice requirements in connection with any other claim or part thereof.

### **3.04 Publication of Information**

- A. The Company shall make no statements, press releases or publicity releases concerning this Service Contract or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Service Contract, or any other particulars thereof, during the Term of this Service Contract, without first notifying the County and securing its consent in writing. The Company also agrees that it shall not publish, copyright or patent any of the data furnished in compliance with this Service Contract, it being understood that under Article 5 of this Service Contract, such data or information is the property of the County.

### **3.05 Meetings**

- A. **Regular Meetings.** The Company shall conduct regular progress meetings with the County at least once every two-weeks from the Contract Date until the Service Date and at least once every month from the Service Date until the end of the Term, or as may otherwise be agreed by the parties. The Company shall prepare and obtain the County's consent to an agenda at least one (1) business day prior to each such meeting and shall prepare and obtain the County's approval of meeting minutes not later than three (3) business days after each such meeting.
- B. **As-Needed Meetings.** In addition to regularly-scheduled meetings required under this Article or otherwise under the Contract Documents, the parties shall meet from time-to-time at the request of either party to address issues and matters related to the Work or O&M Services. The Company shall prepare and obtain the County's consent to an agenda at least one (1) business day prior to each such meeting and shall prepare and obtain the County's approval of meeting minutes not later than three (3) business days after each such meeting.
- C. **Time and Location.** All meetings in connection with this Service Contract shall be held at the offices of the Water and Sewer Department, unless otherwise agreed by the parties, and at a time of day that is reasonably convenient to the County.
- D. **Other Meetings.** As set forth in the Contract Documents, the Company shall attend and conduct other meetings in addition to those required under this Section.

### **3.06 Administrative Clarifications**

- A. During the course of implementation of the Work and O&M Services, if the Parties find it necessary or useful to clarify the meaning, intent or application of any of the terms or provisions of this Service Contract, then any such clarification agreed to by the Parties shall be documented in writing signed by the County's Representative and the Company's Representative (Administrative Clarification). In no event, however, shall any such



Administrative Clarification amend or otherwise change any of the terms or provisions of this Service Contract in a material way.

## **ARTICLE 4 – PROJECT FINANCING AND FINANCIAL MODEL**

### **4.01 Company Responsibilities for Financing**

- A. **General.** The Company is solely responsible, at its cost and risk, for obtaining and paying for all financing necessary for permitting, design, construction, testing and other things required for the Project and to achieve the Service Date as well as may be necessary for operation, maintenance, repair, renewal and replacement of the Project during the Term. Any financing arranged or provided by the Company shall be without recourse to the County and shall be consistent with the terms of this Service Contract.
- B. **Financing Plan.** The Company shall diligently execute the Financing Plan (set forth in Exhibit F) to achieve Financial Close within the time frame required under this Article and shall keep the County informed on a weekly basis as to the Company's progress in its execution of the Finance Plan. The Company may not change the Financing Plan without prior consultation with the County. If the County determines (in its sole discretion) that a material change in the Financing Plan proposed or required by the Company is not in the County's best interest, the County may terminate this Service Contract without liability if such proposed or required change is not withdrawn.
- C. **Financing Agreements.** Not later than one-hundred and twenty (120) days after the Contract Date, the Company shall submit complete drafts of the proposed Financing Agreements and Security Documents identified in the Financing Plan for review and comment by the County.

### **4.02 County Responsibilities for Financing**

- A. **General.** The County shall have no responsibility to provide financing for the Project or to pay debt service or otherwise repay any debt or equity financing arranged or provided by the Company, except as may be expressly otherwise provided in connection with early termination of this Service Contract by the County. No debt or other financing may be issued for the Project in the name of the County.
- B. **Financing Plan.** The County shall bear no risk or other responsibility with respect to the Company's execution of the Financing Plan, but shall provide reasonable assistance to the Company as such assistance is more fully described in the Financing Plan, including participation in the process of issuing debt by other Governmental Entities.

### **4.03 Financial Close**

- A. **Financial Close Deadline.** The Company is solely responsible for achieving Financial Close not later than one-hundred eighty (180) days after the Contract Date (Financial Close Deadline), including receipt of approvals from other Governmental Entities required for issuance of debt included in the Financing Plan. The County may (in its sole discretion) agree to a Company request to extend such Financial Close Deadline for an additional period of up to ninety (90) days.

- B. **Conditions Precedent.** Financial Close shall not be achieved unless and until all of the following conditions have been satisfied (or waived in writing by the County in its sole discretion):
1. **Financing Plan.** The Company has satisfied and complied with all conditions and requirements for Financial Close set forth in the Financing Plan.
  2. **Financial Model Update.** The County has received the Financial Model Update and the audit and opinion of the independent model auditor and has approved such Financial Model Update incorporating the adjustments at Financial Close in accordance with Exhibit E to account for changes in actual interest rates and the other parameters specified in Exhibit E from the Contract Date to the Financial Close Date.
  3. **Financing Agreements.** The County has approved the Financing Agreements for execution by the Company.
  4. **Security Documents.** The County has approved the Security Documents for execution by the Company.
  5. **Sufficiency of Available Funds.** The Company has demonstrated to the reasonable satisfaction of the County that the funds available at Financial Close are sufficient and include prudent contingencies to pay (i) the costs of performing the Work and related Company obligations with respect to achieving the Service Date, and (ii) the capital costs for which the Company is responsible in connection with the O&M Services (such as Renewal Work), and that such funds are not subject to unreasonable disbursement conditions or requirements.
- C. **Failure to Achieve.** Failure to achieve Financial Close by the Financial Close Deadline shall be an Event of Company Default for which the County may terminate this Service Contract in accordance with Article 19, unless such failure is directly attributable to (i) County Fault with respect to its Financial Close obligations set forth in the Financing Plan, or (ii) a Relief Event.

#### **4.04 Financing Agreements and Security Documents**

- A. **General.** The Company may grant security interests or assign Company's interests in the Service Contract to Lenders to secure Project Debt, provided that any such security interest or assignment conforms to this Service Contract.
- B. **Terms and Conditions.** The Financing Agreements and Security Documents (including any amendments or supplements thereto) shall comply with the following terms and conditions:
1. The Security Documents may only secure Project Debt.
  2. No Financing Agreement or Security Document may extend to or affect the County's fee simple interest in the Plant Site or the County's permitted interest in the Water Supply Sites.

3. The County shall have no obligation or liability to any Lender under this Service Contract, except as may be provided under the provisions of Article 18 or a Direct Agreement or other written agreement or instrument duly executed by the County in favor of a Lender.
4. Each Financing Agreement shall contain a clause documenting the Lender's agreement to be bound by the provisions of this Service Contract set forth in [insert].
5. Each Financing Agreement and Security Document shall require Lender or Lender's agent to deliver to the County concurrently with any delivery to any person of any notice of the Lender's exercise of any remedy available to the Lender under such Financing Agreement or Security Document.
6. No Lender shall have the right of access to any funds accounted for, allocated to or held in the Renewal Work Fund.

#### **4.05 Company Refinancing**

- A. **General.** The Company shall not enter into any Refinancing without the County's prior written consent, provided that such consent shall not unreasonably be denied if any such proposed Refinancing would not affect in an adverse or negative manner the Company's ability to perform its responsibilities and obligations under this Service Contract, and further provided that prior County consent shall not be required for an Exempt Refinancing or a Rescue Financing. The Company shall bear all risks and costs in connection with any Refinancing.
- B. **Notice of Proposed Refinancing.** Not later than sixty (60) days prior to the date of any proposed Refinancing, the Company shall provide to the County a Refinancing Plan including a reasonably detailed description of and schedule for the proposed Refinancing and a preliminary calculation of the County's share of the anticipated Refinancing Gain. The Company shall promptly respond to any comments or questions concerning the Refinancing Plan submitted by the County and shall not proceed with execution of the Refinancing Plan unless and until the County provides its consent in writing.
- C. **Refinancing Documentation.** Not later than thirty (30) days prior to the date of any proposed Refinancing Close, the Company shall submit to the County the draft Financing Documents (including term sheet) and the Financial Model Update setting forth the Refinancing Gain calculation for the proposed Refinancing.
- D. **Refinancing Gain.** At the time of closing of any Refinancing, the County shall receive fifty percent (50%) of the Refinancing Gain. Unless otherwise agreed, the County shall receive such share in the form of a reduction in the Fixed Availability Charge for the remaining Term.
- E. **County Costs and Responsibilities.** The County's responsibility with respect to any Refinancing for which it has provided consent shall be limited to delivering an estoppel certificate. To the extent that the County may agree to provide additional support or

assistance to the Company in connection with a Refinancing, any costs incurred by the County for such support or assistance shall be reimbursed as a condition precedent to Company's closing or within thirty (30) days of Company abandonment or failure to achieve closing of a Refinancing.

- F. **Refinancing Closing.** Closing of any Refinancing shall not occur unless and until the following conditions have been satisfied (or waived in writing by the County in its sole discretion):
1. **Refinancing Plan.** The Company has satisfied and complied with all conditions and requirements for the close of Refinancing set forth in the Refinancing Plan.
  2. **Financial Model Update.** The County has received the audit and opinion of the independent model auditor and has approved the Financial Model Update incorporating the adjustments to account for the County's share of the Refinancing Gain.
  3. **Refinancing Agreements.** The County has approved the Refinancing Agreements for execution by the Company.
  4. **Refinancing Security Documents.** The County has approved the Refinancing Security Documents for execution by the Company.
  5. **Sufficiency of Available Funds.** The Company has demonstrated to the reasonable satisfaction of the County that the funds available at close of Refinancing are sufficient to pay the capital costs of performing all Company obligations under the remaining Term of the Service, including prudent contingencies, and that such funds are not subject to unreasonable disbursement conditions or requirements.

#### **4.06 County Refinancing**

- A. **Notice of Proposed County Refinancing.** The County may (at its sole discretion) elect to replace all or a portion of Company financing for the Project with County debt or other funds, provided that as a condition precedent to any such refinancing, the County shall satisfy the redemption, compensation and other rights of Company and its Lenders and Equity Participants under this Service Contract, as more particularly described in Exhibit P. Not later than thirty (30) days before any such proposed refinancing, the County shall provide written notice and a proposed County Refinancing Plan to the Company.
- B. **Rights of Affected Parties.** With respect to any replacement or refinancing of Company financing for the Project, the rights of the Company under this Service Contract and the respective rights of the Lenders and Equity Participants under the Financing Agreements and the Security Documents shall be satisfied.

#### **4.07 Financing of Capital Improvements**

- A. The County shall be responsible for providing financing for Capital Improvements directed by the County and for Capital Improvements required due to a Compensation Event or a

Force Majeure Event, but the Company may (in its sole discretion and at the request of the County) submit a proposal to provide any such financing that may be necessary. The Company shall be responsible for providing financing for any Capital Improvements requested by the Company, subject to the terms of this Service Contract and the County's approval of any terms and conditions for such financing.

#### **4.08 Project Financial Model**

- A. **Base Case Financial Model.** Exhibit B contains the Base Case Financial Model for the Project setting forth the calculation methodology and formulas that shall apply through the Term and displaying projected results for the cost values and assumptions as of the Contract Date. The calculation methodology and formulas included in the Financial Model set forth in Exhibit B may not be changed without written approval of the County and the Company. The Company shall bear the risk of loss in relation to any error or omission in the Financial Model and shall reimburse the County for any additional costs incurred or payments made to the Company in relation to any such error or omission.
- B. **Financial Model Updates.** The Company shall run the Financial Model to generate updated projections and calculations upon the occurrence of (i) Financial Closing, (ii) a Compensation Event, (iii) a Relief Event, if the Initial Term is extended, and (iv) a Refinancing. In any such Financial Model Update, only those changes in the applicable costs and other assumptions, as expressly provided in this Service Contract for each such occurrence, shall be taken into account. Financial Model Updates shall not take into account any changes related to actual performance of the Project (for example, no changes shall take into account the actual costs incurred for the Base Case). No Financial Model Update shall be effective unless and until approval of the County is achieved and confirmed in writing.
- C. **Base Case Financial Model Audit.** On or before the Contract Date, the Company shall at its cost provide an audit and opinion from the independent model auditor as to the accuracy and suitability of the Financial Model and the Base Case results set forth in Exhibit B.
- D. **Financial Model Update Audits.** Not later than five (5) days after a Financial Model Update is provided to the County and at least fifteen (15) days before County approval of such Financial Model Update is requested, the Company shall provide an audit and opinion from the independent model auditor as to the accuracy and compliance with this Service Contract of the Financial Model Update. The costs of obtaining audits and opinions of the Financial Model and Financial Model Updates shall be borne by the Company.
- E. **Public Disclosure.** If the Company has identified the Financial Model or a Financial Model Update (or any portion) as confidential material and the County is requested to disclose such Financial Model or Financial Model Update, the County shall promptly notify the Company. In such event, the Company may seek a protective order or other remedy. In any event, the County shall comply with the disclosure and other requirements of the Public Records Law in effect at the time of any request for disclosure.

## **ARTICLE 5 – CERTAIN OBLIGATIONS AND RIGHTS OF THE COUNTY**

### **5.01 Payment of Service Fee**

- A. Starting on the Service Date and subject to adjustment as set forth in this Service Contract, the County shall pay the Service Fee on a monthly basis in accordance with Article 12 and other applicable provisions of this Service Contract. The County shall have no obligation to make payments of the Service Fee or to pay other compensation or cost reimbursement to the Company unless and until the Service Date is achieved according to the requirements and conditions set forth in this Service Contract.

### **5.02 Finished Water Delivery**

- A. Starting on the Service Date, the County may require delivery by the Company of varying quantities of Finished Water on a weekly basis in accordance with the procedures and conditions set forth in Article 11, provided that during any Contract Year the County shall not require delivery of less than [insert] million gallons and shall not require delivery of more than [insert] million gallons of Finished Water.

### **5.03 Project and Water Ownership**

- A. The County shall at all times own the Project, Raw Water and Finished Water. Unless otherwise expressly provided in this Service Contract, no ownership rights or interests in the Project, Raw Water or Finished Water shall be held by or granted to the Company or third parties.

### **5.04 Project Sites**

- A. **Plant Site.** The County owns the Plant Site in fee simple and shall obtain in a timely manner the necessary property access and usage rights for the Supply Sites. By executing this Service Contract, the County grants to the Company a license to access and use the Plant Site for the performance of Company obligations under this Service Contract during its Term.
- B. **Raw Water Supply Sites.** The County shall in a timely manner provide the Company with access and usage rights to the Supply Sites as necessary for the performance of Company obligations under this Service Contract. Such grants by the County of property access and use rights to the Company for the Plant Site and Supply Sites shall be limited to the Company's performance of its obligations under this Service Contract. The Plant Site and the Supply Sites are more particularly described in Exhibit M.

### **5.05 County-Directed Changes**

- A. **Work Deletion.** The County's Representative may, at its sole discretion and option, delete any part of the design and construction from the Service Contract. In the event this occurs, the Company will submit a cost breakdown of the Work to be reduced and, with the concurrence of the County's Representative, the amount paid to the Company will be reduced by the amount.

**B. Extra Work.** The County's Representative may, at its sole discretion and option, direct Extra Work to be performed under the Service Contract.

1. The Company shall perform Extra Work where directed by the County's Representative, provided that no Extra Work shall be paid for unless requested or directed in writing by the County's Representative. Additional compensation for such Extra Work directed by the County's Representative shall be determined in accordance with the provisions of this Service Contract for a Compensation Event. In no case shall the Company be entitled to compensation for Extra Work unless the Company has first provided notice that the Extra Work is outside the requirements of the Service Contract, in which no Extra Work shall be considered authorized until the County's Representative or the County, as appropriate, makes a final determination that the Extra Work is in fact Extra Work and is denominated by the County's Representative in writing as Extra Work. In the event insufficient funds remain in the Service Contract to pay for such Extra Work, payment to the Company can only be made upon approval of a change order by the Board of County Commissioners.
2. If the Company considers any Work demanded of him to be outside the requirements of this Service Contract, or if he considers any decision or ruling of the County's Representative to be unfair, he shall immediately, upon such Work being demanded or such decision or ruling being made, ask for written instructions or decisions, whereupon he shall proceed without delay to perform the Work or conform to the decision or ruling. Beginning with the first day of this Work, the Company and the County's Representative shall fill out daily records for this Work at the end of each day and said record shall be signed by both parties. One copy being submitted to the County's Representative and the other being retained by the Company. This documentation does not constitute acknowledgement of authorization to pay for this Work. In the event that a claim for this Work is approved by the County subsequent to the commencement of Work, an accurate accounting for Work will be agreed upon on both parties upon completion of this Work.
3. Unless the Company files such written protest with the County's Representative within ten (10) days of receipt said written instructions or decisions, he shall be deemed to have waived all grounds for such protest and to have accepted the requirement, decision or ruling of the County's Representative as just and reasonable and as being within the scope of the Company's obligations under the Contract Documents and no further documentation will be required by the County's Representative. No payment for this claim will be made in the event that a timely Company's written protest to the County's Representative is formally denied.
4. The County's Representative shall in all cases determine the amount, quality, fitness and acceptability of the Work and materials to be paid for, and shall decide all questions or differences of opinion that may arise as to the interpretation of the Plans and Specifications or the fulfillments of the terms of the Service Contract. In the event of such question or difference of opinion, the decision of the County's Representative is to be a condition precedent to the Company's right to receive any money for the



Work or the materials to which the question or difference of opinion relates except as otherwise explicitly provided for herein.

- C. **O&M Services.** The County's Representative may, at its sole discretion and option, direct changes to the O&M Services to be performed under the Service Contract. An adjustment in the compensation due the Company, if any, for such changes in the O&M Services directed in writing by the County's Representative shall be determined in accordance with the provisions of this Service Contract for a Compensation Event.

#### **5.06 Suspension of the Work or O&M Services**

- A. **County's Convenience.** The County's Representative, at any time during the Term and for its convenience, may suspend the Company's performance of the Work or the O&M Services upon delivery to the Company of a written notice at least seven (7) days before the date of suspension. If any such suspension is longer than six (6) months, such suspension may be deemed by the Company to be a termination of this Service Contract for the County's convenience under Article 19 and the Company shall be entitled to payment in accordance with Exhibit P. If any such suspension is equal to or less than six (6) months, then the Company shall resume full performance at such time the County requires upon delivery to the Company of a written notice at least fourteen (14) days before the date for resumption of performance. Any such suspension of the Work or the O&M Services for a period of six (6) months or less shall be a Compensation Event. If any such suspension is longer than six (6) months and the Company does not deem such suspension to be a termination of this Service Contract for the County's convenience under Article 19, then the Company shall resume full performance in accordance with the foregoing provisions applicable to a suspension for a period of six (6) months or less.
- B. **Force Majeure.** If the Company's performance of the Work or O&M Services is suspended due to a Force Majeure Event, then such Force Majeure Event shall be deemed to be a notice of suspension for the County's convenience and the provisions of Subsection (A) of this Section shall apply to the rights and obligations of the parties.

#### **5.07 Monitoring of the Work**

- A. The County shall have the right to review and comment on the Company's design, construction and testing of the Project in accordance with the protocols, conditions and requirements set forth in this Service Contract, including without limitation the provisions of Article 8.

#### **5.08 Monitoring of the O&M Services**

- A. The County shall have the right to monitor, observe and comment on the Company's performance of its obligations with respect to the operation, maintenance, repair, renewal and replacement of the Project in accordance the protocols, conditions and requirements set forth in this Service Contract, including without limitation the provisions of Articles 9 and 10.

## **5.09 Project Documents**

- A. **General.** All notes, correspondence, documents, designs, drawings, renderings, calculations, specifications, models, photographs, reports, surveys, investigations, and any other documents and copyrights thereto for the Work and O&M Services performed or produced in the performance of this Service Contract or delivered to the County, whether in paper or other hard copy medium or in electronic medium, except with respect to copyrighted standard details and designs owned by the Company or owned by a third party and licensed to the Company for use and reproduction, shall become the property of the County.
- B. **Reuse.** If the County elects to re-use the plans and specifications for other sites and/or purposes other than those which it was prepared, is shall be at the County's sole risk and holds the Company harmless for any liability arising out of any reuse of documents. The Company shall bind all subconsultants and subcontractors to the Service Contract requirements for re-use of plans and specifications and other documents.

## **5.10 Project Background Information**

- A. The County at its cost shall furnish the following background information to the Company, provided that the Company may not rely on the accuracy or suitability of any of this information: [insert]

## **5.11 Project Supervision**

- A. The County shall not at any time supervise, direct, control, or have authority over the Project, nor shall County have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction or O&M Services selected or used by Company or any Constructor, or the safety precautions and programs incident to the Project, or for security or safety at the Project Sites while such are under Company's care and control.

## **5.12 Financial Documents**

- A. **General.** The County and the State of Florida at its cost shall have the right to inspect or audit, or to retain an independent third party to inspect or audit, the books, papers, computations, projections, data, records, statements and other documents required to be maintained by the Company under this Section. The Company shall include the clauses set forth in this Section 5.11 in all Subcontracts.
- B. **Negotiated Adjustments.** For a period not less than three (3) years after payment by the County of any fixed amount of an adjustment to the Service Fee or any fixed amount of Reimbursable Cost negotiated by the parties due to a Compensation Event or otherwise under this Service Contract, the Company shall maintain, and keep separate and readily accessible, the certified cost and pricing data along with all supporting documentation submitted to the County in connection with such negotiations. If any of the financial documents are determined by the County not to be complete, accurate or current at the time

of submittal to the County, an appropriate adjustment in such negotiated fixed amount or amounts shall be made by the County.

- C. **Reimbursable Costs.** For a period not less than one (1) year after payment by the County on a time and materials basis of any Reimbursable Cost due to a Compensation Event or otherwise payable under this Service Contract, the Company shall maintain, and keep separate and readily accessible, all the financial and other records necessary to document the actual costs of such time and materials, including without limitation financial statements, third-party invoices with proof of payment, and records of wages and related costs for labor expended. If any of the financial documents are determined by the County not to be complete or accurate, an appropriate adjustment shall be made by the County.

## **ARTICLE 6 – CERTAIN OBLIGATIONS AND RIGHTS OF THE COMPANY**

### **6.01 Project Management**

- A. At all times during the Term and in accordance with the approved Project Management Plan, the Company shall manage and oversee the performance of all of its Subcontractors, employees and other persons that are charged with performing obligations of the Company under this Service Contract. The proposed Project Management Plan shall be submitted by the Company, for review and approval by the County, not later than ninety (90) days after the Contract Date.

### **6.02 Compliance with Applicable Law**

- A. The Company, Subcontractors and all persons shall comply with Applicable Law with respect to performing any and all obligations under this Service Contract. It shall be the Company's responsibility to ensure that all such Subcontractors and persons comply with Applicable Law.

### **6.03 Intellectual Property**

- A. **Ownership and Usage Rights.** The Company shall own or possess the rights to use all Intellectual Property required or utilized for the Project and shall pay all applicable royalties, patent and license fees, and other charges. Intellectual Property developed by the Company in connection with the Project shall be owned by the Company, subject to the County's rights under this Section 6.03.
- B. **License Grant.** The Company hereby grants to the County for any County purpose an irrevocable, perpetual, nonexclusive, fee-free, assignable license to use, reproduce, modify, adapt and disclose and for the County to permit others on behalf of the County to use, reproduce, modify, adapt and disclose all Intellectual Property rights owned, developed, used or controlled by or licensed to the Company for the Project, Work or O&M Services. Any use by the County of such Intellectual Property for a purpose other than the Project shall be at the County's risk and without Company liability.
- C. **Third-Parties.** Before entering into any contact or arrangement with a third party involving the provision or use of Intellectual Property for the Project, the Company shall cause each such third party to comply with this Section 6.03 so that the Company may fulfill its applicable obligations.
- D. **Moral Rights.** The Company hereby waives in favor of the County all moral rights and shall cause all personnel performing or otherwise associated with the Project, Work or O&M Services (including without limitation personnel of the Company and Subcontractors at any tier) to waive in favor of the County all such rights to Intellectual Property used in the Project, Work or Services.

#### **6.04 Project Documents**

- A. **Format.** The Company shall prepare and deliver reports, drawings, specifications and other submittals in the electronic format specified by the County along with such number of hard copies as may be required by the County, unless otherwise provided in this Service Contract.
- B. **Disclosure.** The Company shall not disclose, release, or make available any documents to any third party, without prior written approval from the County. The Company shall warrant to the County that he/she has been granted a license to use and reproduce any copyrighted standard details and designs owned by a third party or used or reproduced by the Company in the performance of this Service Contract. Nothing contained herein shall be deemed to exclude any document from Chapter 119 of the Florida Statutes. In accordance with Florida Statutes 119.07(3) (ee), “facility plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the layout and structural elements of a facility, ...or other structure owned and operated by an agency as defined in F.S. 119.011 are exempt...” from public records to ensure the safety of government infrastructure and to ensure public safety. Information made exempt by this paragraph, with prior approval from the County, may be disclosed: (i) to another entity to perform its duties and responsibilities; (ii) to a licensed architect, engineer, or Company who is performing Project Work or Project Services; or (iii) upon a showing of good cause before a court of competent jurisdiction. The Company shall ensure that all entities and persons receiving such information shall not publically or otherwise disclose such information and shall maintain the exempt status of the information.
- C. **Security.** The Project Documents at all times shall be kept and maintained in a secure location.

#### **6.05 Company-Requested Changes**

- A. The Company, by delivering written notice to the County’s representative, may request or propose changes to the requirements for the Work set forth in Exhibit Q or the requirements for the O&M Services set forth in Exhibit J. The Company may not make any change or implement any deviation from such requirements without the prior, written approval of the County (which approval may or may not be provided in the sole discretion of the County).

#### **6.06 Design and Construction**

- A. Not later than five days the Financial Close Date, the Company shall initiate and diligently perform, and shall pay all the costs of, the Design and Construction of the Work in accordance with the requirements of this Service Contract, including without limitation the provisions of Article 8, and shall achieve the Service Date no later than the Scheduled Service Date.

#### **6.07 Operation and Maintenance**

- A. Starting on the Service Date and continuing through the Term on a 24-hours per day, 7-days per week basis, the Company shall diligently perform and, except as otherwise expressly provided, pay all the costs of, the operation and maintenance of the Project in accordance

with the requirements of this Service Contract, including without limitation the provisions of Articles 9, 10 and 11.

#### **6.08 Technology Advancements**

- A. The Company shall monitor and maintain awareness and current knowledge of technological and related advancements and improvements in the global water industry as well as those developed by Affiliates of the Company and by Subcontractors and their Affiliates that may improve the performance or reduce the costs of the Works or the O&M Services. With regard to such technological and related advancements, the Company shall, on an annual or other agreed-to periodic basis, report to or review with the County the potential applicability of such advancements to the Project. Upon the County's expression of interest, the Company shall provide (at an agreed-to cost to be reimbursed by the County) a proposal to implement such technological and related advancements for the Project. Such proposal shall set forth the expected costs and benefits to the County as well as proposed revisions, if any, to the Company's obligations under this Service Contract.

#### **6.09 Quality Management**

- A. The Company shall conduct the quality management program for the Work and the O&M Services in accordance with the requirements of Exhibit S.

#### **6.10 Health and Safety**

- A. Pursuant to and in full compliance with Applicable Law and as between the Company and the County, the Company shall have full responsibility for the safety of the public, the County's personnel and the Company's employees and contractors (including construction contractors, subcontractors, suppliers, and consultants) throughout the Term, including but not limited to visitors and invitees to the Project and Project Sites, with respect to the public's use of the Project, the condition of the Project and Project Sites, and for services or products provided or furnished by Company.

#### **6.11 Site Security**

- A. The Company shall have full responsibility for the protection of the Project, the Project Sites and other Project-related property and shall provide for the security of the Project Sites in accordance with the requirements of Exhibit U.

#### **6.12 Personnel**

- A. The Company and Subcontractors shall supply competent employees. The County may require the Company to remove an employee if, in the County's sole judgement, it deems the employee careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification. The County has the right to authorize the assignment of specific employees through a written task order authorization. The Company shall not replace any employee in team initially proposed by the Company without prior approval from the Director or the County's Representative. All employees engaged in this Project shall be required to submit the attached Exhibit BB "Conflict of Interest Affidavit".

- B. All employees of the Company or any Subcontractor performing the Work or O&M Services shall have the requisite skill and experience and all required licenses, registrations, certifications and other authorizations. The County shall have the right to require the Company to remove any person not meeting any of these requirements.
- C. Each employee of the Company and Subcontractors that will be involved in the Project shall sign an agreement stating that they will not copy, duplicate, or distribute any Project Documents other than for the purpose of performing Work or O&M Services under this Service Contract, unless authorized in writing by the County.
- D. The Company and Subcontractors shall utilize the individuals listed in Exhibit C for the corresponding Key Personnel positions set forth in Exhibit C and shall ensure that each such individual dedicates the full amount of time necessary for the Project. Unless due to death, disability, incapacity or termination of employment, the Company or Subcontractor shall not change any of the Key Personnel individuals. The Company shall provide written notice to the County not later than fifteen (15) days before the proposed replacement of any Key Personnel. The County shall have the right to review the qualifications and character of each such proposed replacement and to approve or reject any proposed replacement within such fifteen (15) day period.

### **6.13 Subcontracts and Subcontractors**

- A. The Company and Subcontractors shall incorporate into Subcontract all provisions, terms and conditions applicable to the Project which constitute obligations to be assumed and effected by the Company under the Contract Documents and, at the request of County, shall submit a copy of each such Subcontract to the County for examination and approval prior to the Company or Subcontractor execution of the Subcontract. Generalized Subcontracts without all details and provisions included shall not be acceptable. Subcontracts shall be entered into only with those Subcontractors so approved in writing by the County. The County reserves the right of approval or rejection of any Subcontract or Subcontractor at any tier contemplated by the Company or its Subcontractors at any tier for any portion of the Project, whichever is deemed to be in the County's best interest.
- B. The Company and Subcontractors shall retain or cause to be retained only Subcontractors that are qualified, experienced and capable in the performance of the portion of the Work or O&M Services assigned. At the time of execution of any Subcontract, the Company shall assure that each Subcontractor has all licenses, registrations and other required authorizations under Applicable Law and that such licenses, registrations and authorizations shall be maintained during the Subcontractor's performance of the portion of the Work or O&M Services assigned. The organization of the Contract Documents into divisions, sections and articles, and the arrangement of the Plans and Specifications shall not control the Company or Subcontractor in dividing the Work among Subcontractors nor in establishing the extent of Work to be performed by any trade.
- C. As of the Contract Date, the Company is authorized and required to utilize the Subcontractors set forth in Exhibit C for the Project. The Company shall not change any Subcontractor set forth in Exhibit C without the Director's or County Representative's prior written approval. A written request from the Company must be submitted to the Director or County Representative, stating the justifications for the proposed changes. Additional

Subcontractors shall be retained by the Company in accordance with the applicable provisions of the Project Management Plan.

- D. The Company shall provide the County with a list of all Subcontractors and proposed Subcontractors with each monthly report submitted under this Service Contract. Such list shall indicate whether or not such Subcontractor is an Affiliate of the Company or an Affiliate of a Subcontractor.
- E. The Company is required under this Service Contract to achieve the Contract Measures applied to this Project as shown in Exhibit AA.
- F. The retention of Subcontractors by the Company shall not relieve the Company of any of its obligations or responsibilities under this Service Contract, including without limitation those relating to the quality or performance of the Work or O&M Services. The Company at all times shall supervise and be fully responsible to the County for the negligence, willful misconduct or breach of Applicable Law or any provisions of the Contract Documents by any Subcontractor or any of its employees. Nothing in this Service Contract shall create or imply any contractual relationship between the County and any Subcontractor. No Subcontract may impose any obligation or liability upon the County to any Subcontractor or any of its employees.

#### **6.14 Labor Standards and Training**

- A. The Company at all times shall comply with and require all Subcontractors to comply with Applicable Law, including without limitation all federal, State of Florida and County labor, occupational safety and health laws.
- B. The Company shall implement and regularly update, and shall ensure its Subcontractors implement and regularly update, the training program component of the approved Project Management Plan.

#### **6.15 Ethical Standards**

- A. The Company shall at all times strictly enforce and shall ensure that its Subcontractors at all times strictly enforces the Ethical Standards of Conduct component of the approved Project Management Plan. Such Ethical Standards of Conduct shall be reviewed and updated by the Company on an annual basis and as otherwise required under Applicable Law.

#### **6.16 Records and Reports**

- A. The Company shall prepare, maintain and retain all the records, reports and other project documents required or prepared under and in accordance with the Contract Documents in a form that is readily capable of inspection and audit by the County and in accordance with the document control system included in the Project Management Plan. The Company shall make all such records and reports available to the County for inspection and audit during regular business hours upon notice of at least two business days, and if requested by the County, the Company shall provide electronic copies of all such records and reports.



## **6.17 Hazardous Conditions**

- A. Unless otherwise expressly provided in the Contract Documents to be part of the Work, the Company shall not be responsible for any pre-existing Hazardous Conditions encountered at the Project Sites. Upon encountering any Hazardous Conditions, the Company shall stop work immediately in the affected area and duly notify County's Representative and, if required by legal or regulatory requirements, all government or quasi-government entities with jurisdiction over the Project or Project Sites.
- B. Upon receiving notice of the presence of suspected Hazardous Conditions, County shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include County retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that County must take to either remove the Hazardous Conditions or render the Hazardous Conditions harmless. The methods of rendering the hazardous conditions harmless may include having the Company construct through or remove the hazardous material as a part of the Work. In such instance, the Work involved will be Extra Work under the applicable terms and conditions of this Service Contract.
- C. The Company shall be obligated to resume work at the affected area of the Project only after the County's expert provides it with a written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the affected Work-Site.
- D. The Company shall be entitled, in accordance with the provisions of this Service Contract applicable to a Compensation Event, to an adjustment in the Scheduled Service Date to the extent Company's time of performance has been adversely impacted by the presence of Hazardous Conditions.
- E. To the fullest extent permitted by law, County shall indemnify, defend and hold harmless the Company, design consultants, subcontractors, anyone employed directly or indirectly for any of them, or their officers, Director's, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including attorney's fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the affected Work or Project Sites.
- F. Notwithstanding the preceding provisions of this Section, the County shall not be responsible for Hazardous Conditions introduced to the Project Sites by the Company, Subcontractors or anyone for whose acts they may be liable. The Company shall indemnify, defend and hold harmless County and County's officers, director's, employees, and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of our resulting from those Hazardous Conditions introduced to the Project Sites by the Company, Subcontractors or anyone for whose acts they may be liable.

#### **6.18 Limitation on Company Business**

- A. The Company shall not engage in business or other activities unrelated to the performance of its obligations with respect to the Project in accordance with the terms and conditions set forth in this Service Contract.

## **ARTICLE 7 – PERMITS AND APPROVALS**

### **7.01 Company Responsibilities**

- A. **Scope of Responsibility.** With the exception of obtaining those Permits and Approvals set forth in Exhibit D as the responsibility of the County to obtain, the Company shall obtain and take all actions necessary to maintain in full force and effect (including renewals and extensions) all Permits and Approvals required for the performance of the Company's obligations under this Service Contract, including without limitation the Design-Build Work and the O&M Services. The Company's obligation to maintain Permits and Approvals in full force and effect shall extend to and incorporate the County Permits and Approvals, unless otherwise provided in this Article 7. The Company shall pay all filing fees and other costs for obtaining and maintaining all Permits and Approvals, except those filing fees and costs incurred for obtaining the County Permits and Approvals. Except for delay in a Governmental Agency's issuance of Permits and Approvals for the Design-Build Work according to the applicable provisions of Subsection 7.01 G, delay due to a Relief Event, and additional costs and time due to a Compensation Event, the Company shall have no recourse to the County due to a Governmental Agency's failure to issue, delay in issuance and inclusion of terms and conditions any of the Permits and Approvals required to be obtained by the Company under this Article 7.
- B. **Assistance to the County.** The Company shall provide support and assistance, as reasonably requested by the County, for obtaining the County Permits and Approvals not obtained by the County as of the Contract Date.
- C. **County as Permittee.** As requested by the County (in its sole discretion) or as may be required by Applicable Law, the Permits and Approvals obtained by the Company shall be obtained in the name of the County or in the names of the Company and County as co-permittees or shall identify the County as beneficiary, as applicable.
- D. **County Approval.** All applications prepared by the Company to obtain Permits and Approvals and the terms and conditions of all Permits and Approvals obtained by the Company shall be subject to review and approval by the County, provided that such review shall be completed in a timely manner and such approval shall not be unreasonably denied.
- E. **Required Information and Reports.** With respect to all Permits and Approvals, the Company shall prepare and submit to the applicable Governmental Agency in a timely manner all information, data and periodic reports required by Applicable Law (including applicable requirements set forth in the Permits and Approvals), provided that such information, data and periodic reports shall first be delivered to the County in final draft form for review not later than five business days before submitting such information, data and periodic reports to the Governmental Agency. A complete copy of all such information, data and periodic reports submitted by the Company to a Governmental Agency shall be delivered simultaneously to the County.
- F. **Violations.** The Company shall within 24-hours notify the County and, as required by Applicable Law, notify the applicable Governmental Agency or Agencies of any and all

violations of the terms or conditions of any of the Permits and Approvals. The Company shall undertake all necessary actions in a timely manner to cease or correct any such violations.

- G. **Work.** The following Table 7.1 sets forth assumed durations from the dates of Company submission of complete and compliant applications until the dates of issuance of the corresponding Permit and Approvals. If issuance of any of the Permits and Approvals set forth in Table 7.1 is delayed by a Governmental Agency beyond the applicable duration set forth in Table 7.1 and is not caused in whole or in part by Company Fault, then the Company shall be entitled to an adjustment of the Scheduled Service Date equal to the number of days of such delay beyond the applicable duration.

Table 7.1

Permit or Approval	Governmental Entity	Assumed Duration Application Date to Issuance
[Proposal]	[Proposal]	[Proposal]
[Proposal]	[Proposal]	[Proposal]
[Proposal]	[Proposal]	[Proposal]
[Proposal]	[Proposal]	[Proposal]
[Proposal]	[Proposal]	[Proposal]
[Proposal]	[Proposal]	[Proposal]
[Proposal]	[Proposal]	[Proposal]

- H. **O&M Services.** Not later than the earlier of the Scheduled Service Date or the Service Date, the Company shall obtain all Permits and Approvals required by Applicable Law for the Company's operation and maintenance of the Project.

## 7.02 County Responsibilities

- A. **Scope of County Responsibility.** The County has obtained or shall obtain in a timely manner the County Permits and Approvals set forth in Exhibit D. The County shall pay all filing fees and other costs associated with obtaining such County Permits and Approvals.
- B. **Assistance to the Company.** The County shall provide support and assistance (including without limitation those actions required to be undertaken by the County as permittee or co-permittee), as reasonably requested by the Company, for obtaining Permits and Approvals required to be obtained by the Company.

## **ARTICLE 8 – DESIGN, CONSTRUCTION AND TESTING OF THE WORK**

### **8.01 Design and Construction In General**

- A. The Company shall perform Design and Construction, startup and performance testing, and other aspects of the Work in accordance with the requirements of Exhibit L, Exhibit Q and Exhibit R and requirements set forth in the other Contract Documents.

### **8.02 Scheduled Service Date**

- A. The Company shall complete the Work to achieve the Service Date not later than the Scheduled Service Date. The Company shall pay the County liquidated damages in the amount of \$[insert] per day for each day of delay in the Company's failure to achieve the Scheduled Service Date, unless excused by a Relief Event.

### **8.03 Project Sites**

- A. **Site Conditions.** The County makes no representations or warranties as to conditions at the Project Sites (Site Conditions), including, but not limited to the nature or amount of any kinds of soil material, the location of any utilities or structures on the Project Sites, the composition or condition of any utility or structure and its contents, the fitness of any material for use as fill or drainage, or the amount of water to be expected. Any information provided herein relating to the Site Conditions is provided as advisory only, and is the County's best estimate of conditions at a particular location. Please note that underground conditions may vary from those observed by the County, and that the County cannot guarantee that the Company will encounter Site Conditions similar to those observed by the County.
- B. **Site Investigations.** The Company shall, prior to beginning design and construction activities, make whatever investigations of the Project Sites the Company deems diligent or prudent, and shall take into account all Site Conditions which are known to the Company, or which could be known to the Company with reasonable, diligent, investigation, in planning or execution the Work. Where Site Conditions delay the Project, and said delay could have been avoided by reasonable investigations of the Project Sites by the Company, such delay will not be considered to be beyond the control of the Company, and no time extension shall be granted for a Relief Event or otherwise under this Service Contract.
- C. **Differing Site Conditions.** In the event that Site Conditions differ from those reasonably expected or foreseeable by the Company, the Company shall immediately twenty-four (within 24-hours), and before such conditions are further disturbed, notify the County's Representative in writing of (1) subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract Documents, or other information and data that the Company should have known or could have reasonably discovered prior to the proposal submittal date, or two (2) unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Service Contract.

The County's Representative will promptly investigate the conditions, and if the County's Representative determines that such conditions materially differ from those reasonably expected or foreseeable by the data and information set forth in the geotechnical baseline conditions included in the Exhibits, Service Contract Documents or other data and information reasonably available to the Company prior to the proposal date, and such conditions cause an increase or decrease in the Company's cost of, or the time required for the performance of any part of the Work under the Service Contract, an adjustment, excluding loss of anticipated profits may be made and the Service Contract modified in writing accordingly by the County's Representative will notify the Company whether or not an adjustment of the Service Contract is warranted.

- D. **Required Notice.** No claim of the Company under this Article will be allowed unless the Company has given the notice required under this Service Contract. No claim by the Company for change hereunder will be allowed if asserted after the Service Date. If County is not given written notice prior to the conditions being further disturbed after the initial discovery by the Company, the Company will be deemed to have waived its right to assert a claim from additional time and compensation arising out of such changed conditions.

#### **8.04 Project Design**

- A. **Design Liability.** The Company shall have sole and exclusive responsibility and liability for design and performance of the Project, notwithstanding any design or related requirements or preferences of the County provided before or after the Contract Date, notwithstanding any design review, comments, requests or approval by the County or by any Governmental Entity, and notwithstanding the requirements set forth in this Service Contract (including without limitation Exhibit L and Exhibit Q). The Company shall have full responsibility for the professional quality, technical accuracy, completeness, performance and coordination of the Project's design and all other Work required under the Service Contract (including the Work performed by subconsultants and subcontractors), within the specified time period and specified cost. The Company shall, in addition to its other obligations with respect to the Work (such as, but not limited to, achievement of the Guaranteed Performance Standards), perform the Work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient consulting company with respect to the disciplines required for the performance of the Work in the State of Florida. The Company is responsible for, and represents that the Work shall conform to County's requirements as set forth in the Service Contract.
- B. **Design Requirements.** The Company shall prepare the Plans and Specifications and other technical and design related documents to conform strictly to the applicable requirements set forth in the Contract Documents, including Exhibit L and Exhibit Q. The Company acknowledges that it has carefully reviewed such design requirements and has verified prior to the Contract and hereby confirms that such design requirements are fully consistent with the Guaranteed Performance Standards and other obligations of the Company under this Service Contract with respect to the Work and the O&M Services, provided that the Company's compliance with such design requirements shall not relieve or limit the Company's obligations to achieve the Guaranteed Performance Standards and other

obligations of the Company under this Service Contract with respect to the Work and the O&M Services.

- C. **Design Review.** The County shall have the right (but not the obligation) to review and provide comment on the Company's design development and the Plans and Specifications with respect to compliance with the applicable requirements of this Service Contract in accordance with the procedures set forth in Exhibit Q.

## **8.05 Project Construction**

- A. **General.** The Company shall construct the Work in strict accordance with the Plans and Specifications and shall have full and exclusive responsibility for all construction means and methods required or utilized in the performance of the Work and full and exclusive responsibility for providing all of the things necessary to construct the Work, as more particularly described in Exhibit Q. The Company shall furnish all materials and products required to complete the Work except those designated and specifically named to be furnished by the County's Representative. Only materials conforming to the requirements of the Service Contract Documents shall be incorporated in the Work. The materials shall be manufactured, handled, and incorporated to ensure completed Work in accordance with the Service Contract and its intent. Unless otherwise indicated in this Service Contract, equipment, material and products incorporated in the Work covered by this Service Contract shall be new and of the grade specified for the purpose intended. Unless otherwise specifically indicated, reference to equipment, material, product, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Company may, at its option, use any equipment, material, article, or process which is equivalent to that named, subject to the requirements below.
- B. **Proposed Alternatives.** The County shall be the sole judge of the quality, suitability and cost of proposed alternative equipment, material, article or process. The burden of proving the quality, suitability and costs of any alternative shall be upon the Company. Information required by the County in judging an alternative shall be supplied by the Company at the Company's expense. Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to affect such redesign or change will be considered in evaluating the suitability of the alternative material. All costs pertaining to redesign and changes in other parts of the Work, including remedial Work and completed Work, shall be at the Company's expense and no additional time of performance will be allowed. No action relating to the approval of alternative materials will be taken by the County until the request for substitution is made in writing by the Company accompanied by complete data as to the quality, suitability and cost of the materials proposed. Such request shall be made at least thirty (30) days before the early start date of the activity. Any delays in receiving approval shall be the responsibility of the Company. Where classification, rating, or other certification by a body such as, but not limited to, UL, NSF, NEMA, or AREA is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed body, or equivalent independent testing laboratory, indicating compliance with Service Contract requirements. The equivalence of a classification, rating or certification; or the equivalence of the independent testing laboratory or other testing certifying entity shall be solely decided by the County, and such decision shall be final. Testing required proving equality of the material proposed shall be at the Company's expense. Approval of an alternative material will be only for the characteristics and use named in such approval, and shall not change or modify any Service Contract requirement, or establish approval for, the material to be used on any other Project for County or the County.

- C. **Rejected Materials.** Materials furnished by the Company not conforming to the requirements of the Service Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the Work Site unless otherwise permitted in writing by the County. All costs of such removal and replacement will be at the sole expense of the Company, and no additional time of performance will be allowed. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work unless approved in writing by the County. If the Company fails to comply promptly with a request by the County, made under the provisions of this Article, the County may cause the removal and replacement of rejected material and the cost thereof will be deducted from any monies due or to become due to the Company.
- D. **Transport and Storage.** Materials shall be transported, handled and stored by the Company in a manner which will ensure the preservation of their quality, appearance and fitness for the Work. Materials shall be stored in a manner to facilitate inspection.
- E. **Local Material Sources.** The County will have no responsibility to the Company concerning local material sources other than the responsibility involved in the designations of suitability for intended use. The Company shall make all necessary arrangements with local material sources. The Company shall pay all costs in connection with making such arrangements, exploring, developing and using material sources, whether or not indicated, except such costs as the County expressly agrees in writing to assume.

#### **8.06 Project Schedule**

- A. **Initial Construction Activities.** The Company shall proceed in accordance with the approved Mobilization and Engineering Schedule comprising the activities to be performed in the first one hundred twenty (120) days of Work after Notice to Proceed (NTP) with construction as indicated in the Exhibit V to this Service Contract.
- B. **Final Schedule.** The Initial Baseline Project Schedule included in Exhibit V shall be expanded by the Company to develop the Final Baseline Project Schedule covering all details of the entire Project, including all milestone event dates, and submitted to the County for compliance review no later than sixty (60) days after NTP to allow sufficient time to establish the approved Final Baseline Project Schedule prior to the one hundred twenty (120) day period covered by the Mobilization and Engineering Schedule. The Final Baseline Project Schedule shall be cost-loaded design and construction schedule of the Project and coordinated with the agreed Schedule of Values utilizing the Critical Path Method (CPM) with Primavera Scheduling Software. It shall commence on the NTP, and include the start and completion dates of various activities and major Project components, the sequence of design and construction, and the Service Contract completion dates for the overall Project. The Final Baseline Project Schedule shall be updated monthly based on actual progress achieved in accordance with the Service Contract Documents, and submitted to County as a requirement to support each pay application.
- C. **Monthly Progress Schedules.** The Company shall prepare and submit to the County, not later than the 5<sup>th</sup> day of each month, a progress schedule in accordance with the requirements set forth in Exhibit V, provided that the County's receipt or acknowledgement of such monthly progress schedules shall not represent or imply County approval or consent to an adjustment in the Scheduled Service Date or other time-related requirements set forth in this Service Contract for the Company's performance of the Work.



- D. **Incomplete Work or Delay.** If at any time before achievement of the Service Date, the County's Representative finds there is unmanned or unfinished or incomplete Work, or Work delay or Work stoppages, it shall notify the Company in writing to finish or complete the Work at Company expense forthwith using whatever professional services, and construction labor, materials and equipment necessary to perform the Work in accordance with the Service Contract Documents. When the activity duration for any items shown on the approved Baseline Project Schedule do not appear sufficient to be completed in the time provided, and the affected activities are likely to delay completion of the Project in the sole opinion of the County's Representative, or of the County's Representative otherwise determines that the Work is not progressing in a timely manner towards completion in a timely manner, and the Company fails to make good efforts to for completing any of the above Work activities as specified, the County's Representative shall give notice to the Company in writing specifying the conditions pertaining thereto and directing the Company to take the measures necessary to perform the Work. If the Company does not being to correct such conditions within five (5) days of such notice, or provide a plan satisfactory to the County's Representative to correct such conditions, it shall be sufficient grounds for the County's Representative to place the Company in default and notify its surety of same.

#### **8.07 Defective and Nonconforming Work**

- A. **Defective Work.** If at any defects in the Work or materials, unsatisfactory Work or material, poor workmanship, damaged, destroyed, or incorrect Work, are found by the County's Representative, or any other Governmental Entity having jurisdiction over the Work, the Company so notified shall immediately correct such Work at its expense using whatever material and labor necessary in accordance with the plans and specifications. Previous inspection of such Work or prior approval of any design submittals for compliance will not relieve the Company of its responsibility for any of the above deficiencies, although they may have been overlooked by the County's Representative or may have been the results of damage from any cause. Neglect to make good for any of the above Work shall result in the County's Representative giving notice in writing to the Company specifying the conditions pertaining thereto and directing the Company to correct same. If the Company does not correct such conditions within five (5) days after receipt of such notice, it shall be sufficient grounds for the County's Representative to order the subject Work discontinued and have the Work completely remedied at the expense of the Company.
- B. **Nonconforming Work.** All Work and materials are to be inspected by the Company to confirm conformance with the requirements of this Service Contract before use and the Company shall notify the County's Representative in time to enable it to inspect all Work and materials, including inaccessible Work or materials, before being covered. The Company shall furnish at its expense necessary personnel and facilities for inspection of such Work or materials after being covered, if so required. If in the County's Representative's opinion the materials or finished items already installed, whether exposed or covered up, are damaged, destroyed or not in compliance with specifications, the County's Representative shall notify the Company in writing, specifying the Work or materials which shall not be incorporated in the Work without replacement or corrective Work sufficient to obtain the County's Representative's approval. All costs for the correction of said Work or materials shall be borne by the Company.
- C. **Additional Testing.** If, in the opinion of the County's Representative, the structural, mechanical, or electrical integrity of installed Work or materials on Site is questionable, the County's Representative may direct the Company to perform necessary tests to determine the

acceptability of the item in question. The Company shall immediately employ a Professional Engineer licensed to practice in the State of Florida, to submit a testing procedure for approval as well as corrective methods of repair or replacement of the Work if required. Engineering, testing and any required corrective Work shall be performed immediately to minimize delays to the Project. If the tested Work or materials are found to have deficiencies or not be in accordance with the best practices of the trade; even if the County for its convenience elects to accept the Work or materials, all engineering, testing and corrective costs shall be borne by the Company. Should the Work or material in question be found to be without deficiencies and in accordance with the best practices of the trade, said costs will be borne by the County to the extent of actual costs for said services. Any office overhead or other charges will remain with the Company. A non-compensable time extension may be granted if no corrective measures are required by the County's Representative.

- D. **Approval of Correction Methods.** In all cases of corrective Work, including tests, prior to performing any Work, the Company must submit its method of correction and obtain approval from the County's Representative prior to correcting, removing, or replacing this Work. The County's Representative will only approve the completed Work when it is satisfactorily performed. All costs for this Work, including testing, shall be borne by the Company.
- E. **Company Liability.** The Company shall be and remain liable to the County for all damages to the County caused by the Company's negligent acts, recklessness, intentionally wrongful conduct or errors or omissions in the performance of the Work. In addition to all other rights and remedies, which the County may have, the Company shall, at its expense, re-perform the services to correct any deficiencies, which result from the Company's failure to perform in accordance with the standards set forth in this Service Contract. The County shall notify the Company in writing of any deficiencies and shall approve the method and timing of the corrections. Neither the County's inspection, review, approval or acceptance of, nor payment for, any of the Work required under the Service Contract shall be construed to relieve the Company or any subconsultant or subcontractor of its obligations and responsibilities under the Service Contract, nor constitute a waiver of any of the County's rights under the Service Contract or of any cause of action arising out of the performance of the Service Contract. The Company and its subconsultants and subcontractors shall be and remain liable to the County in accordance with applicable law for all damages to County and caused by failure of the Company or its subconsultants and subcontractors to comply with the terms and conditions of the Service Contract or by the Company's or subconsultants' or subcontractors' misconduct, recklessness, unlawful acts, negligent acts, errors or omissions in the performance of the Service Contract. With respect to the performance of Work by subconsultants and subcontractors, the Company shall, in approving and accepting such Work, ensure the professional quality, completeness, and coordination and subconsultants and subcontractors Work. The Company shall be responsible to re-perform any deficient, defective Work and/or services identified by the County within twelve (12) months following Acceptance and shall be subject to further re-performance, repair and replacement for twelve (12) months from the date of initial re-performance, not to exceed twenty-four months (24) from the Acceptance.

## **8.08 Damage to the Work**

- A. **Company Responsibility.** The Company shall diligently take all appropriate actions and apply all necessary safeguards (including without limitation fencing and other measures) to protect the Work, stored materials and the Project Sites from damage. The Company shall be responsible for repairing and replacing damage to the Work, stored materials and the Project Sites in a timely manner, regardless of the cause of such damage and whether or not insurance

proceeds are available to off-set the costs, except if caused by a Force Majeure Event or City Fault.

- B. **Notification.** Upon the occurrence of any damage to the Work, stored materials or the Project Sites, the Company shall notify the County as soon as practicable and shall comply with all the notification and reporting obligations in connection with the Required Insurance within the applicable time requirements.

#### **8.09 Equipment and System Testing**

- A. Upon installation and as a precondition to achievement of Physical Completion, the Company shall conduct testing of all individual equipment and systems in accordance with manufacturer's recommendations or requirements and to demonstrate satisfaction of the applicable equipment and system performance standards under the Contract Documents, including without limitation the standards and requirements set forth in Exhibit Q and Exhibit R.

#### **8.10 Physical Completion**

- A. **Conditions.** Unless deferred or waived by the County (in its sole discretion) by written notice delivered to the Company, Physical Completion of the Project requires that each of the following conditions shall be achieved by the Company:
1. Pre-startup testing of equipment and systems has been successfully completed and compliance with the applicable equipment and system performance requirements has been successfully demonstrated in accordance with the requirements set forth in Exhibit Q and Exhibit R.
  2. Written certifications by the manufacturers of major equipment and all systems have been delivered to the County documenting the agreement of such manufacturers that the equipment and systems have been properly installed and tested in accordance with the recommendations and requirements of such manufacturers.
  3. The Permits and Approvals necessary for startup, performance testing and operation of the Project have been obtained and copies delivered to the County, including without limitation a temporary or permanent certificates of occupancy.
  4. The utilities required for startup, performance testing and operation of the Project have been connected and are ready to provide the necessary utility services.
  5. The Punch List has been documented by the Company and approved by the County.
  6. The Company has delivered to the County a certified statement setting forth in detail all claims of Subcontractors and other persons or entities in connection with the Work.
  7. The training of operations and maintenance personnel required to be completed before the Company's initiation of Performance Testing has been completed and documented.
  8. The County has approved the Company's Performance Testing Plan.
  9. Complete drafts of the O&M Manuals have been delivered to the County.

10. The Company has provided to the County a sworn certification that, with the exception of the portions of the Work included on the Punch List, the Work has been completed in all respects and is in compliance with the Contract Documents, and the County has consented in writing to such certification.

B. **Punch List.** Not later than thirty (30) days before the date of Physical Completion, the Company shall submit the proposed Punch List for review and approval by the County. Such Punch List shall include only those items that would not, individually or in the aggregate, interfere with or otherwise limit the ability of the Company to perform the O&M Services in accordance with this Service Contract and can be completed prior to the date for Final Completion, provided that in no event shall the total cost to complete or perform the Punch List exceed an amount equal to one-half of one percent (0.5%) of the Design-Build Cost of the Work. The Punch List shall identify and describe in sufficient detail each and every such item of Work that is incomplete or requires repair, correction or adjustment, and shall provide the estimated cost of completion for each item and the total estimated cost of the Punch List.

### 8.11 Performance Testing

A. Upon achievement of Physical Completion under Section 8.10, the Company shall conduct Performance Testing of the Project in accordance with the requirements and protocols set forth in Exhibit R.

### 8.12 Service Date Achievement

A. **Conditions.** Unless deferred or waived by the County (in its sole discretion) by written notice delivered to the Company, the Service Date for the Project requires that each of the following conditions be achieved by the Company:

1. Physical Completion has been completed and documented in accordance with the applicable provisions of this Article 8.
2. Performance Testing have been completed and the Company has demonstrated and the County has agreed in writing that the Project is in compliance with the Performance Testing Standards.
3. All of the spare parts, tools, consumables and other items required by the Contract Documents to be on-hand for operation and maintenance of the Project have been delivered to the Project Sites.
4. The Company has provided to the County a sworn certification that the conditions under this Section have been satisfied, and the County has consented in writing to such certification.

B. **Performance Test Report.** Not later than fifteen (15) days after completion of Performance Testing, the Company shall deliver to the County the Performance Testing Report in accordance with the requirements set forth in Exhibit R. Such report shall include, without limitation, a certification by the Company that the Performance Testing have achieved the Performance Testing Standards, detailed descriptions of the tests conducted, and the original data, laboratory reports, and other information to support such certification. If the County delivers to the Company written comments or points of disagreement with any aspect of the Performance Testing Report within fifteen (15) days of receipt of such report, the Company

shall provide the County with a written response and modification of the Performance Testing Report within fifteen (15) days of the Company's receipt of any such comments or points of disagreement. If the Company's response is not satisfy the County's comments or points of disagreement, then the County may suspend further payment of the Fixed Availability Charge until such time that the County's comments and points of disagreement are resolved.

### **8.13 Final Completion**

- A. **Conditions.** Unless deferred or waived by the County (in its sole discretion) by written notice delivered to the Company, Final Completion of the Project requires that each of the following conditions be achieved by the Company:
1. All the items included on the Punch List have been completed to the County's satisfaction.
  2. A complete and reproducible set of the as-built drawings for the Project and ten (10) copies of such drawings have been delivered to the County.
  3. The final O&M Manuals have been delivered to the County.
  4. Operation of the Project since the Service Date has been in full compliance with the Guaranteed Performance Standards.
  5. All of the training of Company operations and maintenance staff and County personnel required under the Contract Documents to be completed by the date of Final Completion has been completed and documented.
  6. The final Performance Test Report has been submitted and accepted without objection by the County.
  7. All the warranties and operating manuals provided by suppliers and manufacturers of equipment, systems, vehicles, materials, fixtures and other components of the Project as well as those warranties and manuals specifically required by the Contract Documents have been delivered to the County.
  8. The final certificates of occupancy have been issued for the Project and copies delivered to the County.
  9. A statement that no claims or other requests or demands by the Company, Subcontractor or other persons or entities against the County remain outstanding along with waiver by the Company of any liability by the County to the Company under the Service Contract or Applicable Law from the Contract Date though and inclusive of the date of Final Completion.
- B. **Liquidated Damages.** If the date of Final Completion is not achieved within ninety (90) days of the Service Date, the Company shall pay liquidated damages in an amount equal to \$[insert] for each day of such delay.

## **8.14 Warranties**

- A. **Project Warranty.** Except where longer periods of warranty are indicated for certain items in the Contract Documents, the Company warrants the Work under this Service Contract to be free from faulty materials and workmanship for a period of one (1) year from the Service Date. This one-year (1) period shall be covered by the Surety Performance Bond as specified in this Service Contract. Upon receiving notification from the County or any public body, to whom the ownership of the Work has been transferred, the Company shall immediately remedy, repair, or replace, without cost to the County or other notifying party and to the entire satisfaction of the notifying party, defects, damages, or imperfections due to faulty design, materials or workmanship appearing in said Work. Remedial Work shall carry the same warranty as the original Work starting with the date of acceptance of the replacement or repair. ALL MAINTENANCE DURING THE PERIOD OF WARRANTY OR, IF A REPAIR IS MADE, THE EXTENDED WARRANTY, SHALL BE PROVIDED BY THE COMPANY. Payment to the Company will not relieve him of any obligation under this Service Contract. Any latent defects should be corrected within the period required by applicable law.
- B. **Damage to the Work.** The Company, at no additional expense to the County, shall remedy damage to equipment, the Project Sites, or the buildings or the contents thereof, or existing utilities or structures, which is the result of any failure or defect in the performance of the Work, and restore any Work damaged in fulfilling the requirements of the Service Contract. Should the Company fail to remedy any such failure or defect within a reasonable time after receipt of notice thereof, the County will have the right to replace, repair, or otherwise remedy such failure or defect and deduct all costs from the Company's pay request.
- C. **Third-Party Warranties.** Subcontractors', manufacturers' and suppliers' warranties and guaranties, expressed or implied, respecting any part of the Work and any material used therein shall be deemed obtained and shall be enforced by the Company for the benefit of the County provided that, if directed by the County, the Company requires subcontractors, manufacturers and suppliers to execute such warranties and guaranties, in writing, directly to the County.
- D. **No Limitation of Rights.** The rights and remedies of the County provided in this Article are in addition to and do not limit any rights and remedies afforded by the Service Contract or by law.
- E. **Warranty Exclusion.** Nothing in the above intends or implies that this warranty shall apply to Work that has been abused or neglected by the County or other public body, utility or entity to which ownership has been transferred.
- F. Unless otherwise specified in the Contract Documents, the Company shall make its own arrangements for legally disposing of waste and excess materials outside the Sites, and shall pay all costs thereof.

1. Prior to disposing of material outside the Work Site, the Company shall obtain written permission from the County on whose property the disposal is to be made. The Company shall file with the County said permission, or a certified copy thereof, together with a written release from the property owner absolving the County from any and all responsibility in connection with the disposal of material on said property.
2. Company shall obtain and pay for all permits for such disposal from all governing authorities. The direct cost of such permits without overhead or other additional charges will be reimbursed by County out of the dedicated allowance established for that purpose. Permits obtained by the Company's convenience or unnecessary permits shall not be reimbursed. Should the question of the necessity or non-necessity of a permit arise, said question shall be decided by the County and that decision shall be final. The cost of compliance with any permit conditions shall rest solely with the Company and will not be reimbursed.
3. Where a project or part of the project is located in the City of Miami, in accordance with the City of Miami Code, a special paving bond is required by the City of Miami Public Works Department. The Company shall obtain and execute this bond between itself and the City of Miami. The cost of the bond will not be reimbursed from the dedicated allowance.
4. The Company shall have no property right in materials after they have been attached or affixed to the Work or the soil, or after payment has been made by the County to the Company for materials delivered to the Site of the Work, or stored subject to or under the control of the County, as provided in Article 10 Basis of Compensation. However, the Company shall be responsible for the security of the material on Site until the material is incorporated into the Work and accepted by the County.

## **ARTICLE 9 – OPERATION AND MAINTENANCE**

### **9.01 O&M Services In General**

- A. The Company shall operate and maintain the Project in accordance with this Service Contract, including without limitation the requirements set forth in this Article 9, Exhibit J and the O&M Manual, on a twenty-four hours per day, seven days per week basis starting on the Service Date and continuing throughout the Term.

### **9.02 Operation and Maintenance Manual**

- A. **Draft O&M Manual.** Not later than ninety days before the anticipated Service Date, the Company shall deliver to the County a complete draft of the O&M Manual for review and comment. Within sixty days of delivery, the County shall provide to the Company written comments and questions regarding the contents of the draft O&M Manual. If desired by either party, a meeting shall be scheduled and attended by the Company and the County to review and discuss such comments and questions within ten days of the County's delivery of such comments and questions.
- B. **Final O&M Manual.** Not later than and as a condition of the Service Date, the final O&M Manual shall be prepared by the Company and delivered to the County.
- C. **Updating of O&M Manual.** Throughout the Term, the Company shall maintain and update the O&M Manual with revisions and supplements, whether to account for Capital Improvements or other changes desired by the Company or required by a Compensation Event or Relief Event. Not later than forty-five days prior to finalizing and putting into practice any such revisions or supplements, the Company shall submit a complete draft O&M Manual revision or supplement for review and comment by the County. Such comments or questions shall be provided by the County in writing not later than thirty days after receipt of the proposed draft revision or supplement to the O&M Manual. Not later than five days before putting the final O&M Manual revision or supplement into practice, the Company shall deliver such O&M Manual revision or supplement to the County.
- D. **Form and Content of O&M Manual.** The O&M Manual contents and updates shall be delivered to the County in hard copy and electronic form in accordance with the requirements of Exhibit J. The O&M Manual shall include without limitation the following components:
1. Operation plan.
  2. Maintenance plan.
  3. Renewal and replacement plan.
  4. Emergency response plan.
  5. Risk management plan.



6. Residuals disposal plan.
7. Brine disposal plan.
8. Health and safety plan.
9. Pumping and process monitoring plan.
10. Regulatory reporting plan.

### **9.03 Coordination of Project Operations**

- A. **Operations Protocol.** Not later than sixty days before the anticipated Service Date, the Company shall deliver to the County a proposed Operations Protocol in accordance with the requirements set forth in Exhibit K. If desired by either party, the County and the Company shall meet prior to and after the proposed Operations Protocol is delivered to discuss issues and needs that should be addressed by the Operations Protocol. The final Operations Protocol shall address the comments and questions provided by the County concerning the proposed Operations Protocol and shall be delivered to the County not later than ten days before the anticipated Service Date.
- B. **Regular Meetings.** The Company shall conduct monthly meetings with the County to review and discuss issues and concerns with respect to the Company's day-to-day operation of the Project, provided that either party may require regular meetings on a weekly, bi-weekly or other periodic basis during such times when there exists a reasonable need to do so.
- C. **Annual Finished Water Production Estimates.** Not later than thirty days before the anticipated Service Date and thirty days before start of each subsequent Contract Year, the County shall provide the Company with a non-binding projection of the estimated monthly quantities of Finished Water required to be delivered by the Company for the upcoming Contract Year.
- D. **Actual Finished Water Production Requirements.** The actual volume of Finished Water produced by the Company during each Contract Year shall be equal to the daily amount required by the County as set forth in the Finished Water Demand schedule prepared in accordance with Article 11 of this Service Contract.

### **9.04 Computerized Maintenance Management System**

- A. **Operation and Updating.** Starting on the Service Date and continuing throughout the Term, the Company shall continuously operate and maintain the Computerized Maintenance Management System. Such Computerized Maintenance Management System shall be updated, as necessary, to reflect Capital Improvements, renewals, replacements and other changes to the Project assets or revisions to the maintenance plan. Reports and other documentation generated by the Company's operation of the Computerized Maintenance Management System shall be provided to the County on a weekly basis to enable the County

to review and monitor the Company's performance of its maintenance, renewal and replacement obligations under this Service Contract.

- B. **County Access and Changes.** The Company shall provide the County with computer-based read-only access in real time to the Computerized Maintenance Management System from off-site locations identified by the County. The County, at its cost, may provide directions to the Company for changes to be made to the Computerized Maintenance Management System to conform with changes made by the County to its computerized maintenance management system.

#### **9.05 O&M Services Personnel**

- A. **Staffing Levels and Skills.** Starting on the Service Date and continuing throughout the Term, the Company shall provide operations and maintenance personnel for performance of the O&M Services in accordance with the requirements set forth in Exhibit J.
- B. **Training.** Not later than one-hundred twenty days before the anticipated Service Date, the Company shall deliver to the County for review and comment a proposed training program for the operation and maintenance personnel in accordance with the requirements set forth in Exhibit J. Such program shall include provisions for training County employees, as required in Exhibit J.
- C. **Unacceptable Behavior.** If any operations and maintenance personnel conducts her- or his- self in an unlawful or otherwise objectionable manner, then such person or persons shall be replaced or subject to appropriate discipline by the Company or Subcontractor, as applicable.
- D. **Changes.** Any changes made by the Company in the operations and maintenance personnel shall comply with the requirements of Exhibit J. The Company shall notify the County within two business days after any changes made to the operations and maintenance personnel and shall use its best efforts to notify the County in advance of changes in the operations and maintenance personnel.
- E. **Minimum Wages.** The Company and Subcontractors shall comply with Sections 2-8.9 and 2-11.16 of the Code of Miami-Dade County, Florida with respect to living wage and responsible wage requirements for the operations and maintenance personnel.

#### **9.06 O&M Inventory**

- A. Not later than one hundred eighty days after the Service Date, the Company shall deliver to the County a comprehensive and complete inventory of spare parts, tools, chemicals and other consumables, vehicles and other mobile equipment at the Project Sites along with cost values.

#### **9.07 Emergencies**

- A. **Company Response.** If the Company determines that an emergency is occurring or may be imminent with respect to public safety or the safety of its employees or with respect to the O&M Services or the Project, the Company shall immediately (and without any requirement

for prior notice to or approval by the County) implement all actions and mitigation steps reasonably necessary or appropriate.

- B. **Response Plan.** Not later than ninety days before the anticipated Service Date, the Company shall prepare and submit for review and approval by the County a proposed emergency response plan in accordance with the requirements set forth in Exhibit W. The emergency response plan shall be put into effect by the Company immediately upon approval by the County and shall be updated (subject to County approval) by the Company on an annual basis.

## **ARTICLE 10 – PROJECT RENEWAL**

### **10.01 Project Renewal In General**

- A. The Company shall perform, in a timely and diligent manner, all Renewal Work as and when necessary to comply with the requirements of this Service Contract, including without limitation the Renewal Work Schedule, the day-to-day operation and maintenance of the Project to satisfy the Guaranteed Performance Standards, and the Project Handover Requirements. Such obligations of the Company shall apply whether or not sufficient funds are available in the Renewal Work Fund and whether or not such Renewal Work is included in the current Renewal Work Schedule.

### **10.02 Schedule for Renewal Work**

- A. **Initial Schedule.** The Company's schedule for performance of Renewal Work for the Project, in effect as of the Contract Date, is set forth in Exhibit N.
- B. **Annual Updates.** Not later than sixty days before the start of each Contract Year, the Company shall submit a draft updated Renewal Work Schedule for the remainder of the Term. Such updated Renewal Work Schedule may, but is not required to, include proposed changes (resulting from Company periodic inspections or otherwise) in the Renewal Work Schedule in effect for the current Contract Year, provided that any such changes shall be highlighted and shall be fully explained in terms of the factors, circumstances and reasons causing the Company to propose each change in the Renewal Work Schedule. In the event that an updated Renewal Work Schedule does not include proposed changes, the Company shall provide an explanation as to why no changes are proposed. Not later than thirty days after receipt, the County shall review the draft updated Renewal Work Schedule and shall deliver either written approval or comments and questions to the Company. The parties shall cooperate to address and resolve any such comments or questions so that the final updated Renewal Work Schedule may be approved by the County before the start of the upcoming Contract Year.

### **10.03 Funding for Renewal Work**

- A. **Renewal Work Charge.** Other than the Fixed Renewal Charge included in the Service Fee and as may be required due to a Compensation Event, the County shall have no responsibility to pay any of the costs for Renewal Work.
- B. **Renewal Work Fund.** The Company shall maintain and provide regular accounting to the County for the Renewal Work Fund in accordance with this Article 10 and other applicable provisions of this Service Contract. Company withdrawals from the Renewal Work Fund shall be limited to the costs of the Renewal Work and the Handover Work. All payments made by the County of the Fixed Renewal Charge component of the Service Fee and all interest and other income (less applicable Company income tax liabilities) earned on fund balances shall be credited to the Renewal Work Fund. The County shall be entitled to the amount of remaining funding credited (Renewal Work Charge payments plus net income

earnings less actual expenditures for Renewal Work) to the Renewal Work Fund upon expiration or termination of the Service Contract.

#### **10.04 Reporting and Inspection**

- A. **Project Asset Registry.** Not later than one-hundred eighty days after the Service Date, the Company shall prepare a detailed inventory of all equipment, structures, buildings, pipelines and other assets comprising the Project. Such Project Asset Registry shall include a list of assets with asset condition, functionality, useful life, manufacturer names, equipment model numbers, cost information, videotape and photographs, all in accordance with the requirements set forth in Exhibit X. The Project Asset Registry shall be updated on an annual basis utilizing information obtained through the Company's annual inspection and day-to-day operation and maintenance of the Project.
- B. **Annual Reporting of Renewal Work.** Not later than sixty days after completing each Contract Year, the Company shall deliver to the County a report detailing the Renewal Work performed during the prior Contract Year along with a detailed accounting of the costs on a monthly basis incurred for such Renewal Work and the monthly amounts credited to the Renewal Work Fund. The Company shall promptly respond to any comments or questions on such annual report delivered by the County.
- C. **Notice of Unscheduled Renewal Work.** The Company shall promptly deliver written notice to the County when the Company becomes aware of Renewal Work costing more than \$[insert] or relates to a critical Project component that is necessary but is not included in the current Renewal Work Schedule.
- D. **Company Inspection and Reporting.** Not later than ninety days after the start of each Contract Year, the Company shall perform a comprehensive inspection of the condition of the Project and, not later than thirty days after completing such inspection, the Company shall deliver to the County a detailed report on the findings of such inspection. The Company shall respond in a timely manner to any written comments or questions on such annual inspection report delivered by the County.
- E. **County Inspection.** The County, at any time, may perform (or retain a third party to perform) an inspection of the Project and intends every five years to perform (or retain a third party to perform) a comprehensive inspection of the Project. As a result of any such inspection performed by, or on behalf of, the County, the County may provide written notice of deficiencies in the Project's condition, including without limitation maintenance or Renewal Work, and the Company shall promptly respond with a proposed plan, for the County's review, to correct such deficiencies. Upon the County's written approval, the Company shall promptly implement such plan of correction.
- F. **County Performance of Renewal Work.** If the County determines at any time (whether upon receipt of the Company's annual report or inspection report or due to an inspection of the Project by the County or its agents) that the Company has failed to perform Renewal Work required under this Service Contract, the County may (but is not required to) deliver written notice to the Company. If the Company has not completed (or undertaken and

maintained performance in the event that more than thirty days is reasonably required for completion) such required Renewal Work, the County may (but is not required to) perform such Renewal Work and deduct the costs thereof from upcoming payments due to the Company for the Renewal Work Charge.

#### **10.05 Project Handover**

- A. **Project Condition and Performance.** Upon expiration or termination of this Service Contract, the Company shall be obligated to transfer possession and operation of the Project to the County in the condition and meeting all the performance and other requirements set forth in Exhibit I.
- B. **Handover Reserve Holdback.** Starting five years before expiration of the Term, the County may hold-back from payment of the Service Fee each month an amount up to twenty percent of the Renewal Work Charge and shall place any such amounts held-back in a reserve account for the Project. The funds accumulated in such account shall be paid to the Company to the extent that available funds in the Renewal Work Fund are insufficient to pay the costs for Renewal Work completed by the Company during the five year period before expiration of the Term, provided that any costs for Renewal Work required during such period in excess of the total amounts available in the Renewal Work Fund and the Handover Reserve Holdback shall be the Company's responsibility without reimbursement by the County. If any funds from the Handover Reserve Account are due to the Company, such funds shall be transferred to the Company not later than thirty days after the County completes the final inspection of the Project.
- C. **Warranty.** Upon expiration or termination of this Service Contract, the Company warrants for a period of one year that the Project shall be free from defects in equipment, buildings and structures, subject to the exclusion of normal wear and tear.

#### **10.06 Damage or Destruction**

- A. **County Responsibility.** Unless the Company is responsible for costs due to Company Fault and except for insurance deductible and self-insurance retention amounts for which the Company shall be responsible under this Service Contract, the County shall be responsible starting on the Service Date for the costs to repair or replace damage or destruction to the Project caused by a Force Majeure Event, provided that the County shall be entitled to all funds recovered through insurance policies and other third-parties in connection with such damage or destruction.
- B. **Financing.** The County shall be required to provide any necessary financing for the costs to repair or replace damage to the Project, unless the Company has agreed with the County to the terms and conditions, including an adjustment of the Service Fee, for the Company to provide financing of such costs.
- C. **Company Assistance.** The Company shall cooperate with and provide all reasonable assistance required by the County to arrange financing and to obtain payments under

applicable insurance policies and from other third-parties in connection with damage or destruction to the Project.

- D. **Repair or Replacement Work.** The County shall arrange for performance of the work necessary to repair or replace damage or destruction to the Project through third-party contracting or through a mutually-agreed arrangements with the Company, provided that any such third-party contracting or Company arrangements shall comply with Applicable Law.

## **ARTICLE 11 – GUARANTEED PERFORMANCE STANDARDS**

### **11.01 Performance In General**

- A. Except and to the extent that the Company may be excused for failure to perform its obligations under this Service Contract for a Relief Event and in addition to the Company's other obligations under this Service Contract with respect to the Project, the Company shall design, construct, operate and maintain the Project to satisfy the standards of performance set forth in this Article 11 and Exhibit G.

### **11.02 Guaranteed Quantities of Raw and Finished Water**

- A. **Guaranteed Production of Raw Water.** The Company shall extract from the BA and the UFA, and deliver to the delivery points, quantities of raw water in accordance with the applicable minimum, average and peak flow rates set forth in Exhibit G. The Company shall pay the liquidated damages amounts set forth in Exhibit G for its failure to comply with such obligations, unless excused by a Relief Event. The quantities of Raw Water delivered by the Company shall be measured at the BA and UFA Raw Water Metering Points.
- B. **Guaranteed Production of Finished Water.** The Company shall treat Raw Water to produce and deliver quantities of Finished Water according to the minimum, average and peak flow rates requested by the County pursuant to subsection (C) of this Section 11.02, subject to the minimum and maximum flow rates set forth in Exhibit G. The Company shall pay the liquidated damages amounts set forth in Exhibit G for its failure to comply with such obligations, unless excused by a Relief Event. The quantities of Finished Water delivered by the Company shall be measured at the BA and UFA Finished Water Metering Points.
- C. **Weekly Request for Finished Water Delivery.** The County shall provide written notice to the Company on a weekly basis (not later than Noon on Friday of each week) to request BA and UFA Finished Water deliveries during the subsequent week (Noon on the Monday immediately subsequent to the Friday when such notice is due through and until Noon the following Monday). At any time after such notice is provided, the County may provide written notice for the Company to adjust the Finished Water deliveries set forth in such request for the remainder of the week, provided that such adjustment request shall be provided to the Company not later than twelve hours before the effective time of day for the adjustment and that, unless an emergency exists or the Company otherwise agrees, no more than two such adjustment requests may be provided by the County in any given week.
- D. **Finished Water Recovery.** The Company at times shall achieve a recovery rate of not less than [insert] % for the BA Raw Water and [insert] % for the UFA Raw Water. The Company shall pay the liquidated damages amounts set forth in Exhibit G for its failure to comply with such obligations, unless excused by a Relief Event. The quantities of Raw Water and Finished Water to calculate the recovery rates shall be measured at the BA and UFA Raw Water Metering Points and the respective BA and UFA Finished Water Metering Points.



### **11.03 Guaranteed Quality of Finished Water**

- A. The Company shall treat Raw Water to deliver Finished Water according to the requirements of Applicable Law and the requirements set forth in Exhibit G with respect to the quality of the Finished Water. The Company shall pay the liquidated damages amounts set forth in Exhibit G for its failure to comply with such obligations, unless excused by a Relief Event.

### **11.04 Assumed Raw Water Conditions**

- A. **Raw Water Flow Conditions.** Unless attributable to faulty design, construction, operation or maintenance of Raw Water Supply Facilities or other Company Fault, it shall be assumed by the parties that the Raw Water production capability of the BA and the UFA at the location of each Raw Water Pumping Station shall be equal to or greater than the respective flow rates set forth in Exhibit A.
- B. **Raw Water Quality Conditions.** It shall be assumed by the parties that the water quality parameters for the Raw Water obtained by the Company from the BA and the UFA shall be within the ranges or limits set forth in Exhibit A. The quality of the Raw Water shall be measured at the BA and the UFA Raw Water Quality Measuring Points.

### **11.05 Guaranteed Pressures**

- A. **Raw Water Pressure.** The Company shall deliver Raw Water from the BA and the UFA to the BA and UFA Raw Water Metering Points, respectively, at the average daily pressures and within the ranges of pressures set forth in Exhibit G.
- B. **Finished Water Pressure.** The Company shall deliver Finished Water from the BA and the UFA to the BA and UFA Finished Water Metering Points, respectively, at the average daily pressures and within the ranges of pressures set forth in Exhibit G.
- C. **Hydraulic Transients.** The Company shall avoid any sudden and substantial changes in the rate of flow and pressures at any point in the Project and shall not cause any sudden and substantial changes in the rate of flow and pressures at any point in the County's water distribution system, as more particularly described in Exhibit G.

### **11.06 Guaranteed Disposal of Brine**

- A. The Company shall perform Brine Disposal in accordance with the standards set forth in Exhibit G.

## **ARTICLE 12 – COMPENSATION**

### **12.01 Compensation in General**

- A. Starting on the Service Date, the Service Fee shall be payable on a monthly basis by the County in accordance with this Article 12 as the full and exclusive compensation for the Company's performance of the O&M Services, provided that the Service Fee shall be adjusted annually under the economic adjustment provisions of this Article 12 and that additional compensation may be due to the Company as an adjustment of the Service Fee or by direct payment of Reimbursable Costs for a Compensation Event in accordance with Article 13.

### **12.02 Service Fee Formula**

- A. The Service Fee for each Contract Year shall be calculated according to the following formula:

$$\text{Service Fee} = \text{FAC} + \text{FOC} + \text{FRC} + \text{VPC} + \text{PUI}$$

Where,

FAC = Fixed Availability Charge

FOC = Fixed Operating Charge

FRC = Fixed Renewal Charge

VPC = Variable Production Charge

PUI = Power Usage Incentive

The amounts for the foregoing FAC, FOC and FRC and the methods of computation for the VPC and PUI components of the Service Fee shall be as set forth in Section 12.03. With the exception of FAC, each component of the Service Fee shall be adjusted each Contract Year in accordance with Section 12.04.

### **12.03 Service Fee Components**

- A. **Fixed Availability Charge (FAC).** The amount of the Fixed Availability Charge shall be \$[insert] for each Contract Year of the Initial Term. For any period of time less than three hundred and sixty five days during which the Fixed Availability Charge may be payable, the amount of the Fixed Availability Charge for such period of time shall be calculated on a pro rata basis. The Fixed Availability Charge shall be subject to a one-time adjustment as of the Financial Close Date in accordance with Section 12.04, but shall not be subject to subsequent adjustment pursuant to Section 12.05. The Fixed Availability Charge shall not be payable during any Extended Term.

- B. **Fixed Operating Charge (FOC).** The amount of the Fixed Operating Charge shall be \$[insert] as of the Contract Date and shall be adjusted pursuant to Section 12.05 for each Contract Year of the Term. For any period of time less than three hundred and sixty five days during which the Fixed Operating Charge may be payable, the amount of the Fixed Operating Charge for such period of time shall be calculated on a pro rata basis.
- C. **Fixed Renewal Charge (FRC).** The amount of the Fixed Renewal Charge shall be \$[insert] as of the Contract Date and shall be adjusted pursuant to Section 12.05 for each Contract Year of the Term. For any period of time less than three hundred and sixty five days during which the Fixed Renewal Charge may be payable, the amount of the Fixed Renewal Charge for such period of time shall be calculated on a pro rata basis.
- D. **Variable Production Charge (VPC).** The amount of the Variable Production Charge for each Contract Year shall be calculated according to the following formula:

$$\text{VPC} = (\text{BA\$}) \times (\text{BAQ}) + (\text{UFA\$}) \times (\text{UFAQ})$$

Where,

BA\$ = fixed unit price of \$[insert] per million gallons of BA Product Water as of the Contract Date and as adjusted under Section 12.05 for each Contract Year

BAQ = million gallons of BA Product Water delivered during the Contract Year

UFA\$ = fixed unit price of \$[insert] per million gallons of UFA Product Water as of the Contract Date and as adjusted under Section 12.05 for each Contract Year

UFAQ = million gallons of UFA Product Water delivered during the Contract Year

For any period of time less than three hundred and sixty five days during which the Variable Production Charge may be payable, the amount of the Variable Production Charge for such period of time shall be calculated on the basis of the million gallons of BA Product Water and UFA Product Water delivered during such period of time.

- E. **Power Usage Incentive (PUI).** If the consumption of electrical power for the Project during a Contract Year is below the Guaranteed Maximum Electricity Utilization, then the amount of the Power Usage Incentive payment due to the Company shall be equal to [15]% of the difference in the (i) cost that would be incurred by the County during the Contract Year for electrical power consumption at the Guaranteed Maximum Electricity Utilization, and (ii) actual cost incurred by the County during the Contract Year for electrical power consumption for the Project. If the consumption of electrical power for the Project during a Contract Year is above the Guaranteed Maximum Electricity Utilization, then the amount of the Power Usage Incentive payment due to the County shall be equal to the difference in the (i) cost that would be incurred by the County during the Contract Year for electrical power consumption at the Guaranteed Maximum Electricity Utilization, and (ii) actual cost incurred by the County during the Contract Year for electrical power consumption for the Project.

Any amount of the Power Usage Incentive payable to the Company shall be added to the Service Fee amount payable to the Company for the Contract Year during which such amount has been calculated. Any amount of the Power Usage Incentive payable to the County shall be deducted from the Service Fee amount payable to the Company for the Contract Year during which such amount has been calculated.

#### **12.04 Financial Close Adjustment**

- A. The Fixed Availability Charge amount set forth in Section 12.03 as of the Contract Date shall be adjusted as of the Financial Close Date in accordance with the methodology and factors set forth in Exhibit E, provided if any such adjustment would cause an increase in the Fixed Availability Charge amount set forth in Section 12.03 more than [ten percent], then the County may terminate this Service Contract without liability to the Company for payment of costs or otherwise.

#### **12.05 Annual Economic Adjustments**

- A. **Fixed Operating Charge.** The Fixed Operating Charge shall be adjusted for each Contract Year starting from the Contract Date by the change in the CPI Index [insert] – All Urban Consumers – Southeast United States.
- B. **Fixed Renewal Charge.** The Fixed Renewal Charge shall be adjusted for each Contract Year starting from the Contract Date by the change in the CPI Index [insert] – All Urban Consumers – Southeast United States.
- C. **Fixed Unit Prices (BA\$ and UFA\$).** The fixed unit prices, BA\$ and UFA\$, for the Variable Production Charge shall be adjusted for each Contract Year starting from the Contract Date by the change in the CPI Index [insert] – All Urban Consumers – Southeast United States.

#### **12.06 Payment of Service Fee**

- A. **Monthly Payment.** The Service Fee shall be paid by the County on a monthly basis in arrears and not later than ten business days after receipt of a Billing Statement for such month that is in compliance with the provisions of this Service Contract. The amounts of the Fixed Availability Charge, Fixed Operating Charge and Fixed Renewal Charge due each month shall be equal to one-twelfth of the amount payable for the applicable Contract Year. The amount of the Variable Production Charge due each month shall be calculated on the basis of the gallons of BA Product Water and UFA Product Water delivered by the Company during each month and applying the fixed unit prices, BA\$ and UFA\$, in effect during the applicable Contract Year.
- B. **Billing Statements.** Not later than ten business days after the end of each month, the Company shall deliver to the County a statement detailing the amounts due for each component of the Service Fee for such month that has ended (Billing Statement). The Company shall respond in a timely manner to any of the County's comments or questions concerning a Billing Statement.

- C. **Annual Budgeting.** Not later than [ninety] days before each Contract Year after the Service Date, the Company shall provide estimated monthly amounts of the Service Fee for the upcoming Contract Year to support the County’s annual budgeting process. The Company shall respond in a timely manner to any of the County’s comments or questions concerning such estimated monthly amounts.

#### **12.07 Reimbursable Costs**

- A. Apart from the Service Fee, the only compensation that may be payable to the Company under this Service Contract are Reimbursable Costs determined in accordance with Exhibit Y for a Compensation Event subject to the provisions of Article 13 and other applicable provisions of the Contract Documents.

## **ARTICLE 13 – RELIEF AND COMPENSATION EVENTS**

### **13.01 Procedures and General Obligations**

- A. **Notice.** The Company shall provide prompt written notice to the County’s Representative of the occurrence or imminent occurrence of a Relief Event or Compensation Event. Such notice must include a description of the event, preliminary estimate of any cost or time impacts, and assessment of any interference or interruption with performance of Company obligations under this Service Contract. Such notice shall be delivered not later than ten days after the Company first became aware (or should have been aware) of the Relief Event or Compensation Event.
- B. **Application for Relief or Compensation.** Not later than thirty days after the occurrence of a Relief Event or Compensation Event (unless a longer time is agreed in writing by the parties), the Company shall deliver to the County’s Representative a detailed application for relief or compensation adjustment, inclusive of detailed explanations and descriptions of the following, as applicable:
1. the nature, date of occurrence, and duration of the Relief Event or Compensation Event;
  2. the additional time impacts caused by the Relief Event or the additional costs and time impacts caused by the Compensation Event;
  3. the proceeds or other coverage available from the Required Insurance to off-set the costs, time and other impacts caused by the Relief Event or Compensation Event;
  4. the effect of the Relief Event or Compensation Event upon the Company’s ability to perform any of its obligations under this Service Contract;
  5. the specific provisions of this Service Contract applicable to the Company’s application for additional costs or time or excuse of performance of Company obligations; and
  6. the steps and measures the Company has taken or proposes to undertake to mitigate and to address the consequences of the Relief Event or Compensation Event.
- C. **County Determinations.** Not later than thirty days after receipt of the Company’s application under this Section 13.01, the County shall deliver to the Company its written determination of the following, in accordance with the applicable provisions of this Service Contract, including without limitation this Article 13:
1. the extent (scope and time) to which the Company shall be excused from performance of its obligations due to Company inability to perform its obligations due to the Relief Event or Compensation Event;

2. the additional time to which the Company shall be entitled due to the impacts or a Relief Event or the costs and time to which the Company shall be entitled due to the impacts of the Compensation Event and the form of compensation adjustment; and
  3. the steps and measures that must be undertaken by the Company to mitigate and address the consequences of the Relief Event or Compensation Event.
- D. **Noncompliance with Procedure.** In the event a party fails to comply with the requirements and procedures set forth under this Section 13.01 with respect to a Relief Event or Compensation Event, such noncomplying party shall be responsible for any additional costs or time caused thereby, provided that failure of the Company to deliver the application required by Subsection C of this Section 13.01 within sixty days after the Company first became aware (or should have been aware) of the Relief Event or Compensation Event (unless a longer time is agreed in writing by the parties) shall be deemed an irrevocable waiver of the Company to any rights to additional costs, time, excuse of performance or other adverse consequences related to such Relief Event or Compensation Event.
- E. **County Obligations.** If a Relief Event or Compensation Event occurs after the Service Date, the County shall continue, during the Term, to pay the Service Fee during the time the Company's performance may be excused by such Relief Event or Compensation Event.
- F. **Company Obligations.** Notwithstanding the occurrence of a Relief Event or Compensation Event, the Company shall:
1. comply with Applicable Law,
  2. perform all of its obligations under this Service Contract not affected by such Relief Event or Compensation Event, and
  3. take all reasonable steps and actions necessary and in accordance with Good Industry Practice to mitigate the adverse consequences of each Relief Event and Compensation Event, provided that such costs of mitigation may be subject to reimbursement by the County.
- G. **Disputes.** Any dispute regarding the application of this Article 13 to a Relief Event or Compensation Event shall be subject to the dispute resolution procedures set forth in Article 15.

### **13.02 Adjustments for Relief Events**

- A. **Potential Adjustments.** Upon the occurrence of a Relief Event, the Company's obligations under this Service Contract shall be subject to the following adjustments, as may be applicable:
1. The Company shall be excused from performance of certain obligations under this Service Contract to the extent and duration that such Relief Event causes directly the inability of the Company to perform such obligations (including but not limited to any liquidated damages that might otherwise be payable).

2. If a Relief Event occurs before the Service Date, the Scheduled Service Date shall be extended by the number of days of delay affecting the critical path for performance of the Work.
3. In no event shall the County be required to adjust the Service Fee or to otherwise reimburse the Company for any additional costs incurred as the result of a Relief Event.

### **13.03 Adjustments for Compensation Events**

- A. **Potential Adjustments.** Upon the occurrence of a Compensation Event, the compensation payable to the Company under this Service Contract shall be subject to an adjustment in the amount necessary to restore the Company to the same economic position as if the Compensation Event had not occurred. If a Compensation Event occurs before the Service Date, the Scheduled Service Date shall be extended by the number of days of delay affecting the critical path for performance of the Work.
- B. **Methods of Compensation.** As more particularly described in Exhibit Y, the County shall pay the amount of additional compensation to the Company for a Compensation Event by one or some combination of the following methods:
  1. Direct payment of Reimbursable Costs determined in accordance with Exhibit Y as a single lump sum, periodic lump sum amounts, or as incurred by the Company on a time and materials basis.
  2. An adjustment of the Service Fee, subject to a Financial Model Update.
  3. Other method agreed by the parties.
- C. **Insurance Proceeds.** The amount of proceeds available, or amount that should be available, under any Required Insurance as well as the amounts of any deductibles or self-insurance retentions shall be deducted from the amount of any additional compensation due to the Company for a Compensation Event.

### **13.04 Financial Model Update**

- A. The Company shall run the Base Case Financial Model with new projections and calculations and submit to the County a Financial Model Update at the request of the County when the County is considering an adjustment of the Service Fee for a Compensation Event. The County may evaluate and dispute the validity, accuracy or reasonableness of any such Financial Model Update and proposed adjustment of the Service Fee within thirty days of its delivery to the County's Representative. In no event may the Base Case Financial Model formulas or original cost assumptions be changed except with the prior written approval of the parties.



## **ARTICLE 14 – CAPITAL IMPROVEMENTS**

### **14.01 Capital Improvements in General**

- A. **County Approval.** Capital Improvements may be made only upon the written approval of the County and pursuant to the applicable provisions of this Article 14.
- B. **Financing.** The financing of the design and construction costs for all Capital Improvements required by a Compensation Event or requested by the County shall be provided by the County, unless the County requests and the Company agrees to provide financing on terms acceptable to the parties.
- C. **Company and Lender Rights.** If any Capital Improvement required by a Compensation Event or requested by the County conflict with or interfere with the rights of the Company or Lenders under this Service Contract, such rights shall be modified in a manner acceptable to the Company and Lenders, as applicable.
- D. **Applicable Law.** All Capital Improvements, including the procedures utilized for procurement of contracts and subcontracts for design services and construction work, shall comply with Applicable Law.

### **14.02 Compensation Event Improvements**

- A. If a Capital Improvement is required due to a Compensation Event, the Company shall provide timely notice to the County and the parties shall apply the applicable provisions set forth in this Article 14 for implementation of such Capital Improvements.

### **14.03 County-Directed Improvements**

- A. The County, at any time after the Service Date, may perform or direct the Company to perform Capital Improvements in accordance with the applicable provisions of this Article 14.

### **14.04 Company-Requested Improvements**

- A. **Company Request.** The Company, at any time after the Service Date, may submit a written request to the County to perform Capital Improvements. Such request must include a reasonably detailed description of the proposed Capital Improvements. Upon receipt of such request by the Company, the County may (in its sole discretion) provide preliminary approval or may reject the request.
- B. **Company Proposal.** Upon the County's delivery of preliminary approval of a Company's request to make a Capital Improvement, the Company shall submit its proposed plan of implementation:
  - 1. procurement plan for design services and construction work,
  - 2. schedule for permitting, design and construction,

3. financing plan,
  4. operation plan, and
  5. maintenance, renewal and replacement plan.
- C. **County Determination.** The County may (in its sole discretion) approve or reject any proposal for a Capital Improvement submitted by the Company under this Section 14.04. If the County provides its written approval of any such proposed Capital Improvement, the procedures for the County's review of design documentation and monitoring of the construction work set forth in this Article 14 shall apply.
- D. **Company Costs.** Unless otherwise agreed in writing by the parties, all costs related to any Capital Improvements proposed or undertaken at the Company's request shall be borne by the Company (including the costs of proposals, permitting, design, construction, financing, operation, maintenance, renewal and replacement). There shall no increase in the Service Fee but there may be a reduction in the Service Fee to account for the County's agreed-to share of net cost savings associated with such Capital Improvements.

#### **14.05 Implementation Procedures**

- A. **Improvements Performed by the Company.** The design and construction of Capital Improvements by the Company (including those requested by the Company and those directed by the County or required by a Compensation Event for which the County requests that design and construction be performed by the Company) shall be performed by the Company according to a detailed plan of implementation prepared by the Company and approved by the County, provided that any such plan shall comply with Applicable Law and Lender Rights. Such proposed plan of implementation shall address the requirements set forth under Subsection 14.04 B of this Article 14. With respect to all such Capital Improvements performed by the Company, the County shall have the rights to review design documentation and to monitor construction as set forth in this Service Agreement for the Work.
- B. **Improvements Performed by the County.** The design and construction of Capital Improvements directed by the County or required by a Compensation Event for which the County does not request that design and construction be performed by the Company shall be procured and performed by the County in accordance with Applicable Law.

## **ARTICLE 15 – DISPUTE RESOLUTION**

### **15.01 Non-Binding Management Review**

- A. **Notice.** By delivery of notice with reference to this Section 15.01 describing in reasonable detail the scope and nature of the dispute and the applicable provisions of this Service Contract, either party may request that a dispute under this Service Contract be subject to management review. Upon receipt of any such request, the non-requesting party within three business days shall notify the other party of its rejection or acceptance (in its sole discretion) of such request.
- B. **Procedure.** If the non-requesting party accepts a request for management review of a dispute, then senior management representatives of the County and the Company not actively involved in day-to-day management or activities associated with the Project shall promptly, but not later than five business days, initiate a review of the dispute and discussions to attempt to reach an agreement of the parties to resolve the dispute. At any time after such discussions are initiated, a party may (in its sole discretion) provide notice to the other party that such management review under this Section 15.01 shall be discontinued.

### **15.02 Non-Binding Mediation**

- A. **Notice.** By delivery of notice with reference to this Section 15.02 describing in reasonable detail the scope and nature of the dispute and the applicable provisions of this Service Contract, either party may request that a dispute under this Service Contract be subject to non-binding mediation. Upon receipt of any such request, the non-requesting party within three business days shall notify the other party of its rejection or acceptance (in its sole discretion) of such request.
- B. **Procedure.** If the non-requesting party accepts a request for non-binding mediation of a dispute, then the parties shall appoint a mediator (who shall be an engineer, attorney or other professional) or a board of three mediators to initiate mediation of the dispute under a mediation process established by the mediator to attempt to reach an agreement of the parties to resolve the dispute. At any time after such non-binding mediation is initiated, a party may (in its sole discretion) provide notice to the other party that such non-binding mediation under this Section 15.02 shall be discontinued.
- C. **Standing Mediation.** At any time and without reference to a specific dispute, either party by delivery of notice with reference to this Subsection 15.02 C to the other party may request that a standing mediator or board consisting of three mediators be established to provide ongoing non-binding mediation of disputes that may arise between the parties under this Service Contract. Upon receipt of any such request, the non-requesting party within ten business days shall notify the other party of its rejection or acceptance (in its sole discretion) of such request. If the non-requesting party accepts a request for a standing mediator or board, then the parties shall appoint a mediator (who shall be an engineer, attorney or other professional) or a board of three mediators. The provisions of this Section 15.02 shall be applicable to such standing mediator or board.

### **15.03 Litigation**

- A. Any litigation between the parties with respect to this Service Contract or the Project shall be conducted in the United States Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and the parties hereby submit to the jurisdiction of such courts. The parties irrevocably waive any objection that either of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction, including any objection based on grounds of lack of in personam jurisdiction. This Service Contract shall be governed by and construed in accordance with the laws of the State of Florida. Nothing in this Article 15 is intended to or shall operate to limit, interfere with or delay the right of either party to commence litigation concerning a dispute or breach of this Service Contract whether in lieu of, concurrent with or after the conclusion of any non-binding management review or non-binding mediation procedures.

### **15.04 Continued Performance**

- A. Unless the issue or matter in dispute prevents a party from performing, each party shall continue to perform its obligations under this Service Contract without delay or interruption during and pending the resolution of any dispute, regardless of the dispute resolution procedure or procedures that may or may not be underway.

## **ARTICLE 16 – PERFORMANCE SECURITY, INSURANCE AND INDEMNITY**

### **16.01 Performance and Payment Bonds**

- A. **Delivery of Design-Build Bonds.** On or before the date of Financial Close, the Company shall deliver performance and payment bonds for the Work prepared on the applicable bond forms included as Exhibit Z and in accordance with the requirements of Section 255.05, Florida Statutes for public projects. Such performance and payment bonds shall be in the amount of 100% of the Design-Build Price and must be in the form of a surety bond written through a local surety bond agency.
- B. **Delivery of O&M Bonds.** On or before Service Date, the Company shall deliver performance and payment bonds prepared on the applicable bond forms included as Exhibit Z and shall comply with the requirements of Section 255.05, Florida Statutes. Such performance and payment bonds shall be in the amount of 100% of the Service Fee and must be in the form of a surety bond written through a local surety bond agency.
- C. **Surety Qualifications.** Any surety issuing performance and payment bonds under this Service Contract must:
  - 1. be approved by the County,
  - 2. have an “A IX” rating in the edition of Best Insurance Guide, published by A. M. Best Company, Oldwick, New Jersey, in effect as of the date of Financial Close,
  - 3. be listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies” in effect as of the date of Financial Close, and
  - 4. hold a valid certificate of authority to transact surety business in the State.
- D. **Obligations of Surety.** If the Company is in default of its obligations under this Service Contract and the County has declared the Company in default, the Surety promptly shall remedy the default or arrange for the completion of the Company’s obligations under this Service Contract by a firm other than the Company acceptable to the County and secured by performance and payment bonds equivalent to those for the Service Contract issued by a qualified surety. The Surety shall make available, as the Project Work progresses or the Services are performed, sufficient funds to pay the cost of completion of the Project Work and achievement of the Service Date or to pay the costs of performing the Services.

### **16.02 Company Insurance**

- A. The Company shall obtain and maintain insurance coverage during performance of the Work and the O&M Services and have responsibility for payment of deductibles and self-insurance retainages according to the requirements and conditions set forth in Exhibit O and shall deliver to the County, not later than the Contract Date, the insurance documentation required by such Exhibit O with respect to performance of the Work.

### **16.03 County Insurance**

- A. The County shall obtain and maintain insurance coverage during performance of the Work and the O&M Services and have responsibility for payment of deductibles and self-insurance retainages according to the requirements and conditions set forth in Exhibit O and shall deliver to the Company, not later than the Contract Date, the insurance documentation required by such Exhibit O with respect to performance of the Work.

### **16.04 Company Indemnity**

- A. To the full extent under Applicable Law, the Company shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents and instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature to the extent arising out of, relating to or resulting from the (i) negligence, recklessness, or intentionally wrongful conduct of the Company or its employees, agents, servants, partners, principals or Subcontractors in the performance of this Service Contract, or (ii) failure by the Company to perform its obligations under this Service Contract. The Company shall pay all claims and losses in connection with its indemnity and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Company expressly understands and agrees that any insurance protection required by this Service Contract or otherwise provided by the Company shall in no way limit the Company's responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. The indemnity and related obligations of the Company under this Section 16.04 shall survive expiration or termination of this Service Contract.

### **16.05 Company Waiver of Liability**

- A. Notwithstanding any provision of this Service Contract to the contrary, the Company agrees and recognizes that the County and its officers, employees, agents and instrumentalities shall not be held liable or responsible for any claims resulting from any actions, errors or omissions of the Company or Subcontractors. In reviewing, approving or rejecting any submissions by the Company or other acts of the Company, the County in no way assumes or shares any liability or responsibility of the Company or Subcontractors under this Service Contract.

## **ARTICLE 17 – REMEDIES AND LIABILITIES**

### **17.01 Remedies In General**

- A. Each party may avail itself of each and every remedy specified in this Service Contract or existing at law or in equity, and each and every remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be determined (in its sole discretion) expedient by a party. The exercise, or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other remedy. The rights and remedies of each party as set forth in this Service Contract are not exclusive and are in addition to any other rights and remedies in law or in equity.

### **17.02 Termination**

- A. The rights and obligations of each party with respect to the remedy of terminating this Service Contract are subject to the terms and conditions expressly set forth in this Service Contract, including without limitation the terms and conditions set forth in Articles 18 and 19.

### **17.03 Liability for Damages**

- A. **Consequential Damages Waiver.** Neither party shall be liable to the other party for special, incidental, consequential, punitive or similar damages in connection with the failure of a party to perform its obligations under this Service Contract or the inaccuracy of any representation set forth in this Service Contract. Such waiver shall not apply to damages of third parties included in the indemnification obligations of the Company under this Service Contract.
- B. **Direct Damages.** Notwithstanding the waiver of special, incidental, consequential, punitive or similar damages under Subsection A of this Section, each party shall be liable for all the Direct Damages incurred by the other in connection with failure of a party to perform its obligations under this Service Contract
- C. **Aggregate Liability.** The aggregate liability of the Company for damages incurred by the County for the failure of the Company to perform its obligations, including liquidated damages, under this Service Contract:
  - 1. until the day ending two years after the Service Date, shall be limited to the amount of the Design-Build Price, and
  - 2. from the day ending two years after the Service Date until the end of the Term, shall be limited to the amount of \$[insert].
- D. **Liquidated Damages.** The Company's liability for the payment of liquidated damages that may be assessed by the County under this Service Contract is subject to the following maximum amounts:

1. One hundred-eighty (180) days of delay in the Company's unexcused achievement of the Service Date, and
  2. \$[insert] in any Contract Year for the Company's unexcused nonperformance of its obligations after the Service Date.
- E. **Third-Party Damages.** The Company's liability for the damages incurred by a third-party, under the indemnity set forth in this Service Contract or otherwise, shall not be limited by any of the provisions of this Section 17.04.



## **ARTICLE 18 – LENDER’S RIGHTS**

### **18.01 Lender’s Rights In General**

- A. **Financing Agreement and Security Document Conditions.** The rights set forth under this Article 18 shall not be available to any Lender in connection with the initial Project Debt or any Refinancing if the applicable Financing Agreement or Security Document does not comply with the provisions of Article 4 of this Service Contract.
- B. **Financing Agreement and Security Document Delivery.** No Financing Agreement or Security Document shall be binding on the County and none of the rights under this Article 18 shall be available to any Lender unless the County has received a copy of the original document, certified as true and correct by the agent designated by the Lender, together with written notice of the address of the Lender’s agent to which notices may be sent by the County.
- C. **Direct Agreement with Lenders.** At the written request of any Lender, the County shall enter into a direct agreement to document the Lender’s rights under this Article 18.

### **18.02 Service Contract Amendments**

- A. The County and Company may not enter into any amendment of this Service Contract that would have a material adverse effect on the rights or interests of any Lender under the Financing Agreements or Security Documents, unless such amendment is approved in writing by the Lender’s designated agent.

### **18.03 Notice of Company Default**

- A. The County shall promptly deliver to the Lender’s designated agent any notice sent by the County to the Company concerning an actual or potential Company Event of Default.

### **18.04 Opportunity to Cure**

- A. **Notice to Lenders.** The County may not terminate this Service Contract for a Company Event of Default and no such termination by the County shall take effect, unless and until the County has first delivered to the Lender’s designated agent written notice of the County’s intent to terminate this Service Contract and provides the Lender with a reasonable opportunity to cure such Company Event of Default.
- B. **Lender’s Cure Rights.** The Lenders shall have the right, but not the obligation, to correct the Company Event of Default cited in the notice provided under Subsection A of this Section, provided that the Lender delivers written notice to the County of its intent to exercise the rights granted under this Section and that the Lender promptly initiates and diligently continues to cure such Company Event of Default. Such correction by the Lender may include the appointment of a third-party to undertake the performance of Company obligations under this Service Contract, subject to prior approval of such third-party by the County in accordance with the applicable provisions of this Article 18.
- C. **Limitation of Lender’s Obligations.** The exercise of Lender’s rights to cure under this Article 18 shall not be construed as a direct assumption by Lender of any of the Company’s obligations under this Service Contract.

### **18.05 Replacement of Company**

- A. **County Approval.** No third-party may replace or acquire interests in the Company or otherwise perform the obligations of the Company under this Service Contract in connection with the Lender's exercise of its rights under this Article, unless the Lender demonstrates to the reasonable satisfaction of the County that any such third party complies with the standards and requirements set forth under this Section. The County shall approve or disapprove a proposed third-party not later than thirty (30) days after receipt of a request from Lender along with such supporting information and documentation as the County may reasonably request.
- B. **Third-Party Standards and Requirements.** The standards and requirements applicable to County review and approval of any third-party proposed by the Lender under this Article 18 shall be as follows:
1. The third-party and any subcontractors possess sufficient financial resources to support the obligations and related risks proposed to be assumed.
  2. The third-party and any subcontractors are qualified with relevant capabilities and experience to perform in a timely and effective manner the obligations proposed to be assumed.
  3. The third-party and any subcontractors have an acceptable record of past performance on other projects (including without limitation the absence of criminal or regulatory violations or pending claims and the absence of contract defaults).
  4. The third-party and any subcontractors are in compliance with applicable laws and policies of the County (including without limitation the absence of conflicts of interest).

### **18.06 Related Lender Rights and Limitations**

- A. **General Extent of Lender Rights.** If the Lender exercises its rights in accordance with this Article 18, the Lender and its designated agent shall have the same rights as the Company under this Service Contract in order to cure a Company Event of Default, including without limitation access to the Project and Project Sites.
- B. **Company Obligations and Liability.** No Lender shall be deemed to be an assignee or transferee of this Service Contract under any Financing Agreement, Security Document or otherwise so as to require or obligate such Lender to directly perform any of the Company's obligations or to assume any of the Company's liability under this Service Contract.
- C. **Condemnation Proceedings.** Each Lender shall have the right (but not the obligation) to intervene and made a party to any condemnation proceedings affecting the Project or Project Sites. The County shall promptly deliver written notice to the Lenders of any such proceedings at such time the County becomes aware of such proceedings.

### **18.07 Estoppel Certificates**

- A. **Certifications.** Not later than thirty (30) days after receipt of a written request from a Lender or proposed Lender, the County shall deliver to such Lender (without cost to such Lender) an estoppel certificate whereby the County shall certify as to:

1. Whether or not this Service Contract has been amended or supplemented, and attaching a copy of any such amendment or supplement.
  2. The validity and effect of this Service Contract.
  3. The County's knowledge of the existence of any Company Event of Default or of any events or circumstances that with passage of time or delivery of notice would constitute a Company Event of Default.
  4. The existence of any claims by the County under this Service Contract.
  5. The Contract Date and the expiration date of the Term.
  6. Whether or not a specific approval or consent of the County required under this Service Contract has been granted.
  7. Whether or not the Lender and its Security Documents, or the proposed Lender and its proposed Security Documents, satisfy the applicable conditions imposed under this Article 18.
  8. Other matters of fact relating to this Service Contract as may reasonably be requested.
- B. **Reliance.** The Lender or proposed Lender to whom a written certification is delivered in accordance with this Section may rely upon the contents of such certification and such certification shall be binding on the County, provided however that no other party may rely on such certification.

#### **18.08 Third-Party Beneficiaries**

- A. The Lenders shall be expressly recognized as being intended, direct third-party beneficiaries of the provisions of this Article 18 and may enforce any of the rights granted under this Article 18.

## **ARTICLE 19 – TERMINATION**

### **19.01 Termination for Convenience**

- A. **Notice.** The County may, for the County's convenience at its sole discretion, terminate performance of the Work or the O&M Services under this Service Contract in whole or in part, if the County determines that a termination is in the County's interest. The County shall terminate under this Section by delivering to the Company a Notice of Convenience Termination specifying the extent of the termination and the effective date, provided that the date of such delivery shall not be less than sixty (60) days prior to the effective date. Such Notice of Convenience Termination shall not be deemed as breach of this Service Contract, and may be issued without cause.
- B. **Amounts Payable.** Upon termination of this Service Contract for the County's convenience, the Company shall be entitled to receive payment from the County in accordance with the applicable provisions of Exhibit P.
- C. **No Further Liability.** Upon payment of the amounts due in accordance with this Section, the County shall have no further obligation or liability to the Company under this Service Contract.

### **19.02 Termination for Company Default**

- A. **Notice.** If a Company Event of Default occurs, the County may terminate this Service Contract by delivering to the Company a Notice of Default Termination specifying the Company Event of Default and the effective date of termination, provided that the date of such delivery shall not be less than thirty (30) days prior to the effective date of termination. Any such Notice of Default Termination shall specify whether or not the Company Event of Default is curable under the provisions of this Section.
- B. **No Limitation of County Remedies.** Nothing contained herein shall limit the availability of any other remedy the County may have if a Company Event of Default occurs, whether such remedy arises by this Service Contract or by operation of law, and the choice by the County to proceed with one remedy shall not limit the ability of the County to pursue additional remedies. As an alternative to termination of this Service Contract for a Company Event of Default, the County may bring suit or proceedings for specific performance or for an injunction.
- C. **Cure.** If the Company cures, or initiates steps necessary to cure, a Company Event of Default that is curable under this Section before the effective date of termination specified in any Notice of Default Termination to the satisfaction of the County, then such Notice of Default Termination shall be null and void upon delivery by the County of written acknowledgement of satisfactory cure or initiation of necessary steps. In the event of the County's satisfaction with the Company's initiation of necessary steps to cure, the Company shall continue to diligently pursue the steps necessary to cure such Company Event of Default.

D. **Company Default Events.** Each of the following shall constitute a Company Event of Default, provided that for events described below in paragraphs 9, 10 and 11 shall not be subject to cure by the Company:

1. **Security for Performance.** Failure of the Company to obtain or maintain in full force and effect, or renew within thirty (30) days prior to expiration, any security instrument required under this Service Contract;
2. **Financial Close Deadline.** Subject to the provisions of Section [insert], failure of the Company to achieve the Financial Close Deadline.
3. **Work.** Company failure to begin the Work within the time specified or to perform the Project Work with sufficient workmen and equipment or with sufficient materials to insure the prompt completion of the Work, or performs the Work unsatisfactorily, or neglects or refuses to remove materials or to perform anew such Work as shall be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work.
4. **Service Date.** Failure of the Company, unless excused by a Relief Event, to achieve the Service Date prior to the 180th day after the Scheduled Service Date.
5. **Performance Standards.** Failure of the Company, unless excused by an Intervening Event or County Fault, to meet any Guaranteed Performance Standard as follows [insert, e.g., on a 12-month rolling average];
6. **Applicable Law.** Failure of the Company, unless excused by an Intervening Event or County Fault to comply with the following Applicable Law [insert].
7. **Abandonment.** Company abandonment of the Work or O&M Services, or a material portion thereof, for two (2) consecutive days;
8. **Payments Due.** The Company fails, refuses or otherwise defaults in its duty to pay any undisputed amount required to be paid to Subcontractors or to the County under this Service Contract within sixty (60) days following the due date for such payment;
9. **Insolvency.** Insolvency of the Company (or, if applicable, the Guarantor as determined under the United States Bankruptcy Code;
10. **Voluntary Bankruptcy.** Filing by the Company (or, if applicable, the Guarantor) of a petition of voluntary bankruptcy under the United States Bankruptcy Code; the consenting of the Company (or, if applicable, the Guarantor) to the filing of any bankruptcy or reorganization petition against the Company or the Guarantor under the Bankruptcy Code; or the filing by the Company or the Guarantor of a petition to reorganize the Company or the Guarantor pursuant to the Bankruptcy Code; or
11. **Involuntary Bankruptcy.** Issuance of an order by a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Company (or, if applicable, the Guarantor) or of a major part of the Company's (or, if applicable, Guarantor's property), respectively, or the filing against the Company (or, if applicable

the Guarantor) of a petition to reorganize the Company (or, if applicable, the Guarantor) pursuant to the United States Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within ninety (90) days after such issuance or filing, respectively.

12. **Assignment.** The Company makes an assignment for the benefit of creditors or contrary to the applicable provisions of this Service Contract.
  13. **Material Obligations.** The Company's failure to perform any if its material obligation under this Service Contract.
- E. **Amounts Payable.** Upon termination of this Service Contract for a Company Event of Default, the Company or Lender may be entitled to receive payment from the County in accordance with the applicable provisions of Exhibit P.
- F. **Erroneous Termination.** If a court of competent jurisdiction determines the County erroneously terminated the Service Contract for a Company Event of Default, the termination shall be converted to a Convenience Termination and the Company shall have no further recourse of any nature for wrongful termination.

### **19.03 Termination for County Default**

- A. **Notice.** If a County Event of Default occurs, the Company may terminate this Service Contract by delivering to the County a Notice of Default Termination specifying the County Event of Default and the effective date of termination, provided that the date of such delivery shall not be less than thirty (30) days prior to the effective date of termination. Any such Notice of Default Termination shall specify whether or not the County Event of Default is curable under the provisions of this Section.
- B. **No Limitation of County Remedies.** Nothing contained herein shall limit the availability of any other remedy the Company may have if a County Event of Default occurs, whether such remedy arises by this Service Contract or by operation of law, and the choice by the Company to proceed with one remedy shall not limit the ability of the Company to pursue additional remedies. As an alternative to termination of this Service Contract for a County Event of Default, the Company may bring suit or proceedings for specific performance or for an injunction.
- C. **Cure.** If the County cures, or initiates steps necessary to cure, a County Event of Default that is curable under this Section before the effective date of termination specified in any Notice of Default Termination to the satisfaction of the Company, then such Notice of Default Termination shall be null and void upon delivery by the Company of written acknowledgement of satisfactory cure or initiation of necessary steps. In the event of the Company's satisfaction with the County's initiation of necessary steps to cure, the County shall continue to diligently pursue the steps necessary to cure such County Event of Default.

- D. **County Default Events.** Each of the following shall constitute a County Event of Default, provided that for events described below in paragraphs 2 through 5, inclusive, shall not be subject to cure by the County:
1. **Payments Due.** The County fails, refuses or otherwise defaults in its duty to pay any undisputed amount required to be paid to the Company under this Service Contract within sixty (60) days following the due date for such payment;
  2. **Insolvency.** Insolvency of the County as determined under the United States Bankruptcy Code;
  3. **Voluntary Bankruptcy.** Filing by the County of a petition of voluntary bankruptcy under the United States Bankruptcy Code; the consenting of the County to the filing of any bankruptcy or reorganization petition against the County under the Bankruptcy Code; or the filing by the County of a petition to reorganize the County pursuant to the Bankruptcy Code;
  4. **Involuntary Bankruptcy.** Issuance of an order by a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the County or of a major part of the County's, respectively, or the filing against the County of a petition to reorganize the County pursuant to the United States Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within ninety (90) days after such issuance or filing, respectively;
  5. **Assignment.** The County makes an assignment for the benefit of creditors or contrary to the applicable provisions of this Service Contract; or
  6. **Material Obligations.** The County's failure to perform any if its material obligation under this Service Contract.
- E. **Amounts Payable.** Upon termination of this Service Contract for a County Event of Default, the Company shall be entitled to receive payment from the County in accordance with the applicable provisions of Exhibit P.
- F. **Erroneous Termination.** If a court of competent jurisdiction determines the Company erroneously terminated the Service Contract for a County Event of Event, the termination shall be converted to a termination for a Company Event of Default and the Company shall not be entitled to any payment and have no further recourse of any nature.

#### **19.04 Termination for Force Majeure**

- A. **Notice.** Either party may delivery written notice to the other party to terminate this Service Contract if, due to a Force Majeure Event and without fault of the party providing notice, the Company's performance of the Work or the O&M Services is delayed or prevented for a period of one hundred eighty (180) days or more. Such notice shall describe the Force Majeure Event and the resulting impacts on the Project or the party and shall provide a date for termination that is not earlier than sixty (60) days after delivery of such notice.

- B. **Options.** Upon receipt of a notice of termination due to a Force Majeure Event under this Section, the receiving party may accept such termination or elect to maintain this Service Contract in effect notwithstanding the Force Majeure Event. If the receiving party accepts such termination, the Company shall be paid the payment in accordance with Exhibit P for termination due to a Force Majeure Event. If the party receiving such notice and electing to maintain this Service Contract in effect is the County, then the Company shall be entitled to compensation and time adjustment for a Compensation Event and to performance excuse for a Relief Event. If the party receiving such notice and electing to maintain this Service Contract in effect is the Company, then the Company shall be entitled only to performance excuse for a Relief Event.
- C. **Unconditional Termination.** Notwithstanding the other provisions of this Section, if the Company's performance of the Work or O&M Services is delayed or prevented for an aggregate period of three hundred sixty five (365) days, either party may terminate this Service Contract immediately upon delivery of written notice and the Company shall be entitled to payment in accordance with Exhibit P for termination due to a Force Majeure Event.

#### **19.05 Procedures and Obligations**

- A. **Transition Plan.** Not later than five (5) days after the Company receives any notice of termination of this Service Contract, the Company shall meet with the County to initiate development of a transition plan in accordance with the provisions of this Section to go into effect upon the Termination Date. The parties shall cooperate and apply diligent efforts towards preparation and submission of a draft transition plan by the Company no later than fifteen (15) days after such initial meeting and the submission of a final and complete transition plan no later than thirty (30) days after such initial meeting. Such transition plan shall include a schedule of activities and tasks to be completed by each party as well as estimates of the costs of each party associated with such activities and shall set forth the terms and conditions for payment by the County of any amounts due to the Company upon termination, including without limitation any Termination Fee and other costs.
- B. **Possession of the Project and Project Sites.** On the Termination Date or such other later date as may be set forth in the final transition plan, the Company shall relinquish and surrender full control and possession of the Project and the Project Sites and the County shall assume full responsibility, control and possession of the Project and the Project Site.
- C. **Company Obligations.** In accordance with the final transition plan and the directions set forth in the notice of termination or other written notice delivered by the County prior to or after the delivery of the final termination plan or the occurrence of the Termination Date, the Company shall take all actions specified by the County, including without limitation the following actions to the extent and by the time specified by the County:
1. Terminate or assign to the County any or all Subcontracts, and stop work or cease services and cancel orders for materials, services or equipment.
  2. Demobilize from and secure in a safe manner the Project and the Project Sites.



3. Settle all outstanding liabilities and claims arising out of the Project.
  4. Provide an accurate and complete list of all equipment, materials, goods, machinery, parts, supplies, vehicles, consumables and other property in inventory or storage for use in the Work or O&M Services.
  5. Transfer the full amount of any funds allocated to the Renewal Fund and the Handback Reserve Fund.
  6. Deliver all Project Documents and ownership and licenses, as applicable, for all Project Intellectual Property.
- D. **Mitigation of Costs.** Whether or not included in the final transition plan prepared under this Section or included in other written notices or directions delivered by the County, the Company at all times shall take all reasonable or appropriate steps and actions necessary or desirable to mitigate any further costs associated with any termination of this Service Contract.

## **ARTICLE 20 – MISCELLANEOUS**

### **20.01 Governing Law and Jurisdiction**

- A. The Service Contract shall be governed by and construed in accordance with the laws of the State of Florida. Any litigation between the parties shall be conducted in the United Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida and the parties hereby submit to the jurisdiction of such courts. The parties irrevocably waive any objection that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction, including any objection to the laying of venue based on grounds of *forum non conveniens* and any objection based on the grounds of lack of *in personam* jurisdiction.

### **20.02 Survival**

- A. The parties acknowledge that any of the obligations in the Service Contract which by nature would continue beyond the termination, cancellation or expiration of the Service Contract including, indemnification, shall survive termination, cancellation or expiration thereof.

### **20.03 Severability**

- A. If any provision of this Service Contract is deemed illegal or unenforceable by a court of law, such portion shall be deemed to be on no effect and shall be deemed stricken from the Service Contract without affecting the binding force of the Service Contract as it shall remain after omitting such provision.

### **20.04 Waiver**

- A. No acceptance, consent, approval, order, measurement, payment or certificate of or by the County or its employees or agents shall either stop the County from asserting any right or operate as a waiver of any provision hereof or of any power herein reserved to the County or of any right to damages provided herein. Either party's waiver of any breach or nonperformance or lack of enforcement of any of the provisions of this Service Contract shall not in any way limit or waive such party's right thereafter to enforce or compel performance or compliance with any provision of this Service Contract.

### **20.05 Entirety of Contract**

- A. This Service Contract represents the entire and integrated contract between the County and the Company. This Service Contract supersedes all prior negotiations, representations, or contracts, written or oral, including without limitation the Request for Proposal and the Company's Proposal.

### **20.06 Independent Contractor**

- A. The Company is, and shall be, in the performance of all work services and activities under this Service Contract, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this

Service Contract shall at all times, and in all places, be subject to the Company's sole direction, supervision and control. The Company shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Company's relationship of its employees and subcontractors to the County shall be that of an independent contractor and not as employees and agents of the County. The Company does not have the power or authority to bind the County in any promise, contract or representation other than specifically provided for in this Service Contract.

#### **20.07 Successors and Assigns**

- A. The Company and the County each binds themselves, their partners, successors, legal representatives and assigns to the other party of the Service Contract and to the partners, successors, legal representatives, and assigns of such party in respect to all covenants of this Service Contract. The Company shall afford the County's Representative the opportunity to approve or reject all proposed assignees, successors, or other changes in the ownership structure and composition of the Company in writing. Failure to do so constitutes a breach of this Service Contract by the Company.
- B. The Company shall not assign, transfer or delegate the performance of this Service Contract, or any part thereof, without the written consent (in its sole discretion) of the County.

#### **20.08 Recourse to County General Fund**

Recourse by the Company, any Lender or any other person or entity to the County's general fund shall not be provided or implied by any of the provisions of this Service Contract.

#### **20.09 Late Payment**

- A. Any amounts payable by the County under this Service Contract not paid when due shall be subject to an additional charge at the rate of interest in effect at the time under Applicable Law.

#### **20.10 Third Party Beneficiaries**

- A. Except as expressly provided in this Service Contract with respect to Lenders, nothing under the Contract Documents shall afford any third party, including members of the public, third-party beneficiary status hereunder.

#### **20.11 Company Representations and Warranties**

- A. The Company represents and warrants that no companies or persons, other than bona fide employees working solely for the Company or the Company's subconsultants and subcontractors, approved by the County, have been retained or employed to solicit or secure this Service Contract or have been paid or guaranteed payment of any fees, commissions, percentage fees, gifts or any other considerations contingent upon or resulting from the award or making of this Service Contract. The Company also represents and warrants that no County personnel, whether a full-time or part-time employee, has or shall be retained or employed in any capacity, by the Company or the Company's County approved subconsultants and subcontractors, to accomplish the Work or the O&M Services completed

under the terms of this Service Contract. For breach or violation of this Section, the County shall have the right to annul this Service Contract without liability.

- B. The Company represents and warrants that all of its employees and subcontractors have and shall maintain in good status the licenses and registrations required for the work or services performed and shall possess the skills, ability and capacity necessary for such work or services.
- C. The Company represents and warrants that it has become familiar with and has evaluated the constraints, requirements and conditions relating to the Project Sites, Work and the financing thereof, and O&M Services, and that the Company's obligations under this Service Contract can be achieved within such constraints, requirements and conditions.
- D. The Company represents and warrants that it is familiar with all the requirements of Applicable Law, including without limitation the terms and conditions of all Permits and Approvals in effect as of the Contract Date and further represents and warrants that it has no reason to believe that any of the Permits and Approvals required to be obtained after the Contract Date will not be issued in a timely manner.
- E. The Company represents and warrants that it is and shall remain a [insert legal form of entity] duly organized, validly existing and in good standing under the laws of the State of [insert name of state] and it is and shall remain qualified to do business and in good standing in the State of Florida.
- F. The Company represents and warrants that it has the power, right and authority to execute and perform this Service Contract, has been so-authorized by all corporate and other necessary actions, and each person executing this Service Contract on behalf of the Company is duly authorized to do so.
- G. The Company represents and warrants that this Service Contract constitutes the valid, legal and binding obligation of the Company, enforceable against the Company in accordance with its terms and conditions and does not conflict with any Applicable Law in effect as of the Contract Date.
- H. The Company represents and warrants that it possess all licenses and other authorizations required to perform its obligations under this Service Contract.
- I. The Company represents and warrants that the execution and delivery of this Service Contract by the Company will not cause or result in a default by the Company under any other agreement or instrument.

## **20.12 County Representations and Warranties**

- A. The County represents and warrants that it has the power, right and authority to execute and perform this Service Contract, has been so-authorized by all necessary actions, and each person executing this Service Contract on behalf of the County is duly authorized to do so.

- B. The County represents and warrants that this Service Contract constitutes the valid, legal and binding obligation of the County, enforceable against the County in accordance with its terms and conditions and does not conflict with any Applicable Law in effect as of the Contract Date.
- C. The County represents and warrants that it possess all licenses and other authorizations required to perform its obligations under this Service Contract.
- D. The County represents and warrants that the execution and delivery of this Service Contract by the County will not cause or result in a default by the County under any other agreement or instrument.

### **20.13 Sovereignty and Police Powers**

- A. Notwithstanding any provision of this Service Contract:
  - 1. The County retains all of its sovereign prerogatives and rights as a County under Florida laws and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the Project and the Project Sites or the operation thereof, or be liable for the same; and
  - 2. The County shall not by virtue of this Service Contract be obligated to grant the Company any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Project and the Project Sites.
- B. Notwithstanding and prevailing over any contrary provision in this Service Contract or in any of the Contract Documents, the County shall have no liability for the exercise of its police powers regardless of any County covenant or obligation that may be contained in this Service Contract or any of the Contract Documents, including but not limited to the following:
  - 1. To cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist the Company regardless of the purpose required for such cooperation;
  - 2. To execute documents or give approvals, regardless of the purpose required for such execution or approvals;
  - 3. To apply for or assist the Company in applying for any Permit or Approval or;
  - 4. To contest, defend against, or assist the Company in contesting or defending against any challenge of any nature shall not bind the Board, the Department, Regulatory and Economics Resources (RER) or any other County, City, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, Service Contract amendments, or any other approvals that

may be granted, withheld or revoked in the discretion of the County or other applicable governmental agencies in the exercise of its police power; and the County shall be released and held harmless, by the Company from any liability, responsibility claims, consequential or other damages, or losses to the Company or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind of nature whatsoever. Without limiting the foregoing, the Parties recognize that the approval of permits may require the County to exercise its quasi-judicial or police powers. Notwithstanding any other provision of this Service Contract, the County shall have no obligation to approve, in whole or in part, any application by the Company. The County's obligation to use reasonable good faith efforts in the processing and obtaining of such permits shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any applications. Moreover, in no event shall a failure of the County to adopt any of the permits be construed a breach of default of this Service Contract.

#### **20.14 Amendments**

- A. The Service Contract may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

#### **20.15 Counterparts**

- A. This Service Contract may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

#### **20.16 Public Records**

- A. The Company shall comply with the state of FL Public Records Law, s. 119.0701, F.S., as amended, specifically to: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Company upon termination of the Service Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Company does not comply with a public records request, the public agency shall enforce contract provisions in accordance with the Service Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Service Contract, the effective date of which is indicated on the first page as the Contract Date.

Miami-Dade County, State of Florida:

[name of Company]:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_

Date  
Signed: \_\_\_\_\_