

**AGREEMENT FOR OPERATIONS AND MAINTENANCE SERVICES
FOR THE TOWN OF WINCHENDON MA**

THIS AGREEMENT is entered into this ____ day of _____2019, by and between

Town of Winchendon, MA, a Town government in the State of Massachusetts, with its mailing address at: 109 Front Street, Winchendon MA 01475 (hereinafter the "TOWN")

And

Veolia Water North America - Northeast, LLC, with its offices at 53 State Street, 14th Floor, Boston, MA 02109 (hereinafter "CONTRACTOR").

RECITALS

WHEREAS, OWNER owns and provides for the operation of wastewater treatment system, including operations and maintenance, repair, administration, customer service and permitting functions; and,

WHEREAS, OWNER desires to employ CONTRACTOR to perform the operation, maintenance, repair, and emergency response of the Wastewater Treatment Facility for the compensation provided for herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, OWNER and CONTRACTOR agree as follows:

GENERAL

1. All definitions of words or phrases used in this "AGREEMENT" are stated in **Exhibit A**.
2. It is understood that the relationship of CONTRACTOR to TOWN is that of independent contractor.
3. All grounds, facilities, equipment, and vehicles now owned by TOWN or acquired by Town shall remain the property of the TOWN.
4. This AGREEMENT shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts without application of any rules concerning conflicts of laws.

5. This AGREEMENT shall be binding upon the respective successors and assignees of each of the parties hereto. Neither party will assign this AGREEMENT without the prior written consent of the other party.
6. All notices shall be in writing and transmitted by certified mail or overnight courier delivery to the address noted in Exhibit B.
7. This AGREEMENT, including the Exhibits identified below, which are made a part thereof, sets forth the entire agreement between TOWN and CONTRACTOR for the goods and services set forth in the Agreement, and supersedes all previous or contemporaneous representations and agreements (whether written or oral), and may be modified only in writing and signed by the parties.

The following exhibits are attached to and made a part of this signed Agreement:

- Exhibit A: Definitions
- Exhibit B: Information for Notices
- Exhibit C: Facility Description
- Exhibit D: NPDES Permit and Water Quality Standards
- Exhibit E: Adjustments to Compensation
- Exhibit F: Breach, Cure and Termination
- Exhibit G: Performance Bond, Insurance, Waiver of Rights and Subrogation
- Exhibit H: Contractor's Proposal

Where any of the provisions of the Agreement conflict with provisions of any applicable laws and regulations (including applicable permits), the provisions of such laws and regulations shall control.

SCOPE OF SERVICES

CONTRACTOR SHALL, subject to the FACILITY's design-capacity capabilities:

1. Perform all services in accordance with the Agreement and the following: all local, state and federal laws, regulations, codes, bylaws, ordinances, orders, permits, and governmental consents and approvals; all equipment manufacturers' warranties; prudent industry practices; any contractor warranties; reasonable care; and all standards of care and performance prescribed or implied by said laws, regulations, codes, ordinances, orders, permits and governmental consents and approvals.
2. Provide adequate staffing of the FACILITY with personnel experienced, qualified and, where required by law, licensed in all relevant areas, including but not limited to technical, laboratory, and administrative/management issues, necessary to satisfy and comply with all legal and regulatory requirements and to provide O&M services in a safe, lawful, responsible, and professional manner. The minimum staffing requirement for the wastewater plant during the term this Agreement is three (3) full-time, on-site personnel in accordance

with the presently established staffing plan in effect at the plant. The requirements for staffing include Massachusetts Department of Environmental Protection - Wastewater Treatment Operator Grade VI certification for the Chief Operator. CONTRACTOR agrees to consider for hire the existing Town staff.

CONTRACTOR understands and agrees that the aforesaid staffing requirements require that the specified number of personnel be on site, and not merely that such number of personnel be on the CONTRACTOR's payroll.

The CONTRACTOR is responsible for providing all of the in scope, or reasonably inferable therein, goods and services set forth in this Agreement, including the operation and maintenance by CONTRACTOR of the following service/facility:

- One (1) Wastewater Treatment Facility to treat wastewater

3. Pay all wages, salaries and benefits for all personnel employed by CONTRACTOR at the FACILITY.
4. Provide for all utilities and consumables such as fuels, chemicals (except 50% sodium hydroxide which shall be the responsibility of the TOWN), sludge disposal, supplies, and lubricants required for normal operation and maintenance, except electricity and as otherwise expressly set forth elsewhere in this Agreement. CONTRACTOR shall pay for potable water usage.
5. Prepare a complete inventory list of spare parts, materials, and chemicals on-site at the time of assuming responsibility for operation and maintenance of the facility; to be submitted within two weeks after start-up.
6. On an annual basis, perform routine and normal repairs and maintenance of plant equipment, buildings, and grounds when such repairs amount to less than \$10,000 per incident, exclusive of O&M CONTRACTOR'S labor, up to the amount of the Maintenance and Repair Limit Fund. Any Maintenance and Repair Limit Fund amount remaining at the end of the year will be carried forward to be used for future work at the facility. Major repairs and Capital Expenditures (e.g., items that cost more than \$10,000) will be the responsibility of the TOWN.
7. Assist the Town with emergency repairs to protect the employees, equipment, buildings, and grounds during force majeure events.
8. Perform laboratory sampling, and analyses and reporting, as necessary, for compliance with all current state and federal regulations regarding treatment FACILITY operations and provide a Quality Assurance/Quality Control program acceptable to regulatory agencies.
9. Provide technical, management, administrative and labor relations personnel for backup and support of regular plant employees.

10. Provide ongoing training programs for plant personnel in operations and maintenance procedures, management, laboratory and process control, hazard communication, and related safety issues.
11. Draft for the Town a 5-year Capital Improvement Plan and budget identifying major repairs and capital expenditures that will be necessary at the FACILITY to restore, maintain, replace or upgrade the FACILITY or equipment for efficiency, safety, function and/or compliance with current and anticipated regulatory requirements. This program will be updated every year throughout the term of this AGREEMENT by December 1, working with the Town's DPW Director.
12. Furnish insurance certificates reflecting insurance coverage as outlined in Exhibit G. The TOWN reserves the right to request copies of the insurance policies and all applicable endorsements thereto.
13. Pay fines and penalties imposed by any governmental body or regulatory agency against the TOWN or CONTRACTOR resulting from the willful action or negligence of the CONTRACTOR.
14. Provide written monthly reports of operations and maintenance including a summary of all appropriate operating costs and budget status. Information shall include staffing, permit compliance results, corrective and preventative maintenance performed, operational concerns, odor control success, safety and training, corrective maintenance and repairs, equipment replacements, etc. CONTRACTOR shall be available to attend monthly meeting, if requested, to review monthly status report.
15. Provide and maintain computer-based records of all maintenance and repairs for the FACILITY. TOWN shall retain title to and have the right to inspect and copy these records during normal business hours.
16. Prepare all NPDES permit reports and submit these to the TOWN for transmittal to appropriate agencies. The CONTRACTOR will assist the Town with the development of the Annual I/I Report.
17. Perform other services that are necessarily incidental to and/or inferable from the Scope of Services, as directed by the TOWN. Reimbursement, invoicing, and payment for additional physical tasks or services shall be by separate written agreement.
18. Cooperate with the TOWN in enforcing existing equipment warranties and guarantees and maintaining warranties on any new equipment purchased on behalf of the TOWN.
19. Be responsible for the disposal of trash generated at the wastewater facility.
20. Maintain records of operations, maintenance, laboratory, personnel, training, safety, process control, daily inspections, materials, alarms, and any other significant events. Proper

documentation of the above must be presented for review upon request during normal business hours.

21. Be responsible for the cost of delivering and disposing of sludge to an approved out-of-town disposal facility.

THE TOWN SHALL:

1. Provide all equipment, structures, and facilities under its ownership and presently located at the FACILITY for CONTRACTOR'S use. Notwithstanding anything to the contrary in this Agreement, the TOWN makes no warranties, express or implied, as to the condition of any of the TOWN's facilities to be operated and maintained or otherwise serviced by CONTRACTOR under this Agreement.
2. Make Capital Expenditures at the treatment FACILITY. CONTRACTOR will cooperate with the TOWN to determine the necessity and cost for these Capital Expenditures.
3. Exercise reasonable efforts to provide influent to the FACILITY having the characteristic set forth in Exhibit D.
4. Omitted
5. Pay for all of the Electrical Utility fees at the FACILITY.
6. Provide for and maintain a pick-up truck with snow plow for CONTRACTOR's use.

COMPENSATION

1. CONTRACTOR's compensation under this AGREEMENT shall consist of an Annual Fee. For the first year of this AGREEMENT, CONTRACTOR'S Annual Fee is \$717,390. The Maintenance and Repair Limit Fund for the first year is \$100,000.
2. TOWN will pay CONTRACTOR one-twelfth (1/12) of Annual Fee for the current year, and payment shall be due and payable on the first of the month for each month that services are provided. All other compensation to CONTRACTOR, if any, is payable within 30 days of TOWN's receipt of CONTRACTORS invoice.
3. CONTRACTOR will carry forward to the TOWN the unspent difference between the annual Maintenance and Repair Fund Limit for the FACILITY and actual documented expenditures for that year. If actual expenditures for this Fund exceed the particular annual Maintenance and Repair Limit, subject to appropriation, the TOWN will reimburse the CONTRACTOR for such expenditures. No expenditure that will exceed the annual limit shall be made until CONTRACTOR provides the Town with the scope and estimated cost of the work, and the Town approves the expenditure in writing. Upon expiration of the Agreement, or earlier termination in accordance with the terms herein, any amounts remaining in the Fund shall be remitted to the Town.

4. Adjustments to the Annual Fees and Maintenance and Repair Limit Fund shall be made in accordance with Exhibit E.

SCOPE CHANGES

The Annual Fee shall be equitably adjusted for any substantial change in the costs of FACILITY operation and maintenance including but not limited to substantial changes in influent flow and loadings, monitoring or reporting requirements), effluent discharge or solids disposal requirements, personnel or staffing requirements imposed by any governmental agency having the jurisdiction to order such a change that directly causes CONTRACTOR'S costs to materially change, provided that CONTRACTOR shall not be eligible for any increases due to any changes in costs caused by CONTRACTOR's breach of this Agreement or the acts or omissions of CONTRACTOR, its employees, agents, and persons for whom any of them are responsible.

TERM AND TERMINATION

1. The initial term of this AGREEMENT shall be 3 years, commencing on January 1, 2019. The contract has an option, exercisable in the TOWN's sole discretion, to extend the contract for up to two (2) additional renewal periods of three (3) years per renewal period.
2. Either party may terminate this AGREEMENT for material breach by the other party in accordance with the provisions for notification, time for correction or cure, and failure to correct as specified in Exhibit F.
3. Notwithstanding anything to the contrary in this Agreement, the continuation of this agreement is specifically subject to annual appropriation and availability of funds (and termination by TOWN) as provided by Massachusetts General Laws Chapter 30B Section 12(A).

LIABILITY, PERFORMANCE BOND, AND INSURANCE

1. CONTRACTOR agrees to defend, indemnify, and hold harmless the TOWN, its employees, officials, departments, boards, and committees from liability for bodily injury, including death, and damage to tangible property claimed by third parties to the extent caused in by the willful misconduct, or negligent acts or omissions, of CONTRACTOR or CONTRACTOR's employees, and persons for whom CONTRACTOR is responsible.
2. CONTRACTOR agrees to indemnify, defend and hold harmless the TOWN from fines, charges, and civil penalties, imposed by any governmental body or regulatory agency on TOWN during the term of this AGREEMENT for violations of law or regulation or the TOWN's NPDES Permit # MA0100862 to the extent caused by the willful misconduct, or negligent acts or omissions, of CONTRACTOR, CONTRACTOR'S employees, and persons

for whom CONTRACTOR is responsible.

3. Contractor shall provide a performance bond and the insurance coverage as described in Exhibit G.
4. To the fullest extent permitted by law and notwithstanding any other provision of this AGREEMENT, CONTRACTOR's cumulative liability for the duration of the AGREEMENT for performance or non-performance of any obligations arising under the AGREEMENT (whether arising under breach of contract, tort, strict liability, or any other theory of law or equity) including, but not limited to its indemnity obligations shall not exceed the sum total of (a) the amount of any insurance proceeds recoverable by CONTRACTOR through coverage required by this AGREEMENT for such events giving rise to liability, PLUS (b) the amount of compensation received by CONTRACTOR in the immediately preceding twelve (12) months; provided that the foregoing limitation shall not apply to any losses resulting from the gross negligence or willful misconduct of CONTRACTOR, its employees or agents in breach of CONTRACTOR's obligations under this Agreement. Unless covered by the indemnities above and the insurance policies provided by the parties herein, neither CONTRACTOR nor the OWNER shall be liable to the other in any action or claim for consequential, incidental or special damages, loss of profits, loss of opportunity, loss of product or loss of use.
5. During any construction work performed by CONTRACTOR for which prevailing wage is required, CONTRACTOR shall ensure that Massachusetts prevailing wages are paid for such work, and that the CONTRACTOR furnishes a performance bond and payment bond each in the amount of 100 percent of the cost of construction issued by a surety qualified to do business in Massachusetts and satisfactory to the TOWN.

DISPUTES AND FORCE MAJEURE UNCONTROLLABLE CIRCUMSTANCE

1. Neither party shall be liable for its failure to perform or for delay in performance of its obligations hereunder (other than payment) when such failure is due, through no fault of such party, to any event beyond its reasonable control (i.e., an Uncontrollable Circumstance) including but not limited to any Force Majeure event including fire, flood, explosion, or other casualty loss, strikes and labor disputes (other than a legal strike by, or labor dispute of, CONTRACTOR'S employees), accident, epidemic, acts or omissions of government, or wrecks or delays in transportation of supplies, materials, and equipment. The party invoking Uncontrollable Circumstance or Force Majeure shall notify the other party in writing as soon as possible upon becoming aware of the event and shall exercise all reasonable and diligent efforts to overcome such event.

EQUAL OPPORTUNITY

CONTRACTOR will maintain an equal opportunity/affirmative action program as required by applicable law for employment at the FACILITY.

WARRANTY

1. The CONTRACTOR warrants that it will operate and maintain the FACILITY in accordance with the provisions of this AGREEMENT, all applicable laws and regulations, applicable equipment manufacturers' warranties, and generally accepted industry principles and practices for maintenance and operation of similar facilities, within the FACILITY's design-capacity capabilities, so that the effluent wastewater conforms to federal, state and local water quality standards as summarized in Exhibit D. The CONTRACTOR's liability for breach of this warranty shall include reimbursement of fines and civil penalties as set forth in Paragraph 3 and 7 of the *Liability and Insurance* portion of this AGREEMENT.

MISCELLANEOUS

1. The parties intend that there shall not be any third-party beneficiaries to this AGREEMENT.
2. If any provision of this AGREEMENT is held invalid or unenforceable, the remainder of the AGREEMENT shall remain in full force and effect. The parties shall negotiate in good faith to substitute for the invalid or unenforceable provision a provision that as near as possible and maintains the same or similar allocation of risks and benefits between the parties as the original provision had done.
3. The failure of either party to enforce any right hereunder shall not be construed as a waiver of its right to enforce that or any other right hereunder in the future. Any waiver must, to constitute a waiver, be express and unequivocal.

Both parties indicate their approval of this AGREEMENT by their signatures below.

CONTRACTOR

TOWN of WINCHENDON

(Signature)

(Signature)

EXHIBIT A

DEFINITIONS

- A.1 “*The FACILITY*” means all equipment, vehicles, grounds, sewers, and facilities described in Exhibit C.
- A.2 “Capital Expenditures” means any expenditures for:
- (1) the purchase of new equipment or facility items that cost more than \$10,000;
 - (2) major repairs which significantly extend equipment or facility service life and cost more than \$10,000; or,
 - (3) expenditures that are planned, non-routine, and budgeted by OWNER.
- A.3 “Annual Fee” means a fixed sum for CONTRACTOR'S services. The Annual Fee includes all direct costs, labor, overhead, and profit for CONTRACTOR'S performance of operation and maintenance of the FACILITY as expressly required hereunder.
- A.4 “Preventive Maintenance” means the cost of those routine and/or repetitive activities required by the equipment or facility manufacturer or CONTRACTOR to maximize the service life of the equipment, vehicles, and facility.
- A.5 “Corrective Maintenance and Repairs” means those non-routine/non-repetitive activities required for operational continuity, safety, and performance generally due to failure or to avert a failure of the equipment, vehicle, or facility or some component thereof.
- A.6 “Biologically Toxic Substances” means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet discharge requirements of the TOWN's NPDES permit. Biologically toxic substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.
- A.7 “Adequate Nutrients” means plant influent nitrogen, phosphorus, and iron contents proportional to BOD5 in the ration of five parts nitrogen, one part phosphorus, and one- half (0.5) part iron for each 100 parts BOD5.
- A.8 “SERVICE COMMENCEMENT DATE” means the date on which the CONTRACTOR begins operation and maintenance of the FACILITY.

A.9 “COMPLIANCE MONITORING” means the sampling and analysis schedule required by the DEP or EPA as specified in Exhibit D.

A.10 “ABNORMAL SUBSTANCES” includes raw water containing any substance determined to be hazardous or harmful by Federal law:

CERCLA 1980 Section 101(14)

The term "hazardous substance" means (A) any substance designated pursuant to section 311 (b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of this Act, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress, (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant under section 112 of the Clean Air Act, and (F) any imminently chemical substance or mixture with Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas):

TOSCA 1976 Section 4(e)

Chemical substances and mixtures as defined;

Safe Drinking Water Act (1974) Section 1401 (1) and (2)

Contaminants and maximum contaminant levels as defined to be harmful for human consumption. The substances include natural and man-made radionuclides, metals, fluoride, volatile compounds, inorganic chemicals, pesticides, toxic materials or carcinogenic materials which exceed maximum contaminant levels as established by the EPA or State of Massachusetts DEP or identified during the term of contract by EPA or DEP.

A.11 “*FORCE MAJEURE*” means any event that occurs through no fault of the party invoking Force Majeure and that is beyond the reasonable control of such party, including but not limited to war, earthquake, fire, flood, explosion or other casualty loss, strikes and labor disputes (other than a legal strike by, or labor dispute of, the party’s employees), accident, civil commotion, epidemic, or reasonably unforeseeable acts or omissions of government.

A.12 “Uncontrollable Circumstance” means any event or condition which has an effect on the rights or obligations of the parties under this Agreement, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) Force Majeure (ii) preliminary or final order of any local, province, administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body, or (iv) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Facility.

It is specifically understood that none of the following acts, events or circumstances, unless caused by Force Majeure, shall constitute an Uncontrollable Circumstance: (i) any act, event or circumstance that would not have occurred if the Party asserting excuse of performance due to an Uncontrollable Circumstance complied with its obligations under this Agreement and/or applicable law; (ii) changes in general economic conditions, including interest rates, inflation rates, labor costs, energy prices, insurance costs, commodity prices, currency values, exchange rates; (iii) changes in the financial condition of CONTRACTOR; (iv) union or labor work rules, requirements or demands that have the effect of increasing the cost of performance; and (v) any event the effect of which could have been prevented or avoided by the exercise of due care, foresight or due diligence on the part of the Party asserting excuse of performance resulting from an Uncontrollable Circumstance, its agents, employees and subcontractors.

EXHIBIT B

INFORMATION FOR NOTICES -ADDRESSES OF SIGNATORIES

THE TOWN:

Mr. Keith Hickey, Town Manager
Winchendon Town Hall
109 Front Street, Dept. 1
Winchendon, Massachusetts 01475

THE CONTRACTOR:

Veolia Water North America – Northeast, LLC
Ms. Darlene Domingos, Vice President – Operations
15 Elkins Street, 2nd Floor
Boston, MA 02127

With a copy to:

Veolia Water North America – Northeast, LLC
Attention: General Counsel
53 State Street, 14th Floor
Boston, MA 0210

EXHIBIT C

FACILITY DESCRIPTION

The TOWN's wastewater treatment facility:

Wastewater Treatment Facility - The Winchendon Wastewater Treatment Facility (WWTF) was upgraded in 1973 and 2004 to provide secondary treatment of wastewater. The facility is designed to handle an average daily flow of 1.1 million gallons with peak hour of 4.9 million gallons.

The facility is located on the south bank of the Millers River, north of River Street. The access road to the facility is off River Street, approximately one mile from the intersection of Main and River Street.

Process Description. Raw wastewater enters the facility through a 24-inch influent line, from which point it flows by gravity through the influent Parshall flume. Flow is macerated in the influent channel grinder then flows to the two primary clarifiers.

The 45-foot diameter primary clarifiers are used to settle the primary sludge and waste secondary sludges are co-settled. The settled sludges are pumped from the primary clarifiers to the sludge blend tank for processing and disposal.

From the primary clarifiers, the wastewater flows to the secondary treatment system, which includes two aeration basins and two 70-foot diameter secondary clari - flocculators.

Treated wastewater is discharged from the secondary treatment system and flows by gravity to the ultra-violet disinfection system tanks. Following disinfection, the flow is discharged to the effluent Parshall flume and then to the Millers river.

Activated sludge can be both recycled to the aeration basins, and/or wasted out of the system as required. Waste activated sludge (WAS) can be pumped to the primary clarifiers for co-settling, or to the sludge blend tank, which flows by gravity into the gravity sludge thickener. Alternatively, WAS can be directly pumped to a tanker truck.

One 26-foot diameter gravity thickener is used for thickening the combined sludges up to 6 percent. Currently, thickened sludge is hauled to a neighboring community where it is dewatered.

EXHIBIT D

NPDES PERMIT AND WATER QUALITY STANDARDS

- D.1 The following constitute the design parameters for the Facility: 1.1 million gallons of flow per day, 1,818 pounds of BOD5 per day (seasonal), 1,943 pounds of suspended solids (seasonal), and a daily peaking factor of 4 times flow. Design data is contained and discussed in the November 2004 “Winchendon Wastewater Treatment Facility Operations and Maintenance Manual” produced by Tighe & Bond Engineers.
- D.1.5 CONTRACTOR shall not be responsible for fines or penalties imposed on the TOWN through no fault of CONTRACTOR, including but not limited to instances of the following: (1) the FACILITY influent does not contain Adequate Nutrients to support operation of FACILITY biological processes and/or contains Biologically Toxic Substances which cannot be removed by the existing process and facility; (2) dischargers into TOWN's sewer system violate the TOWN's Ordinances; (3) the influent flow BOD5 and/or suspended solids exceeds the FACILITY design parameters set forth above which are; or, (4) if the FACILITY is inoperable or can operate only at a reduced capacity on account of construction or similar activities, or Force Majeure events.
- D.2 In the event any one of the FACILITY influent characteristics, suspended solids, BODS or flow, exceeds the design parameters stated above, CONTRACTOR shall return the plant effluent to the characteristics required by the NPDES permit in accordance with the following schedule after Project influent characteristics return to within design parameters.

Characteristics Exceeding Design Parameters by	Recovery Period (maximum)
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10% or less	7 days
Above 10%, less than 20%	14 days
20% or above	20 days

Notwithstanding the above schedule if the failure to meet effluent quality requirements is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then CONTRACTOR will have a 30-day recovery period after the influent is free from Biologically Toxic Substances or contains Adequate Nutrients.

- D.3 Omitted.
- D.4 Notwithstanding the foregoing, even where, under the provisions of this Agreement, CONTRACTOR is excused from any noncompliance with the requirements of the TOWN's NPDES permit, Contractor will nonetheless use all reasonable efforts to meet those requirements.

EXHIBIT E

ADJUSTMENTS TO COMPENSATION

E.1 INFLATION OR DEFLATION ADJUSTMENT

Compensation shall be increased or decreased as follows:

ANNUALLY

Compensation shall be adjusted annually for inflation adjustments and CPI-related items according to the following U. S. Department of Labor, Bureau of Labor Statistics Indices:

**65% CPI-U, All Items in Boston-Cambridge-Newton MA, Series #CUURS11ASA0, and
35% CPI-U, Water, Sewer and Trash Collection Services, Series #CUUR0000SEHG**

The first adjustment in compensation shall be effective one (1) year following the SERVICE COMMENCEMENT DATE and shall be based on the percentage change in the index between the SERVICE COMMENCEMENT DATE and one (1) year following the date. Each subsequent adjustment in compensation shall be effective each contract year thereafter and shall be based on the additional change in the index over the immediately preceding twelve (12) month period.

Example Computation:

For Contract year 2:

CPI-U, Indices #CUURS11ASA0, January 2019 = 135.0

CPI-U, Indices #CUURS11ASA0, January 2020 = 137.5,

And

CPIU, Indices #CUUR0000SEHG January 2019 = 123.5

CPIU, Indices #CUUR0000SEHG January 2020 = 126.5

Change in CPI-U, #CUURS11ASAO is $137.5 / 135.0$ or 1.0185 (1.85%), and

Change in CPI-U, #CUUR0000SEHG is $126.5 / 123.5$ or 1.0243 (2.43%)

Therefore the service fee shall be adjusted as follows:

Annual change in CPI-U, #CUURS11ASAO of 1.85% X 65% = 1.20%

Annual change in CPI-U #CUUR0000SEHG of 2.43% X 35% = .85%

Total Annual Adjustment (1.20% + .85%) or 2.05%

Contract Year 1 Service Fee: \$717,390

New Service Fee, Year 2 ($\$717,390 * (1+.0205)$) = \$732,096

E.2 ANNUAL CHEMICAL USED

In the event that any (i) changes in permit requirements, (ii) changes in or enactment of new regulatory requirements, (iii) process improvements, or (iv) facility upgrades, results in a reduction of 10 percent or more of the quantities of chemicals used in 2015-2017, as set forth in the below table (the “Chemical and Flow Baselines”), at the WWTF for “wastewater chemicals”, the monetary savings to the contractor resulting from such reduction shall be split between the contractor and the Town on an equal basis.

Chemicals & Flow	2015	2016	2017
poly aluminum chloride (PAC), gals	14,720	14,532	24,640
50% sodium hydroxide, gals	27,000	30,000	30,000
Flow, annual average, MGD	.443	.418	.519

Any yearly chemical cost exceeding these amounts shall be paid for by the contractor. The Chemical and WWTF Flow Baseline shall be adjusted each year starting one year following the SERVICE COMMENCEMENT DATE. For avoidance of doubt, an example of the equation to determine the savings resulting from a reduction of WWTF chemicals is as follows:

$$\text{Savings} = \{[(\text{Chemical Baseline (gals/year)/Baseline Annual Average Flow (MGD)}) - (\text{Chemical Actual (gals/year)/Actual Annual Average Flow (MGD)})] \times \text{Actual Chemical Price (\$/Gal)}\}$$

Furthermore, the Chemical and Flow Baseline is calculated based upon a three year average for the calendar years 2015 through 2017 are as follows:

$$\text{Chemical Baseline} = (\text{Chemical Use 2015 (gals/year) / Flow 2015 (MGD)}) + (\text{Chemical Use 2016 (gals/year) / Flow 2016 (MGD)}) + (\text{Chemical Use 2017 (gals/year) / Flow 2017 (MGD)})/3$$

EXHIBIT F

BREACH, CURE, AND TERMINATION

Either party may terminate the Agreement upon material breach by the other party, after written notice of the breach to the other party, provided that the breach is not corrected within 90 days (or if related to compensation, within ten days) after receipt of notice. Notwithstanding the foregoing, in the event of any termination, the TOWN shall, at its option, have the right to require continuation of the Agreement for up to 12 months to permit the TOWN to transition operation and maintenance services to another contractor, in which event CONTRACTOR shall continue to perform all services in accordance with the provisions of the Agreement, and shall fully cooperate with the Town in the transition to a new contractor. CONTRACTOR agrees that, notwithstanding any alleged breach of Agreement by the TOWN or any pending disagreements between the parties, including as to the extent or scope of or payment for services performed by CONTRACTOR or the time required for such performance, CONTRACTOR shall provide all services and cooperation in accordance with the provisions of the Agreement, in good faith, and in a timely manner.

EXHIBIT G

PERFORMANCE BOND, INSURANCE, WAIVER OF RIGHTS AND SUBROGATION

During the performance of the work, the Contractor shall maintain Automobile, Workers' Compensation and Commercial General Liability (including, but not limited to, Bodily Injury, Property Damage and Personal Injury) as follows:

- a. Provide a 100% Performance Bond totaling each year's estimated annual cost for the operations of all FACILITIES. All bonds shall be from companies authorized to do business in Massachusetts and satisfactory to the Town. Such bond may be renewed every year provided that a fully compliant bond must be in effect without interruption during the term of the Agreement.
- b. **Commercial General Liability** – Coverage shall have limits of \$10M per Occurrence/\$10M Aggregate, combined single limit for bodily injury and property damage liability. The policy shall include Premises and Operations; Independent Contractors; Products and Completed Operations, Contractual Liability, Collapse, Explosion and Underground Hazard coverage. This limit may be achieved by a combination of the underlying and Umbrella coverages, if appropriate. The Town shall be named as an “Additional Insured”.

Indicate how Contractor will address cyber-liability occurrences which affect the facility and how it will finance risk associated with the exposure, either through insurance or through other financing mechanism.

- c. **Business Automobile** – Coverage shall have a limit of \$1M per Occurrence/\$1M Aggregate, combined single limits for bodily injury liability and property damage liability. The limit may be achieved by a combination of the underlying and Umbrella coverages, if appropriate. This policy shall include Owned Vehicles, Hired and Non-Owned Vehicles Liability. The policy shall also include coverage for Cargo Pollutants. The Town shall be included as “Additional Insured.”
- d. **Workers' Compensation** – Must meet statutory limits in compliance with Massachusetts and Federal Laws. The coverage must include Employer Liability limits of \$1,000,000/\$3,000,000/\$1,000,000. These limits may be achieved by a combination of the underlying and Umbrella coverages and/or by the Massachusetts Employer Liability Statutory Endorsement

- e. ***Umbrella Liability*** –
Umbrella Liability of \$5,000,000 per occurrence, \$5,000,000/aggregate. The Town should be included as an Additional Insured.
- f. ***Contractor Pollution Liability*** –
Limit of \$10M per Pollution Condition
- g. ***Professional Liability*** -
Limit of \$10M per Wrongful Act as relates to any incidental or direct economic loss associated with design errors or professional advice.
- h. ***Railroad Protective Liability*** –
If there will be any construction within 50 feet of railroad property and such construction may affect a railroad bridge, trestle, tracks, road-beds, tunnel, underpass or crossing, the Contractor must provide evidence of Railroad Protective Liability Insurance.
- i. ***Subcontractor Insurance*** -
It shall be the responsibility of the Contractor to require all subcontractors to comply with the same insurance requirements that are required of the Contractor.
- j. ***Special Requirements***
 - A. The Contractor waives all rights against the Town for damages caused to Contractor's property. Such waiver shall include a waiver of the right of subrogation from the Contractor's insurer. The Contractor shall require similar waivers from all Subcontractors and Sub-subcontractors. The Contractor waives all rights against the Town for loss or damage to any equipment used in connection with the Agreement where such loss is covered by any property insurance. The Contractor shall require similar waivers from all Subcontractors and Sub-subcontractors.
 - B. Current valid insurance policies or certificates meeting the requirements herein identified shall be maintained by the Treasurer during the duration of the named project. Renewal certificates of insurance shall be sent to the Treasurer at least 30 days prior to any expiration date.
 - C. Certificates of Insurance meeting the required insurance provision shall be forwarded to the Treasurer prior to the commencement of the work.
 - D. Property Insurance. The Town shall insure the Facility for property damage at a value equal to 100% of the current replacement value and include coverage for business interruption losses. The Town shall waive all rights of subrogation and shall include a waiver of subrogation from its insurer in favor of Contractor and all Subcontractors of every tier.

- E. In addition to any other indemnification obligations of Contractor: To the maximum extent permitted by law, Contractor agrees to and shall indemnify or pay on behalf of, defend and hold harmless the TOWN and all departments, agents, committee or board members, officers, employees from and against any and all liability (incl. Employer's Liability and Professional Liability) whatsoever arising from the Contractor's operations or the operations of its agents, representatives and sub-contractors including products & completed operations. This agreement to indemnify, defend and hold harmless the Town includes all claims, demands, suits, actions, injunction related expenses, costs, expenses, judgments, penalties and attorney's fees which may be imposed upon, incurred by, or asserted against the TOWN and by reason of (a) any failure on the part of Contractor to comply with any provision or term required to be performed or complied with by Contractor under this Agreement; or (b) for the death, injury (personal, financial, bodily or consequential), property damage, loss of property, consequential loss due to faulty work or economic loss suffered by any person on account of or based upon the act, misfeasance, malfeasance, nonfeasance, omission (design or other), inherent building material defect, fault, negligence or misconduct of Contractor or any person hired by, contracted by or otherwise working with Contractor, except to the extent such claim is solely the result of the TOWN'S gross negligence or willful misconduct.

This indemnity, defense, and hold harmless agreement shall include indemnity against all cost, expenses, judgments, settlements, penalties, and liabilities (including, without limitation, attorney's fees) incurred or in connection with any claims or proceedings brought thereon and the defense thereof with counsel acceptable to the TOWN and/or counsel selected by an insurance company which has accepted liability any such claim.

EXHIBIT H

CONTRACTOR'S PROPOSAL

