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CONTRACT FOR OPERATIONS AND MAINTENANCE

Between

**Ashburnham & Winchendon Joint Water Authority
Water Filtration Plant**

and

U.S. Filter Operating Services, Inc.

August 2001

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SECTION 1, INTRODUCTION

On this, the 1st day of August, 2001, the Town of Ashburnham, located at 32 Main Street, Ashburnham, Massachusetts and the Town of Winchendon, located at 109 Front Street, Winchendon, Massachusetts, acting by and through the Ashburnham Winchendon Joint Water Authority (AWJWA or OWNER) and US Filter Operating Services, Inc. located at 200 Cordwainer Drive, Suite 202, Norwell, Massachusetts 02061, a corporation (OPERATOR) do hereby agree as follows:

SECTION 2, SCOPE OF SERVICES

Pursuant to this Agreement, the OPERATOR shall supervise, operate, maintain, and repair the Water Treatment Facilities (WTF) as set forth in this Section 2, the OWNER'S RFP, including but not limited to the Requirements set forth therein and the OPERATOR'S Proposal set forth in Attachment 1 hereinafter jointly referred to as the "Scope of Service" and as provided for elsewhere under this Agreement. Each party hereto agrees that it shall cooperate in good faith with the other, its agents and subcontractors, to facilitate the performance of the mutual obligations set forth in this Agreement. In the event of any irreconcilable conflict between the Request for Proposals and the Operator's Proposal, the requirements providing the greatest benefit to the Owner shall govern. Neither party shall take advantage of any obvious error or omission in the Contract Documents. Any apparent discrepancies shall be submitted to the Engineer for determination, whose decision thereupon shall be conclusive.

2.1 OPERATION

The OPERATOR shall comply with all aspects of this Agreement, perform its duties and responsibilities in accordance with 310 CMR 22 Massachusetts Drinking Water Regulations as applicable to OPERATOR'S services hereunder, and operate the WTF in compliance with the all federal, state, and local laws and regulatory requirements and in a workmanlike manner in accordance with the best practices in the water industry.

2.2 MAINTENANCE

OPERATOR shall perform in a good and workmanlike manner any and all major repairs, capital improvements, and all routine maintenance, consisting of preventative maintenance tracking, corrective maintenance scheduling and spare parts inventory control, cleaning and lubrication of service equipment, equipment inspections and adjustments, and building and grounds janitorial services for the WTF and to all equipment, vehicles, and instrumentation provided to OPERATOR by the OWNER through this Agreement, and any and all other appropriate maintenance, all such maintenance to be performed in a good and workmanlike manner in accordance with the industry standards. OPERATOR shall keep the Treatment Facilities in a neat and orderly condition.

2.3 OTHER OPERATIONS SERVICES

2.3.1 Disposal of Residuals Sludge

As the agent for the OWNER, OPERATOR shall engage a hauler or haulers to dispose of residuals sludge. All waste, residuals sludge and/or byproduct treated and/or generated during OPERATOR's performance of the Scope of Services is and shall remain the property of the OWNER.

2.3.2 Testing and Laboratory Analysis

OPERATOR shall perform the sampling and laboratory analysis required by state regulations as well as that customary for process control. Laboratory procedures and analysis shall conform to the current edition of *Standard Method for the Examination of Water and Wastewater*. OPERATOR shall prepare the data for all permit monitoring and operating reports and shall deliver such results to the OWNER and submit such results to all required regulatory agencies.

2.4 TECHNICAL SUPPORT

OPERATOR shall provide on-call backup advice in process control, management, maintenance and plant repair to assist the WTF Staff and ensure performance of OPERATOR's obligations under this Agreement.

2.5 STAFFING

OPERATOR shall provide all aspects of managerial services to ensure operation of the WTF including personnel administration, treatment, public relations, and communications necessary for the operation, maintenance, and repair of the WTF.

Only OPERATOR employees experienced in water systems shall staff the WTF and shall have the operator certifications required by state regulations. The staffing plan shall be consistent with project requirements.

2.6 TRAINING

OPERATOR shall provide training in the areas of maintenance, safety, supervising skills and laboratory skills. This training shall include both plant specific and drinking water field related material.

2.7 SECURITY

OPERATOR shall use reasonable efforts to secure the WTF at all times using existing security devices. OPERATOR shall be responsible for losses and liabilities arising or resulting from its negligence and/or willful misconduct.

2.8 BUILDING AND GROUND MAINTENANCE

OPERATOR shall keep all floors, walls, and interior surfaces clean and paint all surfaces as necessary. All exterior painted surface shall be kept neat, clean and repainted as necessary at OPERATOR'S expense. Any exterior brick, block or concrete work shall be maintained by the OPERATOR. All problems shall be reported to the OWNER.

The OPERATOR shall, at its expense, keep the exterior grounds of the Facility and all landscaping and grass areas in safe, clean, neat and well maintained, mowed condition. The OPERATOR shall indemnify the OWNER as set forth in Section 6.1 caused by or resulting from the OPERATOR'S failure to maintain such areas.

The OPERATOR shall store all trash and refuse within the WTF and shall attend to the disposal thereof; shall keep all drains inside the WTF clean; shall service and deliver goods and merchandise, required for the Operations and Maintenance of the WTF, only in the manner and areas designated by the OWNER; and shall conform to all reasonable rules and regulations which the OWNER may make in the management and use of the Facility and ensure such conformance by the OPERATOR'S employees. All floor areas shall be kept clean and house-keeping shall at all times be orderly, safe and presentable.

2.9 COMMUNICATIONS

OPERATOR shall develop a formal communications, publicity and community relations program in order to keep the OWNER informed about the operation and maintenance of the WTF. OPERATOR shall deal in a professional manner with the residents, members of the public and community groups concerned with any aspect of the operation of the WTF.

2.10 REPORTS

OPERATOR shall maintain complete and accurate records of operations, maintenance, repair, and improvement activities at the WTF and shall prepare and submit to the OWNER a monthly report including a narrative summary of operations of consequence, including significant unusual events, if any, and all data required for monthly reporting to local, state, and federal agencies. OPERATOR shall submit to the Massachusetts Department of Environmental Protection (MADEP) and copy the OWNER, monthly reports required by MADEP. OPERATOR shall submit additional reports, as may be required by law without additional payment. OPERATOR shall bring to the attention of the OWNER any significant matter relating to the operation of the WTF which good professional practice warrants being brought to the attention of the OWNER.

OPERATOR shall prepare a year-to-date financial summary of expenditures. This report shall be submitted as part of the appropriate monthly report.

Once each year, at a time to be determined in advance by the OWNER, OPERATOR shall prepare and submit an annual report that records significant events of the past year, describes the status of the WTF, and compares the status to planned activities.

The OWNER shall, at any time, have the right to access and copy any and all records relating to or arising from its services under this Agreement.

2.11 RECOMMENDATIONS ON CAPITAL IMPROVEMENTS

OPERATOR shall annually or as reasonably requested by the OWNER prepare and submit recommendations for necessary capital repairs, replacements, and expenditures for Capital Improvements and report on the progress of Capital Improvements previously approved.

2.12 INVENTORY

Within thirty (30) calendar days after the signing of this Agreement, OPERATOR shall prepare a written listing of the quantity and condition of all equipment, tools, materials, supplies, and spare parts found at the WTF. The OWNER shall have thirty (30) calendar days to verify and accept OPERATOR'S list. Upon termination of this Agreement, OPERATOR shall replenish inventory substantially equal in value to the inventory existing at the beginning of the Initial Term of this Agreement, or shall give the OWNER credit therefor. OPERATOR shall maintain an up-to-date inventory list and shall maintain a reasonable number of spare parts in stock (including standard lubricants, long-lead-time replacement items, and similar items).

2.13 REPAIRS AND OTHER COSTS AND EXPENSES

OPERATOR shall pay expenses required for the normal and routine operation, maintenance and repair of the WTF including but not limited to the following: Personnel costs, fuels, chemicals, transportation and residuals disposal, electricity, and expendable supplies. Unless otherwise agreed in writing by the parties, OPERATOR shall not be required to pay the following:

- Expenses resulting from a change in Scope of Services
- Expenses resulting from a change in applicable law or regulations by any federal, state, or local agency or authority
- Any damages which result from force majeure, as defined herein, or the acts or omissions of the OWNER or any third party.

OWNER shall pay OPERATOR for such expenditures, provided they are authorized by the OWNER, upon submission of reasonable documentation verifying such expenditures, as set forth in Section 5.

2.14 EMERGENCY SITUATIONS

In the event of damage or destruction of the WTF or an emergency which is likely to result in material loss or damage to the WTF or constitute a material threat to human health or safety, OPERATOR shall notify OWNER promptly and request approval of expenditures for emergency repairs as are necessary to mitigate or reduce such loss, damage or threat. OWNER and OPERATOR shall cooperate in good faith in pursuing responsible or obligated measures to mitigate any threats to human health or safety.

If at any time the OPERATOR reasonably determines that an emergency situation exists, that there is insufficient time to comply with the requirements set forth above such that action must be immediately taken to protect the safety of the public or employees of the OWNER or the OPERATOR, to protect the safety and integrity of the WTF or to minimize the immediate consequences of a force majeure, then the OPERATOR shall take all such action as it in good faith determines is reasonable and necessary under the circumstances. Promptly thereafter, but not more than 24 hours later, the OPERATOR shall notify the OWNER of the event and of the OPERATOR'S response thereto.

OWNER shall make direct payment or reimburse OPERATOR for all material and supplies, and additional other costs reasonably or unavoidably incurred by OPERATOR in responding to emergency situation, including for emergency repairs. Such OPERATOR costs may, if approved and agreed upon by the OWNER, include direct labor charges at standard OPERATOR rates, for services exceeding those required pursuant to this Agreement. The OWNER shall not be responsible or obligated to pay any amounts caused by or exacerbated by the OPERATOR'S failure to plan for foreseeable events, or its negligence or willful misconduct.

2.15 ACCOUNTING RECORDS

OPERATOR shall maintain up-to-date financial records as they apply to the services rendered by OPERATOR under the terms of this Agreement.

2.16 APPLICABLE LEGAL REQUIREMENTS

OPERATOR shall comply with applicable legal requirements, as the same may be in force and effect from time-to-time during the term of this Agreement, in performing its services hereunder.

SECTION 3, RESPONSIBILITIES OF THE OWNER

3.1 OWNER REPRESENTATIVE

On or before the date services are to commence under this Agreement, the OWNER shall designate an authorized representative (the "Authorized Representative") to administer

this Agreement. OWNER may change its authorized representative by written notice as provided in this Agreement. Said Authorized Representative shall have no authority to obligate the OWNER to spend money, to alter or amend this Agreement, or to accelerate, suspend or stop work hereunder.

3.2 PERMITS

The OWNER shall be responsible for obtaining and maintaining all necessary permits, licenses and other governmental or private party approvals and for the payment of all fees required for ownership and operation of the WTF and the equipment owned by the OWNER and used in connection with the WTF, or provided by OWNER to OPERATOR for such use. OPERATOR shall assist the OWNER, including but not limited to by providing accurate and complete information promptly.

3.3 TAXES

The OWNER shall be responsible for all real estate, personal property, utility, excise, and sales tax applicable to the WTF or equipment that the OWNER owns. OPERATOR shall be responsible for vehicle excise tax of vehicles it owns or leases and sales tax on consumable supplies.

The OWNER shall provide OPERATOR with a certificate evidencing that the OWNER is exempt from sales tax.

3.4 SUPPORT

The OWNER shall permit use by OPERATOR, without charge, of all equipment, structures and facilities under its ownership and assigned to the WTF. The OWNER shall provide OPERATOR with all information which the OWNER has under its control and which is necessary to operate and maintain the WTF. The OWNER, however, does not warrant or guarantee the accuracy or completeness of said information.

3.5 EXPENDITURES FOR MAJOR MAINTENANCE AND REPAIRS

The OWNER is responsible for undertaking and payment for Expenditures for Major Maintenance and Repairs in excess of the Maintenance Limits as set forth in Section 5.

3.6 NOTICE OF LITIGATION

If the OWNER or OPERATOR receives notice of or undertakes the defense or the prosecution of any actions, claims, suits, administrative or arbitration proceedings or investigations in connection with the WTF, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings.

SECTION 4, TERM AND TERMINATION

4.1 TERM

Services by OPERATOR under this Agreement shall commence on August 1, 2001 and terminate on July 31, 2006 (the "Initial Term"), unless this Agreement is renewed or terminated as provided herein.

4.2 RENEWAL

The OWNER may elect to extend the Initial Term of this Agreement for an additional five year term (Renewal Term). If the OWNER so elects, it shall so notify the OPERATOR and the OWNER and OPERATOR shall meet not later than one-hundred-and-eighty (180) calendar days prior to the end of the Initial Term. The payment to the OPERATOR during the Renewal Term shall be as provided for the initial term using the same annual escalation factor.

4.3 TERMINATION

This Agreement may be terminated for breach or default (collectively, "breach"), but only if (i) the breach is a material one; (ii) the party claimed to have committed the breach has received written notice of such breach given in accordance with Section 7 of this Agreement ("Notices"), which notice shall state with reasonable specificity the breach complained of and which shall state that the claimed breach is of such a nature that it, in the opinion of the non-breaching party, would give the non-breaching party a right to terminate this Agreement unless the breach is cured as set forth below; and (iii) the party claimed to have breached shall have neither cured the breach within a reasonable time, but in any event within not less than ten (10) nor more than thirty (30) days from the date of its receipt of written notice of breach or, with respect to a breach which cannot be cured within said period, shall have failed to take within said period reasonable steps to cure same and diligently continued to prosecute such cure. If the breach has been cured within said period, or reasonable steps to cure same commenced within said period and diligently prosecuted, the same shall not constitute cause for the termination of this Agreement. It is expressly understood and agreed that the notice required and the right to cure afforded by this provision shall apply to each and every obligation of the parties under this Agreement, whether the obligation is a general or specific one.

In the event the Agreement is terminated by either Party, OPERATOR shall, at the OWNER's option, designated by written notice to OPERATOR given with Notice of Termination, continue to provide the Services as set forth in this Agreement for up to one hundred and twenty (120) calendar days, as the OWNER may determine, beyond the date of delivery of such Notice of Termination, and this Agreement shall continue in full force and effect during such period.

In the event that funds are not appropriated or otherwise made available for continuation of this Agreement for any year succeeding the first year of this Agreement, OPERATOR shall have the right to terminate this Agreement upon not less than sixty (60) days prior written notice to the OWNER (or written notice given not less than fifteen days after receiving notice of non-appropriation or non-availability, if such notice is received less than 60 days before the effective date of such event), effective as of the date beyond which funds are not appropriated or otherwise made available. In the event of any such termination pursuant to this Section, the OPERATOR shall assist the OWNER with the transition of Services to the OWNER or its designee, provided, however, the OPERATOR shall not be obligated to provide the Services following the date beyond which funds are not appropriated or otherwise made available for payment to the OPERATOR. The parties acknowledge that Chapter 30B of the Massachusetts General Laws provides for termination of this Agreement by the OWNER under certain circumstances.

In the event that the Facilities are damaged or destroyed rendering it incapable of processing water and the OWNER determines it is in best interest of the towns to permanently shut down the Facilities, the OWNER and OPERATOR shall each have the right, upon 90 days prior written notice to the other party, to terminate this Agreement. (This right of termination shall be independent of, and separate and apart from, the termination provisions relating to breach set forth herein)

Notwithstanding any provision to the contrary, if, in the OWNER'S sole discretion, there is an emergency situation, including but not limited to a danger to public health or safety, or a danger to the public water supply, the OWNER may without waiving any other right or remedy it may have, terminate or suspend this Agreement, in whole or in part, for said emergency, then the OWNER'S action shall be treated as a termination for convenience or Force Majeure, as the OWNER may designate. If the OPERATOR is at fault, solely or in part, the termination may be deemed for cause, at the OWNER'S discretion. In the event of such a termination or suspension the OWNER or its designee may take over all or any portion of the services being provided under the Agreement.

The OPERATOR shall have no damages for delay or hindrance.

In the event of termination before the expiration of the applicable term, all finished work and documentation, complete and incomplete, shall be delivered to the OWNER. The OPERATOR shall be entitled to receive payment for any work performed and accepted under this Agreement which was completed prior to the date of termination, but shall have no right to additional amounts, including but not limited to lost profits, indirect, incidental, consequential or punitive damages.

Notwithstanding any other provision of this Agreement, the OWNER reserves the right at any time in its absolute discretion to suspend or terminate this Agreement in whole or in part for its convenience upon thirty (30) days written notice to the OPERATOR. If any portion of this Agreement so suspended is not recommenced by written notice of the

OWNER within the time period specified in the written notice of suspension, the suspended portion of this Agreement shall thereupon be deemed terminated as to that portion for the convenience of the OWNER in accordance with this provision. The OWNER shall incur no liability by reason of such termination for convenience except for the obligation to pay for work performed and accepted and for reimbursable expenses accruing through the date of termination less any offset or claim of the OWNER. Such obligation shall not exceed the available appropriation. The OPERATOR shall have no right to recover other amounts, including but not limited to amounts for lost profits, or consequential damages.

SECTION 5, BASE PAYMENT

5.1 BASE PAYMENT

From August 1, 2001, the OWNER shall pay OPERATOR as payment ("Base Payment") for equipment, materials, and utilities provided and the services performed pursuant to this Agreement, the sum of \$28,024.92 per month or part thereof, for the first year with adjustments as specified hereafter.

5.2 ANNUAL ADJUSTMENT

Base Payment shall be increased annually, effective each anniversary of the commencement date of the Initial Term, at an annual escalation rate of 2.67% for treatment plant operations cost. Start-up costs shall be included for first year only. Major Maintenance and Repairs shall not be subject to annual escalation.

5.3 FLOW ADJUSTMENT

The Base Payment stated above is for the operation and maintenance of the WTF at the existing Average flow characteristics at the commencement of this Agreement. The Baseline Condition is 1,400,000 gallons per day calculated as an average annual day flow. The 12-month period for the calculation will begin on the initial date of the Agreement. A calculated annual average day flow which is exceeded by 20% or more of the Baseline Condition shall be the basis for a Base Payment adjustment.

5.4 MAJOR MAINTENANCE AND REPAIRS

OPERATOR shall pay for Major Maintenance and Repairs necessary during the term of this Agreement, provided that the aggregate amounts which it shall be required to pay for all such items shall not exceed \$20,000 per year. The AWJWA may authorize expenditures from this account for those items whose total dollar value exceeds \$2,000. The aggregate amount for Major Maintenance and Repairs shall not be adjusted annually thereafter. The OWNER shall pay OPERATOR for all costs incurred over the aggregate amount for Major Maintenance and Repairs, at a multiplier of 15% times actual cost, provided that the OPERATOR first obtains prior written approval for such expenditures, including certification as to the availability of an appropriation, and further provides the OWNER with complete and accurate supporting documentation justifying the

expenditure, as the OWNER may request. The Owner shall have the right at any time to review any and all of the OPERATOR'S records regarding its services under this Agreement. In the event that at the end of any Agreement year any of the aggregate amount for Major Maintenance and Repairs remains unspent and uncommitted for payment of any services or goods ordered prior to the end of such year, OPERATOR shall return 100 percent of such savings to the OWNER by crediting the OWNER the amount of such saving(s) on OPERATOR'S invoice to the OWNER prepared after the amount of savings has been determined, but in no event later than the invoice due for the last month in the quarter immediately following such year. Any such savings realized during the last year of this Agreement shall be credited on OPERATOR's last invoice to the OWNER.

5.5 CHANGES IN SCOPE OF SERVICES

In the event that OPERATOR proposes that it perform additional work or services involving the management, operation, maintenance, or repair of the WTF where such services or work exceeds or is a change in the Scope of Services provided for in Section 2 of this Agreement, OPERATOR shall first request an amendment to this Agreement. Such amendment, if approved, shall be executed by both parties and certified as to the availability of funds.

Changes in the Scope of Service include, but are not limited to, requests for additional services or materials by the OWNER, additional services performed or materials supplied meeting new or changed government regulations or reporting requirements, including changed effluent standards which increase the cost of operating WTF, and changes arising from construction or modification of the WTF. The OWNER shall not be obligated to pay OPERATOR for additional work constituting Changes in the Scope of Service unless the OPERATOR has first obtained written approval from the OWNER as set forth above, except for service performed or materials supplied in the event of any emergency as set forth herein (in which case OPERATOR shall seek to notify OWNER of same as soon as feasible and in any event not less than 24 hours)

5.6 INVOICE PROCESSING AND PAYMENT

The OWNER shall make monthly payments to OPERATOR of amounts due as Base Payment based on the monthly invoice from the OPERATOR for work performed and accepted. OPERATOR also shall invoice the OWNER monthly in arrears for all other amounts due. The OPERATOR shall provide such additional supporting documentation as the OWNER may request.

The OWNER shall retain 5% of each monthly payment as partial security for the fulfillment of the Contract by the OPERATOR.

Within thirty (30) days from the invoice date, the OWNER shall make monthly payment to the OPERATOR for the work performed and accepted, based on the said monthly invoice, less a retainage of five percent of the approved amount of the invoice.

Within thirty (30) days of receipt of the final monthly invoice for the Initial 5-year Term, if contract is not renewed, or Renewal Term, if contract is renewed, the OWNER shall

pay the OPERATOR the entire balance due on the Contract less (1) a retention based on its estimate of the fair value of its claims against the OPERATOR and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors and suppliers based on demands for same. Items (1) and (2) shall include all engineering, legal, and other professional services which may be required by the OWNER relative to these items.

SECTION 6, INDEMNIFICATION

6.1 INDEMNIFICATION

The OPERATOR hereby indemnifies and shall at all times save and hold harmless the Town of Ashburnham, Town of Winchendon, and the Ashburnham Winchendon Joint Water Authority (OWNER), and its respective officers, attorneys, employees, and agents, from and against any and all claims (including workers' compensation and wage claims) demands, suits, actions, liabilities, damages, penalties, judgments, and costs and expenses, including without limitation the costs and expenses of litigation, of or by anyone that in any way is caused by, arises out of, or is occasioned by the performance, activities, operations, conducts, negligence, or omissions of the OPERATOR, or any of its subcontractors, or the agents or employees of either, regardless of whether or not they are caused in part by a party indemnified hereunder.

The OPERATOR's liability for performance or non-performance of any obligation 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 specified in this Section, shall not exceed \$10,000,000 cumulatively for the duration of the Agreement; provided that the foregoing limitation shall not apply to: (i) any amounts recoverable pursuant to the insurance maintained by the OPERATOR pursuant to Section 6.2; (ii) any amounts recoverable pursuant to the performance bond maintained by the OPERATOR pursuant to Section 6.3; or (iii) any losses resulting from the gross negligence or willful misconduct of the OPERATOR or the OPERATOR's subcontractors, employees or agents in breach of the OPERATOR's obligations under the Agreement.

Neither party nor their affiliated companies, nor the officers, agents and employees or contractors of any of the foregoing, shall be liable to the other in any action or claim for consequential or special damages, loss of profits, loss of opportunity, loss of product. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies which are inconsistent with these terms are waived.

6.2 OPERATOR INSURANCE

OPERATOR shall obtain and maintain the following occurrence basis insurance during the term of this Agreement with companies authorized to do business in Massachusetts:

- A. General Liability Insurance including broad form endorsement, XCU, and contractual requirements in the amount of not less than \$2,000,000.
- B. Vehicle and Equipment Liability Insurance in the amount of \$2,000,000 for collision, comprehensive, bodily injury and property damage.
- C. Worker's Compensation Insurance for all OPERATOR employees employed at the WTF, including Employer's Liability Insurance in an amount not less than \$1,000,000 for each accident.
- D. Umbrella Liability of \$5,000,000 for each occurrence.
- E. Incorporate the Indemnification Provision included in Section 6.1.
- F. Insurance details, including the identity of the insurer, the terms of the insurance and insurance conditions shall be subject to approval by the AWJWA.

At the commencement of this Agreement, OPERATOR shall furnish the OWNER with satisfactory proof of such insurance, and each policy shall require a 30-day notice of cancellation to be given the OWNER while this Agreement is in effect. These policies shall be in effect at the time OPERATOR takes possession of the WTF.

The OWNER shall be named as an additional insured under these policies, with the exception of the Worker's Compensation Insurance, during the term of this Agreement. The Certificate Holders shall be the Procurement Officer, 32 Main Street, Ashburnham, MA, 01430 and the Procurement Officer, 109 Front Street, Winchendon, MA 01475. The cancellation provision of said policies, as evidenced by the insurance certificate, shall state that the Insurer shall not cancel or reduce the coverage without 30 day notice to the Certificate Holders.

The OWNER may require that the OPERATOR obtain additional coverage for any particular project or item of work, including but not limited to construction, requiring an amendment to this Agreement.

6.3 PERFORMANCE BOND

The OPERATOR shall obtain and maintain a Performance Bond in an amount no less than one hundred percent of the contract amount to insure all services comply with the requirements of federal, state and local law, and the terms and conditions of this

Agreement, and further containing such additional terms in accordance with law and satisfactory to the OWNER. The Surety shall be licensed to do business in Massachusetts.

SECTION 7, MISCELLANEOUS

7.1 RELATIONSHIP

The relationship of OPERATOR to the OWNER is that of independent contractor and not one of employment. None of the employees or agents of OPERATOR shall be considered employees of the OWNER. For the purposes of all state, local and federal laws and regulations, the OWNER shall exercise primary management and operational and financial decision-making authority.

7.2 NONDISCRIMINATION

OPERATOR shall refrain from unlawful discrimination in employment and shall undertake appropriate affirmative action.

7.3 ENTIRE AGREEMENT; AMENDMENTS

This Agreement contains the entire agreement between the OWNER and OPERATOR and supersedes all prior or contemporaneous communications, representations, understandings, or agreements. This Agreement may be modified only by a written amendment signed by both parties, certified as to the availability of funds.

7.4 HEADINGS, ATTACHMENTS AND EXHIBITS

The headings contained in this Agreement are for reference only and shall not in any way affect the meaning or interpretation of this Agreement. The Attachments to this Agreement shall be construed as an integral part of this Agreement and are incorporated herein. The documents so attached are as follows:

OPERATOR'S Proposal (Attachment 1)

OWNER'S Request for Proposals including appendixes (Attachment 2)

7.5 WAIVER

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

7.6 ASSIGNMENT AND SUBCONTRACTING

This Agreement shall not be assigned by either party without the prior written consent of the other. Any subcontractor of services by OPERATOR shall be subject to the prior approval of the OWNER, which approval shall not be unreasonably withheld or delayed, and OPERATOR shall require that its subcontractors comply with the terms and conditions of this Agreement, as it applies to the Subcontract(s).

7.7 ACCESS AND INSPECTION BY OWNER

The OWNER shall have the right at any time to inspect the WTF and equipment. OPERATOR shall provide the OWNER with access, to the OPERATOR'S financial and operating records related to the WTF for the purpose of auditing costs and/or verifying OPERATOR's performance under this Agreement.

7.8 COOPERATION WITH OTHER CONTRACTORS

The OPERATOR shall cooperate with the OWNER's Consulting Engineer to provide any data and opinions relative to the operation, performance, and maintenance of the Facility and its appurtenances and related equipment as may be required for the OWNER.

7.9 FORCE MAJEURE

Neither party shall be liable to the other or deemed to be in breach under this Agreement for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, labor disputes, or shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance shall be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay. It is agreed, however, that since the performance dates of this Agreement are important, continued failure to perform for periods aggregating five (5) days or more, even for causes beyond the control of OPERATOR, shall be deemed to render performance impossible and the OWNER shall thereafter have the right to terminate this Agreement in accordance with the provisions of Section 4.3 regarding emergency situations and/or the OWNER'S right of termination for convenience.

7.10 DOCUMENTATION

All reports, records, plans, maps, readings, and other documentation, stored on whatever media, prepared by the OWNER or OPERATOR is the property of the OWNER.

7.11 GOVERNING LAW

The Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of its choice of law rules.

7.12 NOTICES

All notices shall be in writing and shall be delivered in person or transmitted by certified mail, return receipt requested.

Notices required to be given to OPERATOR shall be addressed to:

US Filter Operating Services, Inc.
200 Cordwainer Drive, Suite 202
Norwell, MA 02061

Notices required to be given to the OWNER shall be addressed to:

Town Administrator	and	Town Manager
Town of Ashburnham		Town of Winchendon
32 Main Street		109 Front Street
Ashburnham, MA 01430		Winchendon, MA 01475

Changes in addresses shall be transmitted to the other party by like notice. All addresses must include a street address.

7.13 SEVERABILITY

Should any part of this Agreement for any reason be declared invalid or void, such declaration shall not affect the remaining portion, which shall remain in full force and effect as if this Agreement had been executed with the invalid portion eliminated.

[END OF TEXT THIS PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date first above written.

ATTEST:

Kate W. Nancy

ASHBURNHAM AND WINCHENDON
JOINT WATER COMMISSION

By: Ronald W. Peep

Ashburnham Board of Selectmen

Charles W. Howard

Mary E. Crowell

ATTEST:

Carley C. Bennett

By: [Signature]
Winchendon Town Manager

APPROVED AS TO FORM:

By: Elizabeth Phillips
Town Counsel

Approved as to the availability of an appropriation in the amount of
\$ 386,299.00 (total contract)

By: [Signature]
Ashburnham Town Accountant

By: [Signature]
Winchendon Town Accountant

ATTEST:

Cheryl Lane

OPERATOR:

By: [Signature]
US Filter Operating Services, Inc.
Northeast Business Center
Vice President + General Manager