WASTEWATER SYSTEM
OPERATION AND MAINTENANCE SERVICES AGREEMENT

This Wastewater System Operation and Maintenance Agreement (the “Agreement”), made and entered into as of this 18th day of August, 2016, between the New Hartford Water Pollution Control Authority (“WPCA”), Town of New Hartford, Connecticut with an address at 530 Main Street, New Hartford, CT 06057 (“Owner”) and Aquarion Water Company of Connecticut, a Connecticut corporation, with an address at 835 Main Street, Bridgeport, CT 06604 (“Company”).

WHEREAS, the Owner owns and, through its agency the New Hartford WPCA, operates a wastewater treatment plant, pump stations and collection system (the “System”) as described in Appendix A, which is attached hereto and made a part hereof; and

WHEREAS, the Owner is responsible for overseeing the day-to-day operation of the System; and

WHEREAS, the Owner desires to contract with an operator that has the specialized professional skills and experience to efficiently operate and maintain the System; and

WHEREAS, the Owner and Company wish to enter into this Agreement setting forth their respective rights, duties, privileges and responsibilities;

NOW, THEREFORE, in consideration of the agreements, terms and conditions stated herein, the parties agree as follows:

ARTICLE I - CONTRACT TERM; RENEWAL AND TERMINATION

1.01 Term

The term of this Agreement shall be three (3) years commencing on September 1, 2015 (or such other date mutually acceptable in writing by both parties) and expiring on August 31, 2019. The Owner and Company may enter into two (2) additional three (3) year extensions of this Agreement on mutually acceptable terms and conditions.

ARTICLE II - SCOPE OF SERVICES

2.01 Operation and Maintenance of the System

The Company shall provide the services as detailed in this Agreement and more particularly described in the Scope of Services attached hereto as Appendix B (“Scope of Services”). The Company shall operate and maintain the System at all times on behalf of the Owner in compliance with Applicable Law and in accordance with the terms and provisions of the Agreement, subject to any Uncontrollable Circumstances, as defined herein, and the operating and design capability of the facilities comprising the System (the “Facilities”). Company shall at all times operate and maintain the System in an efficient and economical manner and in accordance with Prudent Industry Practices.
In no event will Company be responsible for the operation, maintenance, repair, management or refurbishment of Owner’s water system, which is operated separately from the System.

2.02 Regulatory Compliance

Company will supervise all regulatory compliance, except for the enforcement of Owner’s ordinances or regulations. Subject to the limitations of this Section and the design capabilities of the System, Company shall operate the System in compliance with current state and federal regulatory requirements. Company will not be responsible for process upsets or violations that are attributable to:

(a) Sewage constituents or contaminants that are not within the design capabilities of the System or that cannot, within the design capabilities of the System, be treated to the degree required by Applicable Law, as amended from time to time; or

(b) The malfunction or failure of equipment except to the extent due to the negligent acts, errors or omissions of Company.

Company shall pay any fines or civil penalties for violations imposed on the Owner or Company by a regulatory agency having jurisdiction of the operation and maintenance of the System that is caused by the negligence or willful misconduct of Company. Company shall be given full authority to contest such violations.

2.03 Access

Owner shall provide Company with access to the System as necessary to perform the Services under this Agreement. Owner shall provide Company service records and sewerage maps of System that Owner has within it’s possession. Company shall provide reasonable access to the System for authorized Owner personnel to inspect the System during normal business hours. All visitors, including Owner personnel, shall comply with Company’s established operating and safety procedures and any requirements imposed by Company’s insurance.

2.04 Technical Support

Company shall provide advisory technical support to the Owner, utilizing on-site and/or locally based staff, concerning the operations impact or planning level costs associated with proposed expansions or extensions of the System. Such support is not intended to include engineering design, supervision of major projects, or services that are unrelated to Company’s obligations under this Agreement.

2.05 Staffing

Company will provide properly trained employees of Company for the staffing of the System, including a Class III wastewater operator as project/Chief plant operator and a Class II wastewater treatment plant operator for 7 hours per day in accordance with Applicable Law. As part of the Routine Services, Company shall assign two operators for a total of 70 hours per week, with occasional time off-site for training, meetings, administrative duties, paid leave, and similar reasons. In addition, Company will be on call 24 hours per day, 7 days per week for
emergencies. Company will provide appropriate initial and ongoing training for its employees with respect to safety, supervisory skills and regulatory compliance. Company shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws.

2.06 Non-Routine Services

Non-Routine Services are not included in the Services provided by Company. Non-Routine Services shall include but are not limited to the following:

- Alarm or emergency call-outs outside of normal hours.
- All other on-call services outside of normal hours.
- Emergency situations extending beyond normal hours.
- Breaches of security beyond normal hours.
- WPCA pre-approved over-time and non-routine charges not covered by services summarized immediately above.
- Operation and maintenance required due to Uncontrollable Circumstances

Company will assist Owner in obtaining or providing, or Company will obtain and provide with Owner authorization, such Non-Routine Services so required, and Company will be paid for such Non-Routine Services as provided for in Appendix C.

2.07 Reporting

(i) The Company shall prepare and file all necessary reports for state and federal authorities in compliance with Applicable Law and submit a copy of such reports to the WPCA on a timely basis provided that the Company shall certify to the WPCA as to the accuracy and completeness of such reports.

(ii) The Company shall report any event or permit violation to the appropriate regulatory agencies as required by Applicable Law and promptly notify the designated representative of the WPCA of such a reportable event or permit violation.

(iii) The Company shall provide monthly progress reports to the WPCA relating to the influent flows and loadings, effluent quality, compliance with NPDES permit limitations, compliance with nitrogen limits and the associated nitrogen credits, seasonal compliance with disinfection requirements, biofilter performance and odor control issues, sludge volumes and quantities processed, septage volumes received and processed, pump station and collection system operations and inspections, regulatory compliance schedules and reports, operations and maintenance issues, projected expenditures, improvements and/or capital projects for consideration, and all other matters in a form and frequency not herein specified. The Company will identify what services are Routine or Non-Routine and whether the maintenance and repairs performed and needed are more cost-effectively addressed by maintenance work versus replacement.

(iv) The Company shall maintain a complaint, comments, or inquiry log that includes a description of the complaint and how and when the complaint was handled. The
Company shall submit the complaint log to the WPCA as part of the monthly progress report.

(v) The Company shall provide the WPCA with a copy of any correspondence received by the Company from state, federal, or other authorities with respect to the Facilities as soon as practicable following receipt thereof and provide to the WPCA copies of correspondence submitted by the Company to such authorities.

2.08 Safety

The Company shall maintain the safety of the System at a level consistent with Applicable Law and insurance requirements.

2.09 Use of Facilities

(a) The Facilities shall be used solely for the collection and treatment of sewage within the boundaries of Owner or within a municipality having an inter-municipal agreement with Owner for the collection and treatment of sewage. At no time shall the Company use or permit the use of the Facilities for any purpose other than those contemplated by this Agreement without Owner’s prior written consent.

(b) Notwithstanding the foregoing, the Owner may allow a limited number of Town of New Hartford residents that have septic systems to discharge septage into the Facilities via contracted septage haulers on an annual basis. The Company and Owner recognize the System is not designed specifically for treating septage. The Owner and Company agree that a provisional treatment pilot process may be instituted to gauge the quantity of septage that may be considered for processing such that no adverse odors, equipment failures or process efficiencies are compromised. Company shall ensure that the quantity of septage delivered to the System does not cause violation of any Applicable Law. The Company shall notify the Owner of the need to reduce and/or curtail the quantity of septage hauled to the System.

If requested by the Owner and agreed to by the parties, the Company shall assist the Owner in formulating a septage management protocol that addresses waste manifest procedures and appropriate recordkeeping. This may include being responsible for invoicing septage haulers, preparation and maintenance of manifests and sample chain of custody forms, preparation and signing of contracts between the septage haulers and the WCPA, and completion of all paperwork necessary to comply with all Applicable Law. Services provided under this paragraph, except for services provided for on-site septage receiving during normal business hours, shall be considered and paid for by the Owner as Non-Routine Services.

ARTICLE III - RESPONSIBILITIES

3.01 Owner Responsibilities

(a) Owner shall be responsible for:
• Attainment and payment of all permitting fees
• Instituting the necessary Capital Improvements to ensure System performance compliance
• Use of Owner’s land, equipment, buildings, structures and facilities under the Owner’s ownership that are located in the System as of the effective date of this Agreement.
• Obtaining insurance associated with buildings and appurtenances related to the System
• Capital Improvements and repairs, including associated bonds and/or other debt service, of the System
• Maintaining all existing easements, licenses, warranties and permits pertaining to the System.
• Utilities (water, electricity, natural gas, telephone, cable land lines)
• Chemicals
• Diesel fuels and gasoline (required to operate the System)
• Equipment such as miscellaneous tools, replacement parts, etc.
• Supplies, including miscellaneous office supplies
• Costs of Process Residue hauling and disposal
• Contract laboratory costs not related to in-house process control monitoring
• Labor, subcontractor costs, equipment, supplies, and other expenses associated with Non-Routine Services, as specified herein
• Expenses for WPCA or Owner employees
• Expenditures for routine maintenance and repairs, including maintenance contracts, equipment, supplies, etc., except Company labor for preventative maintenance during normal business hours
• Expenditures for emergency sewer line or equipment repair or replacement
• Expenses related to municipal or private surveillance and alarm monitoring by municipal or third party vendors
• Fire protection
• Engineering or other professional services outside of the scope of services provided herein.
• Replacement cost of existing spare part(s) when use of the spare part is for normal wear on the part (if a spare part is being utilized to rectify a situation caused by the Company’s negligence or willful misconduct, the spare part shall be replaced at the Company’s expense).
• All other items not specifically listed as a Company obligation under this Agreement.

(b) As of or prior to execution and delivery of this Agreement, Owner shall have delivered to the Company (i) a certificate of incumbency for the officers of the Owner executing this Agreement; and (ii) such other certificates and documentation as the Company shall reasonably request in connection with the execution and delivery of this Agreement.
(c) Compliance with Applicable Law. Except to the extent specifically delegated to the Company in this Agreement, Owner shall comply with all Applicable Law. Company shall reasonably assist Owner in complying with all Applicable Law known to Company. Owner shall be responsible for any fines or penalties arising out of noncompliance by the Owner with Applicable Law except for any fines or penalties which result from either: (i) the Company’s noncompliance or breach of the terms and provisions of this Agreement, or (ii) the negligent or willful acts or omissions of the Company.

(d) Taxes. Owner shall be responsible for all real estate, *ad valorem*, personal property, utility, excise, franchise, occupational, disposal, sales, and use taxes applicable to the Facilities (excluding the Company’s equipment) and the services provided for under this Agreement other than taxes imposed upon the Company’s income or taxes related to the Company’s employees. Owner shall furnish a document at the Company’s request relieving the Company of obligations for sales and use taxes.

(e) Project Support. Owner shall permit exclusive use by the Company, without charge, of all equipment, structures, and facilities under the Owner’s ownership assigned to the Facilities or as specified in future equipment or construction specifications, Owner, at its sole discretion, may provide the Company with the temporary use of any of Owner’s equipment so that the Company may discharge its obligations under this Agreement in the most cost-effective manner. Owner shall provide the Company with information necessary to manage, operate, and maintain the Facilities.

(f) Capital Improvements and Repairs. Owner shall be responsible for providing all Capital Improvements and repairs to the Facilities, including without limitation the cost of all permits, approvals, labor, materials, utilities, equipment, and supplies. As an alternative, Owner and the Company may enter into future agreements for the funding of specific Capital Improvements and repairs. Any loss, damage, or injury resulting directly and solely from the Owner’s failure to provide Capital Improvements and repairs when reasonable requested by the Company shall be the sole responsibility of the Owner. Owner shall not hold the Company in breach of this Agreement for failure to fulfill any obligation under this Agreement to the extent that such failure results directly from the Owner’s failure to provide Capital Improvements and repairs when reasonably requested by the Company.

3.02 Company Responsibilities

(a) Company shall be responsible for complete operation and administration of the System as detailed in the Scope of Services in Article II and Appendix B. Company shall perform all routine and non-routine operation and maintenance services required for efficient operation and maintenance of the System.

(b) Company shall perform the Services according to Prudent Industry Practices.
(c) Company shall be responsible for any and all income taxes imposed on Company associated with or arising from the performance of the services contemplated under this Agreement. To the extent permitted by law, Owner shall provide Company with any applicable certificates of exemption from sales and use taxes for purchases made by Company in order to fulfill its obligations under this Agreement.

(d) As of or prior to execution and delivery of this Agreement, the Company shall provide to Owner (i) a copy of all Company authorizations necessary to perform its obligations under this Agreement; (ii) copies of certificates of insurance; (iii) certificates of incumbency for the officers of the Company executing this Agreement; and (iv) such other certificates and documentation as the Owner shall reasonably request in connection with the execution and delivery of this Agreement.

(e) In connection with the provision of the Services, Company shall also be responsible for:

- Labor and benefits for Company employees
- Safety equipment and related supplies
- Cell phone communication and related supplies
- Transportation (including fuel) to/from/around the Town of New Hartford for Company employees
- Costs for utilizing existing spare part(s) when it is used to replace the existing part as a result of negligence or willful misconduct by the Company.

3.03 Company Equipment

During the term of this Agreement, the Company may at its discretion elect to provide at its own cost and expense certain vehicles and equipment it deems necessary to perform its obligations hereunder and shall retain ownership of such vehicles and equipment.

ARTICLE IV - INDEMNIFICATION

4.01 Company Indemnification

Company shall indemnify, defend and hold the Owner and its officials, employees, agents and contractors (collectively, the "Owner Indemnified Parties") harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys' fees and costs, imposed or asserted against or incurred by any of the Owner Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Company; or (b) the negligence or willful misconduct of Company, its agents, employees, and/or subcontractors arising out of the performance of this Agreement or the Services; provided, however, as to any of the foregoing Company shall not be liable to the Owner Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances,
judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Owner Indemnified Parties.

4.02 Owner Indemnification

Owner shall indemnify, defend and hold the Company and its officers, directors, employees, agents and contractors (collectively, the “Company Indemnified Parties”) harmless from and against any and all liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys’ fees and costs, imposed or asserted against or incurred by any of the Company Indemnified Parties arising out of or resulting from (a) a breach of any of the representations, warranties or covenants contained in this Agreement by Owner; or (b) the negligence or willful misconduct of Owner, its officials, agents, employees, and/or contractors arising out of this Agreement or the Services; or (c) any violation by the System of an Applicable Law pertaining to the environment, any discharge, dispersal, release, or escape from the System, any flow into or upon land, the atmosphere or any water course or body of water; or (d) any violation by the Owner of any Applicable Law prior to the first date of the Term of this Agreement; provided, however, that as to any of the foregoing, Owner shall not be liable to the Company Indemnified Parties under this Section to the extent that any such liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits arise out of or result from the negligence or willful misconduct or breach of this Agreement by the Company Indemnified Parties.

The Owner acknowledges and agrees that the Company is not liable or responsible for the condition of the System components as of the date hereof or for any damages, fines, penalties or any other liabilities arising from or related to said System components. Owner shall indemnify, defend and hold the Company Indemnified Parties harmless from and against any and all of said damages, fines, penalties or other liabilities, including without limitation reasonable attorneys’ fees.

In the event that both the Owner and Company are negligent and/or guilty of willful misconduct, then in such event each party shall be responsible for the portion of the liability equal to its comparative share of the total negligence and/or willful misconduct.

4.03 Hazardous Materials

Owner acknowledges that except as specifically stated in this Agreement, Company has no responsibility as a generator, treater, storer or disposer of hazardous or toxic substances found or identified at a site.

Owner agrees to defend, indemnify and hold harmless the Company Indemnified Parties, from any liabilities, losses, fines, penalties, damages, costs, actions, expenses, claims, demands, liens, encumbrances, judgments, administrative proceedings or suits, including reasonable attorneys’ fees and costs, arising out of Company’s performance of work under this Agreement and made or brought against Company for any actual or threatened environmental pollution or contamination except to the extent that Company has negligently or willfully caused or contributed to any such pollution or contamination.
4.04  Consequential Damages

Neither party shall be liable for any special, consequential, punitive, indirect or incidental damages relating in any way to this Agreement or the System, loss of actual or anticipated profits or revenue or cost of claims of customers.

4.05  Limitation of Liability

Liability of Company to Owner under this Agreement shall be limited to the amount of the annual Base Compensation under Appendix C plus proceeds of applicable insurance. The foregoing limitation of liability shall not apply to claims of indemnification from third parties. Liability of Owner to Company shall be limited to the amount of the annual Base Compensation under Appendix C plus proceeds of applicable insurance. The foregoing limitations of liability shall not apply to claims of indemnification from third parties.

4.06  Right of Offset

In the event the Owner is entitled to indemnification pursuant to this Agreement or in the event fines, penalties or any other amounts are owed but unpaid by the Company pursuant to any provision of this Agreement, the Owner shall have the right, subject to a reasonable opportunity to cure, to offset the amount of any such indemnity claim against amounts then owing or to become owing by the Owner to the Company under this Agreement or otherwise. The rights by the Owner to offset under this Section shall be in addition to and not in limitation of any other rights it may have.

ARTICLE V - INSURANCE

5.01  Company Insurance

Company shall obtain and maintain at its expense the insurance coverages described in Appendix D and shall add Owner (Town of New Hartford and New Hartford WPCA) as additional insureds and shall provide a certificate of insurance prior to start of Agreement evidencing required coverage in Appendix D.

5.02  Owner’s Insurance

Owner shall procure and maintain property and structures liability insurance and fire, flood, boiler and machinery insurance policies, including extended coverage for vandalism, theft and malicious mischief to the full insurable value of the System. Within thirty days of the start of services under this Agreement, Owner shall furnish copies of such policies to Company with a certification or other evidence that Company has been designated as an additional insured.
ARTICLE VI - COMPENSATION

6.01  6.01 Base Compensation

The initial year Base Compensation for the operation and maintenance of the System shall be as set forth in Appendix C.

6.02  Adjustments to Base Compensation

The Base Compensation for the operation and maintenance of the System shall be adjusted in accordance with the terms of Appendix C.

6.03  Payment Terms

The Owner shall make monthly payments on the last day of each month for which services have been rendered in an amount equal to 1/12 of the Base Compensation. Company shall invoice the Owner in arrears for all other amounts due, if any. Partial months shall be prorated. Such invoices shall be due and payable within forty-five (45) days from the date received by the Owner. The Owner will review Company’s invoices, and if the Owner questions any items, the Owner shall notify Company within fifteen (15) days of receipt of the invoice. The Company shall respond to the Owner’s notice within forty-five (45) days after receipt. If the parties fail to agree, either party may by written notice to the other party, have the amounts due determined by the dispute resolution process as provided in Section 9.02. All amounts not in dispute will be paid when due. Payment not made within forty-five days shall be subject to interest at 1 ½% per month.

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis, at the rates set forth in Appendix C. Non-Routine Services and the associated costs will be presented as part of the monthly invoice subject to the same terms and conditions as outlined above.

6.04  Public Health and Safety Emergencies

Company may, without the Owner’s prior written approval, undertake emergency repairs or actions which may subsequently be considered changes in the Scope of Services under this Agreement when in its judgment Company believes public health and safety or regulatory compliance will be compromised and when time is of the essence and prior notification and written agreement by the Owner is not practical. In such instances, Company shall notify the Owner as soon as possible of its actions and its intention to request additional compensation for such emergency services. The Owner shall promptly review Company’s request and upon agreement that there was a change in the Scope of Services (which agreement shall not be withheld without good and sufficient cause), the Owner shall provide such compensation.

ARTICLE VII - TERMINATION

7.01  Termination

Either party may terminate this Agreement pursuant to the terms of Section 7.02 hereof.
In the event of termination of this Agreement, the Owner shall, upon invoice by the Company, pay the balances of any outstanding accounts to include but not be limited to the Base Compensation for services rendered through the termination date, cost of verifiable Non-Routine Services performed by the Company, and any other amounts that are owed but unpaid pursuant to the provisions of this Agreement.

7.02 Events of Default

(a) Events of Default by the Company. The occurrence of any of the events set forth below, in each case unless caused by Uncontrollable Circumstances, shall constitute an Event of Default of this Agreement by the Company.

- Entry into bankruptcy, reorganization or similar proceeding of the Company or its successor for the readjustment, arrangement, composition or adjustment of any debt under the United States Bankruptcy Code, as amended, or any part thereof, or under any other laws, rules or regulations, whether state or federal, for the release of debtors, now or hereafter existing.
- Assignment by the Company or its successor for the benefit of any of its creditors.
- If any representations or warranty made in writing by or on behalf of the Company in this Agreement or in any certificate or other document delivered pursuant hereto or otherwise in connection with any of the transactions contemplated hereby, shall prove to have been false, misleading or incorrect in any material respect when made or deemed made.
- Failure to pay any final and un-appealable fine, if and to the extent such fine is the result of the Company’s failure to operate the Facilities in accordance with the terms of this Agreement, within the time period prescribed by such authority.
- Placement of a lien or other encumbrances on the Facilities which is not discharged by the Company within five (5) days of notice demanding such by the Owner, provided such lien was filed on account of any action by the Company or anyone acting on the Company’s behalf.
- Failure to otherwise comply with any of the material covenants or provisions under this Agreement.

(b) Events of Default the Owner. The occurrence of any of the events set forth below, in each case unless caused by Uncontrollable Circumstances, shall constitute an Event of Default of this Agreement by the Owner.

- If representations or warranty made in writing by or on behalf of the Owner in this Agreement or in any certificate or other document delivered pursuant hereto or otherwise in connection with any of the transactions contemplated hereby, shall prove to have been false, misleading or incorrect in any material respect when made or deemed made.
- Failure to pay any uncontested or undisputed fines, if and to the extent such fines are the Owner’s responsibility pursuant to the terms of this Agreement, within the time period prescribed by such authority.
• Failure to pay any amount due and owing to the Company pursuant to the terms of this Agreement.
• Failure to otherwise comply with any of the material covenants or provision of this Agreement.

(c) Notice of Event of Default. Either party may declare such Event of Default by delivery of notice to the breaching party, describing the Event of Default and describing, if the non-breaching party so desires, the remedies it shall seek in connection with such Event of Default. In the Event of Default of this Agreement the non-breaching party must provide notice of the Event of Default to the breaching party, identifying the specific nature of the breach, and the breaching party in such instances shall have a period of thirty (30) days following receipt of such notice to cure the Event of Default, or reasonable additional time if a default cannot be cured within thirty (30) days and the defaulting party is diligently pursuing its cure.

(d) Remedies. Upon the occurrence of an Event of Default by either the Company or by the Owner, each party shall have all those rights and remedies allowed by Applicable Law in equity, including but not limited to, the right to terminate this Agreement in accordance with the terms herein.

7.03 Conditions of System upon Termination

Ninety days prior to the expiration of the Term, the Company and the Owner shall conduct an exit review to determine whether:

(a) All necessary maintenance has been undertaken,

(b) The System is operating in compliance with Applicable Law, provided however, that

• The influent is within treatment capabilities of the System and
• The Owner has completed all Capital Improvements and repairs required or requested by the Company to maintain the Facilities in compliance with Applicable Law, and

(c) The System is in a condition commensurate with the age of structure and equipment, including normal wear and tear.

If such exit review establishes that the foregoing requirements have not been satisfied as a result of the Company’s failure to comply with its maintenance obligations hereunder, the Company shall at its sole cost, make all necessary repairs to bring the System into compliance with such requirements. In the event that the Company does not make such repairs, the Owner shall have the right to offset any remaining monthly Base Compensation for the reasonable cost of such repairs in accordance with Section 5.08.
7.04 Termination of Agreement Due to Sale of System

In addition to the provisions set forth in Section 7.02, the Owner can terminate this Agreement if it is selling the System or substantially all of its assets by giving 60 days' notice to the Company in the manner described in Section 11.01. The Company agrees to fully cooperate in any such transfer by providing all necessary records and information as may be reasonably required by Owner to consummate said sale.

ARTICLE VIII - ASSIGNMENT AND SUBCONTRACTING

8.01 Assignment

Except as otherwise provided in this Agreement, neither party shall assign its rights, nor secure the assumption of its obligations under this Agreement, in whole or in part, without the prior written consent of the other party. The Owner shall not withhold that consent if the assignee of the Company has the technical, financial and managerial ability to fulfill the Scope of Services requirements. The Company shall not withhold its consent if the assignee of the Owner is at least as creditworthy as the Owner on the date hereof. This Agreement shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Any assignment of the Agreement in violation of this Section 8.01 shall be void.

8.02 Subcontracting

Company may subcontract work under this Agreement to any third party with the approval of the Owner. Such approval shall not be unreasonably withheld.

ARTICLE IX - GOVERNING LAW AND DISPUTE RESOLUTION

9.01 Governing Law

This Agreement shall be governed by and construed in accordance with the laws (and not the rules governing the conflict of laws) of the State of Connecticut.

9.02 Dispute Resolution

In the event that a dispute arises among the parties, the disputing party shall provide the other party with written notice of the dispute and within twenty (20) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include a statement of each party's position and a summary of the evidence and arguments supporting its position. Each party shall designate a high level executive or officer to work together in good faith to resolve the dispute; the name and title of said executive shall also be included in the notice and response. The executives shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as they reasonably deem appropriate to further the attempt to resolve the dispute. If the executives have not resolved the dispute through good faith efforts within sixty (60) days after the date of the disputing party's notice, then, before resorting to taking the case to court, the parties shall try in good faith to resolve the dispute by non-binding mediation using the rules of the American Arbitration Association ("AAA") under its Commercial Mediation Rules. All costs attributed to
mediation shall be borne equally by both parties. The parties shall choose a mediator in Connecticut. If they fail to do so, then they will request AAA to choose a mediator for them who shall be located in Connecticut.

Absent mutual consent by both parties, in the event that one of the parties brings a dispute immediately to court without first following the afore-mentioned dispute resolution process, then the opposing party shall be entitled to recover reasonable attorney’s fees and costs from the party initiating the litigation if either (a) the case is remanded and the parties are ordered to follow the dispute resolution process outlined herein or (b) the dispute is heard and judgment is awarded in favor of the opposing party.

Jurisdiction shall be proper in any state or federal court located in the State of Connecticut.

ARTICLE X - REPRESENTATIONS AND WARRANTIES

10.01 Representations and Warranties of the Company.

The Company hereby represents and warrants as follows:

(a) Existence and Powers. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Connecticut, with the full right, power and authority to enter into and perform its obligations under this Agreement.

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

(c) No Conflict. Neither the execution nor delivery by the Company of this Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Company of the terms or conditions hereof, (i) conflicts with, violates or results in a material breach of any constitution, law, governmental regulation, corporate charter or bylaws applicable to the Company, or (ii) conflicts with, violates or results in the material breach of any term or condition of any order, judgment or decree or any agreement, contract, permit, approval, consent, authorization, license, certification, or instrument, to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.
(d) No Litigation. There is no action, lawsuit or proceeding, at law or in equity, before or by any court or governmental body, pending or, to the best of the Company’s knowledge, threatened against the Company, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the Company or the validity, legality or enforceability of this Agreement against the Company, or any other agreement or instrument entered into by the Company in connection with the transactions contemplated hereby, or on the ability of the Company to perform its obligations hereunder or under any such other agreement or instrument.

(e) Financial Condition. The Company has not filed, nor have any creditors of the Company filed, any type of proceeding under the United States Bankruptcy Code, nor has a receiver, liquidation custodian or trustee been appointed for the benefit of the Company’s creditors, nor is the Company aware of any fact that materially and adversely affects, or may in the future, so far is it can now foresee, materially and adversely affect, its financial condition, results of operations or business prospect which has not been disclosed in writing to the Owner.

(f) Technical Knowledge. The Company has the necessary technical knowledge and employees required to meet all of its obligations under this Agreement.

(g) Representations and Warranties. No statement, representation or warranty by the Company in this Agreement, including the Exhibits and Schedules hereto contains any untrue or misleading statements of material fact, or omits to state any material fact, necessary to make such statements, representation or warranty by the Company in this Agreement, including the Exhibit and Schedules hereto not misleading.

10.02 Representations and Warranties of Owner.

The Owner hereby represents and warrants as follows:

(a) Existence and Powers. The Owner is a body corporate and politic constituting a municipal corporation, validly existing under the Constitution and the laws of the State of Connecticut, with full legal right, power, and authority to enter into and to perform its obligations under this Agreement.

(b) Due Authorization and Binding Obligations. This Agreement has been duly authorized, executed, and delivered by all necessary action of the Owner and constitutes a legal, valid, and binding obligation of the Owner, enforceable against the Owner in accordance with its terms and provisions except as the
same may be limited by bankruptcy, insolvency, or other similar laws affecting creditors' rights from time to time in effect.

(c) No Conflict. Neither the execution nor the delivery by the Owner of this Agreement, nor the performance by the Owner of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Owner of the terms or conditions hereof (i) conflicts with, violates or results in a material breach of any constitution, law or governmental regulation applicable to the Owner or (ii) conflicts with, violates or results in the material breach of any term or condition of any order, judgment or decree or any contract, agreement or instrument, to which the Owner is a party or by which the Owner or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(d) No Litigation. There is no action, lawsuit or proceeding, at law or in equity, before or by any court or governmental body, or proceeding for referendum or other voter initiative, pending or, to the best of the Owner's knowledge, threatened against the Owner in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the Owner or the validity, legality or enforceability of this Agreement against the Owner or any other agreement or instrument entered into by the Owner in connection with the transactions contemplated hereby, or on the ability of the Owner to perform its obligations hereunder or under any such other agreement or instrument.

ARTICLE XI - MISCELLANEOUS

11.01 Notices

All notices shall be in writing and shall be delivered, in person or transmitted by certified mail, return receipt requested, or national courier service providing proof of receipt, to the parties listed below. Either party may update such addresses on written notice to the other party. Notices shall be effective upon receipt.

To the Company:

Aquarion Water Company of Connecticut
835 Main Street
Bridgeport, CT 06604-4995
Attention: Donald J. Morrissey, Executive Vice President and Chief Financial Officer

To the Owner:

Water Pollution Control Authority
Town of New Hartford
530 Main Street
New Hartford, CT 06057

11.02 Entire Agreement; Modifications; Schedules

The provisions of this Agreement (except captions, which are for convenience only and shall be ignored in interpreting this Agreement), including the Appendices annexed hereto shall (a) constitute the entire agreement between the parties, superseding all prior or contemporaneous negotiations, understandings or agreements and (b) not be modified in any respect except by express written agreement executed by the parties. The Appendices attached hereto are specifically made a part of this Agreement.

11.03 Notice of Litigation

In the event that the Owner or the Company 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 Facilities, the party receiving such notice or undertaking such defense or prosecution shall promptly give the other party notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings.

11.04 Appendices

The following Appendices are attached to this Agreement and made a part hereof:

List of Appendices
Appendix A: The System
Appendix B: Scope of Services
Appendix C: Pricing
Appendix D: Insurance
Appendix E: Definitions

[Signature Page Follows]
IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

WITNESS:

Christine Hayward

Denton Butler

Town of New Hartford
By: Denton Butler
Its: Water Pollution Control Authority
Chairman

WITNESS:

Joy Hyde

Aquarion Water Company of Connecticut
By: Donald J. Morrissey
Its: Executive Vice President and Chief
Financial Officer
APPENDIX A
THE SYSTEM

System

The System is owned by the Town of New Hartford, Connecticut and is operated under the direction of the New Hartford Water Pollution Control Authority, which operates under an enterprise fund accounting system and derives its operating revenue from sewer and water use charges, fees and assessments.

The System has an average daily capacity of 400,000 gallons per day with a peak capacity of 1,200,000 gallons per day. The current average daily flow approximates 85,000 gallons per day.

The treatment process at The New Hartford Water Pollution Control Facility ("WPCF") is a sequencing batch reactor and is located on an approximately three-quarter acre site located along the west branch of the Farmington River. The major components of the WPCF include: automatic influent screening, aerated grit, influent pumping station, three sequencing batch reactor tanks, disk filters, ultraviolet disinfection, septage receiving, sludge storage and decanting, biofilter for odor control, a standby generator, and all related appurtenant facilities.

The sewage collection system is generally comprised of approximately 14,000 linear feet of 8-inch and 12-inch interceptor sewers, 6,000 linear feet of 8-inch laterals, and approximately 350 feet of 4-inch force main from the pumping station. The earliest installations are believed to have been made in the 1960s. The main collection system pumping station has a capacity of 210 gallons per minute and is located at the intersection of Routes 44 and 219. Two small package pumping station serve the Prospect Street area.

Customer Base

The System currently serves approximately 210 customers. Most customers are residential, with few commercial customers. There are no large institutions on the System.
APPENDIX B
SCOPE OF SERVICES

All services described in this section shall be considered Routine Services unless specifically stated otherwise herein. All services described herein are subject to the terms and conditions of the Agreement.

1. Operations

a. The Company shall operate all Facilities within their design capacity and capability and in accordance with all Applicable Law.

b. The Company shall provide administrative, back-up and support professionals that it deems necessary to assure qualified, continuous management, operation and maintenance of all Facilities.

c. The Company shall ensure a sufficient level of experienced, qualified operator staff available 24 hours per day, 7 days per week, to provide on-call, on-site contract operations services in response to alarms, reported operational problems, and/or emergencies. Responses outside normal hours shall be considered Non-Routine Services.

d. On-call contract operations staff shall be on-site to respond to reported operational problems within 1 hour of receiving the alarm or being notified of the operational problem or emergency.

e. The Company shall be responsible for the coordination of all vendors, suppliers and Company employee efforts necessary for the proper operation of the System.

f. Whenever feasible the Company shall obtain pricing at quoted prices for such things as chemicals and lab services to ensure efficiencies.

g. The Company shall advise the Owner of abnormal (i.e. not within the Company’s control) conditions that exceed hydraulic capacities, design criteria, permit parameters, or permit conditions or violate Applicable Law. The Company shall address any violations associated with such abnormal conditions within 10 days after the conditions have ceased or within a time period stipulated by appropriate regulatory agencies, Services provided to address abnormal conditions, as defined herein, shall be considered and paid for as Non-Routine Services.

h. The Company shall obtain prior, written approval from the Owner for any shut down of the System in whole or part, excluding emergency situations. The Company shall notify the Owner within one hour of determining that an emergency situation has occurred which requires shut down of any facilities in whole or part. The Company shall continue to make emergency notification to the Owner until such time as the Owner has verifiably responded.
2. Sampling and Analysis

a. The Company shall implement and maintain a wastewater sampling program and assist the Owner in coordinating with a third party contract laboratory for analytical testing as required by the Owner’s permits or Applicable Law. Laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Water and Wastewater or be in accordance with testing requirements of the Applicable Law.

b. The Company will perform laboratory analyses within Owner’s laboratory to the extent practicable for process control purposes. Other testing and laboratory analysis primarily associated with permit compliance will be performed by a contract laboratory, subject to review and approval by Owner, such approval not to be unreasonably withheld or delayed. The cost for such agreed upon contract testing will be the responsibility of Owner.

3. Maintenance

a. The Company shall provide the labor to: (i) perform predictive and preventative maintenance in accordance with manufacturers’ specifications and approved operating and maintenance procedures developed for equipment and processes of the Facilities; (ii) inspect pump stations, coordinate call before you dig (CBYD), and conduct reviews of the collection system during normal hours; and (iii) maintain the buildings and grounds of the Facilities. The Company shall schedule and track all preventive maintenance and perform spare parts inventory control in accordance with Prudent Industry Practices.

b. The Company shall be responsible for maintaining all manufacturer’s warranties, if any, on new and used equipment purchased either by Owner or the Company and assist Owner in enforcing existing equipment warranties and guarantees.

c. Company shall provide seasonal housekeeping functions to ensure access to the System, including miscellaneous pruning, and snow blowing and/or shoveling around the tanks and buildings. Owner shall be responsible for snow plowing to allow access to the System. Services provided shall be considered Routine Services.

4. Process Control, Effluent Standards and Other Standards

a. The Company shall be responsible for meeting all effluent requirements imposed by Applicable Law unless one or more of the following occurs
and is the cause of the violation: (i) the influent does not contain adequate nutrients to support biological processes or contains Biologically Toxic Substances which cannot be removed by the existing processes and Facilities; (ii) the influent contains a discharge that violates Owner’s Sewer Use Regulations or Applicable Law; (iii) the influent flow, BOD5, TSS, or TKN exceeds the Facilities design capabilities; or (iv) portions of the Facilities are inoperable or are operable only at a reduced capacity due to Unforeseen Circumstances.

b. The Company will operate the Facilities in a manner that will minimize odors and will communicate with the public and community groups in a professional manner concerning odors. Any odor complaint received will be acted upon expeditiously and Owner will be notified as soon as practicable.

5. Disposal of Screenings, Grit, Scum and Wastewater Sludge

a. The Company shall arrange for, and Owner shall pay for, in accordance with the terms of any agreement entered into by the Company, subject to review and acceptance by Owner, such approval not to be unreasonably withheld or delayed, for disposal of Owner’s screenings, grit, scum and wastewater sludges ("Process Residue") and other wastes in accordance with Applicable Law.

b. Title and ownership of all Process Residue and other wastes treated or generated during the performance of the Services is and shall remain the sole and exclusive property of Owner notwithstanding the provision of services by the Company.

c. All manifests or other documentation reasonably required for the disposal of Process Residuals disposed of in accordance with the terms hereof shall be signed by or in the name of the Owner.

6. Communications and Customer Service

a. The Company shall provide the designated representative of the WPCA with telephone numbers, pager numbers, and cell phone numbers by which the WPCA may contact the Company during normal business hours and during non-business hours and/or emergency conditions. The Company shall ensure that the contact numbers are up-to-date at all times.

b. The Company shall maintain contact and communications with local, State and Federal officials as a representative of the System.

c. The Company shall report promptly to the WPCA any regulatory agency inspections of the facilities, including inspections that result in a notice of a
facility operational problem or deficiency or a notice of violation. The Company shall provide copies of inspection reports to the WPCA upon receipt from the inspecting agency.

d. The Company shall advise the WPCA of pending, proposed or future wastewater regulatory requirements of which the Company is aware and the potential effects of these requirements on the System.

e. The Company shall process all customer service inquiries received over the WPCF telephone number or via mail or email, including follow up field service work as required.

7. Reporting Responsibilities

a. The Company shall prepare, sign and submit all monthly operations and monitoring reports as required by appropriate regulatory agencies and Applicable Law and any other reports as may be reasonably requested by the WPCA.

b. The Company shall report any event or permit violation to the appropriate regulatory agencies as required by applicable laws, regulations, and permits. The Company shall immediately notify the designated representative of the WPCA of a reportable event or permit violation.

c. The Company shall be responsible for maintaining a complaint log and shall submit the log, which shall include a description of the complaint and how and when it was handled, to the WPCA each month or as requested.

d. The Company shall submit a monthly report to the WPCA itemizing Routine and Non-Routine Services performed and needed, and documenting the cost effectiveness of the maintenance work vs. replacement cost as related to the decisions made by the Company. Individual maintenance, repair or replacement tasks will remain on the WPCA’s agenda until the WPCA is satisfied that the tasks have been completed.

e. The Company will attend WPCA meetings at the request of the WPCA.

8. Equipment Maintenance, Repair, and Facility Improvements

a. The Company shall provide routine preventative maintenance and repair of the Facilities, including equipment, buildings and grounds, consistent with accepted maintenance practices, Prudent Industry Standards, and/or manufacturer specifications and preventive maintenance recommendations. The Company shall identify and prepare an annual maintenance program, including: the scheduling and recording of maintenance on all system components and facilities, calibration of instrumentation and meters on an annual basis and exercise of all back-up pumps, engines, generators under the authority of the WPCA. Direct costs for
routine maintenance and repairs, including costs for subcontracted services and equipment, shall be invoiced to and paid for by the WPCA in accordance with Section 3.01 of the Agreement.

b. The Company shall advise the WPCA of Capital Improvements that may be needed for the Facilities. Capital Improvements may include: major rehabilitation or overhaul of equipment, replacement equipment, new equipment or improvements required for the operation of the Facilities in accordance with permit requirements, and Applicable Law. The Company shall submit an annual report to the WPCA of recommendations for Capital Improvements, if any, required to enable the Company to comply with all Applicable Law.

c. The Company shall implement cost containment/reduction measures where applicable as determined by mutual agreement between the Parties.

d. The Company shall assist the WPCA with enforcement of any existing equipment warranties and guarantees and maintain all warranties on any new equipment purchased after the contract is signed and implemented. The WPCA will maintain any existing guarantees and warranties for the mutual benefit of the WPCA and Company.

9. **Housekeeping, Security, Safety and Other Requirements**

a. The Company shall perform housekeeping functions at each of the facilities as required to maintain buildings, grounds, and process units in a clean, safe and orderly condition.

b. If requested by the WPCA and agreed to by the parties, the Company shall provide seasonal housekeeping functions to ensure access to the sites, including mowing, tree pruning, plowing, snow blowing and/or shoveling at and in the wastewater treatment facilities. Direct costs associated with seasonal housekeeping functions, including costs for subcontracted services, shall be invoiced and paid for by the Owner.

c. The Company shall secure all systems, facilities and property within the limits of existing security devices as provided by the Owner. The Company shall notify the WPCA of any breach of security within 1 hour of determining such a breach has occurred and shall assess the facilities for breach of security impact(s) and notify the WPCA and impact(s) as soon as such determination is made. Services provided under this paragraph shall be considered and paid for as Non-routine Services.

d. The Company shall be responsible for responding to all sewer Call-Before-You-Dig requests that will be identified and screened by the Hartford Town Hall and to assist in locating and marking the wastewater utilities as required. Services provided under this paragraph shall be considered as Routine Services.
APPENDIX C
PRICING

Base Compensation in first Agreement year: $191,520 or a monthly payment of $15,960

Annual Adjustments: The Base Compensation shall be increased by approximately three percent in each of the second and third years of the term of the Agreement. This will bring the base compensation in the second year to $197,280 or a monthly payment of $15,960 and in the third year to $203,220 or a monthly payment of $16,935.

Incentive Payment

In addition to the Base Compensation, the Company shall be paid one-third (1/3) of the amount of material savings introduced by the Company in any year of this Agreement. The reduction in each expenditure is to be agreed upon by the Owner and Company and may include, for example, cost savings related to labor, sludge disposal, electricity and nitrogen credits, etc. The cost savings will be compared to the baseline cost for the same expenditure for the 12-month period immediately preceding the effective date of this agreement. Said incentive shall be paid in an annual fiscal year ending payment. Such program or service improvements do not include variances in seasonal adjustments to pricing, discounts received by the Owner for services directly negotiated and billed to the Owner or rollback pricing generally introduced by vendors to their customer base.

Non-Routine Services:

Costs for Non-Routine Services provided by Company as described previously herein, shall be paid by Owner to Company separately on a time and expense basis. Materials and subcontractors will be invoiced to Owner by Company at cost. Hourly rates for Non-Routine Services performed shall be subject to an annual adjustment as described in the paragraph above and shall be as follows for year 1 of this Agreement: The application of the hourly rates for Non-Routine Services will be for the actual hours provided in the provision of the service (excluding travel time), however, Non-Routine Services provided outside of the normal work-week shall be subject to a two (2) hour minimum charge.

Hourly rates for Non-Routine services are:

- Professional Sanitary Engineer: $125/hour
- Laboratory/Analytical QA/QC Specialist: $100/hour
- Class III Connecticut Operator: $80/hour
- Class II Connecticut Operator: $70/hour
- Class I Connecticut Operator: $60/hour
- Laborer/CADD Support: $50/hour
APPENDIX D
INSURANCE

The Company at its expense shall procure and maintain during the term of this Agreement the following insurance:

I. Insurance Types and Limits.

1. Commercial General Liability Insurance – Commercial General Liability Insurance shall be provided by the Company in the following amounts: One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000), in the aggregate. This policy should be written on an occurrence basis on ISO form (CG 00 01 12 07 or CG 00 01 10 01) or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products/completed operations (3 years beyond completion and acceptance), personal and advertising liability, and liability assumed under insured contract (including tort liability of another assumed in a business contract). There shall be no modification limiting the scope of coverage for liability arising from explosion, collapse or underground property damage.

2. Comprehensive Automobile Liability Coverage. A policy to provide coverage against claims of personal injury or property damage covering all owned, leased, non-owned and hired vehicles used in the performance of work under this Agreement with a minimum limit per occurrence of $1,000,000 for personal injury and property damage.

3. Workers Compensation Insurance. A policy to provide coverage as required by State law and Employers Liability in the amount of $500,000 per occurrence.

4. Umbrella Liability Coverage. A policy to provide coverage in excess of General Liability and Automobile Liability in the amount of $5,000,000. The Company may satisfy this requirement by providing total limits under a combination of the primary and umbrella policies.

II. Insurance Certification. All policies of liability insurance required to be maintained by the Company shall:

1. Provide that coverage shall not be canceled or non-renewed until at least thirty (30) days prior notice has been given, except only ten (10) days’ notice shall be provided for non-payment of premium.

Coverage shall annually provide Owner a certificate of insurance as evidence of the above coverage and include Owner as an additional insured except on workers compensation.
1. General Requirements

a. Company must submit evidence of equivalent insurance coverage as appropriate for the work being performed from each of its subcontractors before their work commences.

b. All insurance policies must be endorsed to provide that the insurer will give Company at least thirty (30) days written notice of cancellation.

c. Company will furnish the Owner Certificates of Insurance as evidence of the required coverage.

d. All insurance policies, except for Workers’ Compensation, shall include Owner, and its officers, directors, agents and employees as additional insured’s (collectively “Indemnities”) covered for liability arising out of any ongoing and completed operations.

e. All insurance policies shall contain express waivers by the insurance company of its rights of subrogation against the Indemnities.
APPENDIX E
DEFINITIONS

“Applicable Law” means any applicable statute, law, constitution, charter, ordinance, resolution, judgment, order, permit, industry standard or code, decree, rule, regulation, directive, interpretation, standard or similar binding authority, which has been enacted, promulgated, issued or enforced by any judicial, legislative, administrative, municipal or other governmental authority having jurisdiction as of the date of execution of this Agreement. A change in Applicable Law means the enactment, adoption promulgation, modification, repeal or change of any Applicable Law which establishes new requirements or changes the requirements with respect to the operation or maintenance of the System or otherwise impacts a party’s ability or cost of performance of its obligations under this Agreement. A change in Applicable Law shall include any change in any sales, use, and real property, ad valorem or excise tax or any tax paid by or on behalf of the Company which is imposed by the United States or any other taxing authority, or any political subdivision thereof with respect to the Facilities or the performance of the Company’s obligation hereunder, but shall not include taxes based on or measured by net income, any unincorporated business, incorporated business, payroll, franchise or employment taxes.

“Biochemical Oxygen Demand” or “BOD5” means the oxygen utilized in the biochemical oxidation of organic matter for five (5) days at a temperature of 20 degrees Centigrade, reported in milligrams per liter as found using a BOD5 test method listed in the latest edition of Standard Methods for the Examination of Water and Wastewater.

“Biologically Toxic Substances” means any substance or combination of substances contained in the influent in sufficient concentrations so as to (i) interfere with the biological processes necessary to comply with Applicable Law or (ii) increase the cost of disposal of Process Residue.

“Capital Improvement” means all costs related to the construction, installation, repair or replacement of any component of the System in excess of $2,500.00 per item.

“Non-Routine Services” means additional operation and maintenance, including the cost of labor, parts and subcontractors, considered non-routine under this Agreement or required as a result of Uncontrollable Circumstances.

“Non-Specification Influent” means wastewater that is chemically or biologically altered such that the wastewater is toxic or inhibitory to the biological treatment process. As a result, the Non-Specification Influent may pass through the treatment process or partition to the sludge and render that waste stream as hazardous or require special disposal practices.

“Prudent Industry Practices” means those methods, techniques, standards and practices which, at the time they are employed hereunder and in light of the circumstances know or reasonably believed to exist at the time, are generally accepted and recommended in the municipal water and wastewater treatment industry as practiced in the northeast United States.

“Services” means those activities provided by Company to Owner as described in Appendix B.
“Total Kjeldahl Nitrogen” or “TKN” means the concentration of organic-bound nitrogen plus ammonia as nitrogen, reported in milligrams per liter, as found using a TKN test method listed in the latest edition of *Standard Methods for the Examination of Water and Wastewater*.

“Total Suspended Solids” or “TSS” means the concentration of organic and inorganic solids that can be removed from wastewater by filtration, reported in milligrams per liter, as found using a TSS test method listed in the latest edition of *Standard Methods for the Examination of Water and Wastewater*.

“Uncontrollable Circumstances” means causes beyond either party’s reasonable control including, but not limited to, Acts of God, floods, quarantine restrictions, riots, strikes other than by employees of Company, commercial impossibility, failures of utilities, increases in tariff rates for electric and gas utilities, hurricanes, landslides, lightning, earthquakes, drought, epidemics, fires, explosions, bombings, casualties, acts of civil or military authority, sabotage, vandalism, acts of a public enemy or terrorists, changes in Applicable Law, receipt of Non-Specification Influent, damage to the system caused by third parties, or other events or circumstances beyond the control of the party obligated to perform, whether such other causes are related or unrelated, similar or dissimilar, to any of the foregoing.