

TAB 1



City of Palmetto Agenda Item

Meeting Date

08/28/12

Presenter: Allen Tusing

Department: Public Works

Title: Wastewater Privatization Contract for Wastewater Services for the City of Palmetto

In 1991 the City of Palmetto determined to be in the best interest to allow the private sector to operate and maintain its Advanced Wastewater Treatment Facility and Lift Stations. This contract has been in place for over 20 years. The Department of Public Works has been very satisfied with the performance and the teamwork approach of Veolia Water North America, the current service provider.

With the upcoming installation of the new Aquifer Storage Recovery (ASR) project and the fact that the current contract with Veolia will expire before required well testing can be completed, it became evident that we should look into the extension of the contract.

While evaluating future infrastructure needs of the City, the experience that Veolia has and the vast resources worldwide along with cost savings that have been afforded the City, we recommend to enter into a longer agreement with Veolia and include Chapter 153 of the Florida Statutes.

This addition will give City staff the tools to perform work related to sewer force mains, gravity collection system, reclaimed water distribution system, cross-connection control program and storm water system. Under the proposed agreement, Veolia will also provide management, administration, financing, and designing related services.

State statute requires that you consider the following attributes when deciding to privatize the operation of the wastewater treatment plant:

- (1) The most recent available income and expense statement for the utility;
- (2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
- (3) A statement of the existing rate base of the utility for regulatory purposes;
- (4) The physical condition of the utility facilities being purchased, sold, or subject to a wastewater facility privatization contract;
- (5) The reasonableness of the purchase, sale, or wastewater facility privatization contract price and terms;
- (6) The impacts of the purchase, sale, or wastewater facility privatization contract on utility customers, both positive and negative;
- (7)(a) Any additional investment required and the ability and willingness of the purchaser or the private firm under a wastewater facility privatization contract to make that investment, whether the purchaser is the municipality or the entity purchasing the utility from the municipality;
- (b) In the case of a wastewater facility privatization contract, the terms and conditions on which the private firm will provide capital investment and financing or a combination thereof for contemplated capital

replacements, additions, expansions, and repairs. The municipality shall give significant weight to this criterion.

(8) The alternatives to the purchase, sale, or wastewater facility privatization contract, and the potential impact on utility customers if the purchase, sale, or wastewater facility privatization contract is not made; and

(9)(a) The ability of the purchaser or the private firm under a wastewater facility privatization contract to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the municipality or the entity purchasing the utility from the municipality.

(b) In the case of a wastewater facility privatization contract, the municipality shall give significant weight to the technical expertise and experience of the private firm in carrying out the obligation specified in the wastewater facility privatization contract.

Budgeted Amount:	<input type="text" value="\$1,206,191"/>	Budget Page No(s):	<input type="text" value="172"/>	Available Amount:	<input type="text" value="\$1,206,1910"/>	Expenditure Amount:	<input type="text" value="\$1,206,191"/>
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Additional Budgetary Information:

Funding Source(s):	<input type="text" value="432"/>	Sufficient Funds Available:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Budget Amendment Required:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Source:	<input type="text"/>
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City Attorney Reviewed:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Advisory Board Recommendation:	<input type="checkbox"/> For <input type="checkbox"/> Against <input checked="" type="checkbox"/> N/A	Consistent With:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	<input type="text"/>
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Potential Motion/ Direction Requested:	<input type="text" value="To find that entering into the 10 year agreement with Veolia Water North America Operating Services LLC to be in the best interest of the City and to authorize the Mayor to execute the agreement beginning September 1, 2012."/>
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Staff Contact:	<input type="text" value="Allen Tusing"/>	<input type="text"/>	<input type="text"/>
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Attachments:	<input type="text" value="Contract, memo from Public Works, Veolia Documents"/>
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Background

Veolia Water North America – South, LLC (Veolia Water) has worked as a partner to the **City of Palmetto, Florida**, for more than 20 years and provides more than 30 years of experience working with cities like yours in the State, as well as 40 years of work with governmental clients in the U.S.

Veolia Water companies originated the privatized operations, maintenance and management (O&M) services approach for municipal water and wastewater facilities in North America four decades ago – in 1972 entering into the U.S.'s first Public-Private Partnership for a municipal wastewater treatment facility with the City of Burlingame, California. This project initially involved the O&M of a 5.5-MGD treatment plant, and the partnership formed then remains strong today under a contract that has been renewed 10 times.

Our work with the City of Palmetto began under the first O&M in 1991 and has continued since that time. This contract covers your wastewater treatment facilities, and we also manage the environmentally conscious reuse programs, which use high quality effluent for irrigation and apply biosolids to nearby farmlands.

At the start of the contract, we worked with the City to reduce O&M costs by 15%, reflecting a first-year savings for the City of approximately \$70,000. We also implemented improvements in operations, such as recommending a change in effluent disinfectant to liquid chlorine for overall protection from the more dangerous chlorine gas, installing chemical feed stations to improve process control, assisting the City in developing a reclaimed water distribution system to area residents, and adding an odor control system to the headworks at no cost to the City. Over the course of the contract, Veolia Water has also worked with the City and capital project contractors to maintain wastewater operations during 24 major capital improvement projects (CIPs) for the upgrade of the treatment plant and lift stations.

Over the past more than five years, the City's Public Works Department and Veolia Water's O&M staff have coordinated numerous cost saving projects at the wastewater treatment plant--saving the City a total of \$415,747, which includes engineering, administrative, labor and materials costs for numerous projects at the Wastewater Treatment Plant.

Additionally, Veolia Water's O&M team identified unforeseen repairs needed in addition to the funded



Veolia Water, over the past 21 years, has worked with the City of Palmetto to:

- **Reduce operations costs and improve wastewater system performance.**
- **Develop and implement a “purple pipe” system for residential irrigation.**
- **Improve the quality of discharges to endangered shellfish beds.**
- **Exceed the effluent quality parameters of one of the most stringent regulatory permits in the U.S.**

capital projects, including a new return activated sludge pumping station, and the City responded by approving the additional projects in order to meet contractor deadlines and reduce the overall cost of the capital program.

We have also continued to work with the City's consulting engineers to resolve conflicts with trihalomethane (THM) discharges to Terra Ceia Bay, working to avert any potential environmental damage from this contaminant to the local marine life.

Veolia Water is also committed to controlling odors from the plant and lift stations. While odors are a normal byproduct of a wastewater operation, we take very aggressive steps to prevent odors from being a nuisance to our neighbors. We respond promptly to any and all odor complaints, as we have a genuine and honest concern for our neighbors. As part of these efforts, Veolia Water worked with outside vendors, at no cost to the City, to address odor control needs for the wastewater facility and collection system. The following odor control projects that have been completed to date include:

- Installation of a new scrubber system that was designed and built to filter air at the headworks, which significantly reduced odors.



VEOLIA WATER PROJECTS AND RESOURCES State of Florida

- **6 Current Municipal Projects**
 - 4 *Municipal Clients*
 - *O&M Services*
 - *Design/Build/Operate Services*
 - *Capital Project Work*
- **Local Team/ Resources**
 - *Florida Staff Base of ~70*
 - *Regional Staff Base of ~675*

- Installation of a bagging system on the wash press to reduce odors from screenings discharged to headworks dumpster.
- Installation of a fogging system to reduce odors from the fermentation splitter box.
- Installation of a pilot microbe injection system at lift station No. 19 to reduce odor, fats, oil and grease.
- Installation of a pilot chemical injection system at lift station No. 5 to reduce odor and corrosion.
- Diligent housekeeping to keep equipment clean and free of odor-causing buildups.

Veolia Water is experienced in delivering emergency services as well as ongoing routine facility maintenance and repairs. While our acclaimed asset management and maintenance programs incorporate predictive and corrective measures that protect and extend system performance and life expectancy, unplanned-for events do occur. One example of this is our work with the City to address emergency conditions that occurred when the City received 7.3 inches of rain in just six hours in September 2009. At the 2.4-MGD facility, Veolia Water's staff treated flow of up to 6-MGD (with 4-MGD being the rated maximum flow) over two days and several of the lift stations were at high-level status for 36 hours. We staffed the plant around the clock, and during the storm, no lift stations overflowed, emergency process control measures prevented sludge blankets from overflowing the clarifiers and floodwaters at the headworks were kept below the electrical connections.

This is the type of commitment we will continue to offer the City, and one that is a hallmark of our firm's O&M approach for municipal clients throughout Florida and North America.

Veolia Water's overall work experience in the State of Florida covers more than 35 years and has included delivering two complex design/build/operate (DBO) projects over the last decade, with the initial project for a new (greenfield) regional water treatment plant for Tampa Bay Water, and then the expansion of that plant (a \$158 million project to double the capacity of the plant to 120-MGD).

Veolia Water's regional business operations is also headquartered in the State, and provides management and support for projects in 12 states in the Southeastern U.S. and the Caribbean region, with more than 645 personnel and nearly 90 facilities.

In addition to our local experience, knowledge and resources, we bring to this project an unmatched base of overall experience in water, wastewater and reclaimed water operations—today, Veolia Water companies deliver these types of services to some 167 municipal and governmental clients, ranging from communities in Florida to some of the largest cities in the U.S.

In the remainder of this section we profile the service capabilities and experience that Veolia Water office—demonstrating our firm's experience in water, sewer, wastewater and water reuse utility operations.

Service Capabilities

In North America, Veolia Water companies serve ~550 communities and manage 385 water and wastewater facilities, along with industrial projects throughout the continent and the Caribbean. Under these contracts they design, build, operate and manage various types of facilities, programs and systems or provide consulting support to clients.

For its operations in North America, Veolia Water provides comprehensive management programs, tools and policies and procedures, which have been developed and refined over four decades of O&M work to ensure compliant, cost-effective operations at all its projects. This experience provides the firm with the capabilities necessary to successfully operate water and wastewater systems — using best industry practices and tools, including routine and preventive maintenance, information technology, asset management, environmental compliance and emergency operations.

Under the O&M services approach, Veolia Water delivers management, employees, consumables (e.g., chemicals, electricity), facility maintenance and purchasing power required to provide a full-service approach to managing facilities operations and management needs. They also guarantee to meet or exceed all permit requirements and provide for comprehensive maintenance management.

Veolia Water's maintenance programs address the corrective and preventive maintenance needs of equipment and structures using an industry-standard computerized maintenance management system (CMMS). The elements of a comprehensive maintenance program provide for cost reductions in terms of overall maintenance dollars expended.

Some of the other elements of Veolia Water's O&M services approach include:

- **Regulatory Compliance** - Veolia Water works with O&M customers to ensure that they maintain environmental and regulatory compliance, while assuming full responsibility for its violations. Regulatory compliance becomes the company's business when it enters into an outsourcing agreement, an agreement under which Veolia Water guarantees compliance within the design parameters of a given facility. The company also provides the systems and engineering capabilities to add any needed flexibility within a given system, and it complies with local, state and federal laws and regulations.
- **Safety** - Safety is Veolia Water's highest priority, and the company's emphasis on safety has resulted in a safety culture throughout the organization that is reflected in a strong record of performance. Today, Veolia Water's safety statistics lead the industry, and its safety program is designed to support zero tolerance for workplace

VEOLIA WATER O&M STATISTICS

- 167 Municipal Clients
 - 191 Municipal Wastewater Facilities
 - 87 Municipal Water Facilities
 - 5,622 Miles of Collection System Lines
 - 2,875 Miles of Distribution System Lines
 - 148,932 Meters Read
- 104 Industrial Clients
 - 75 Industrial Wastewater Facilities
 - 32 Industrial Water Facilities
- 1.71 Billion Gallons Wastewater Treated Daily
- 963 Million Gallons Water Treated Daily
- 19 Million+ Population Served Daily

incidents. This has resulted in Veolia Water's projects celebrating no lost-time incident milestones that range up to 26 years. Veolia Water's safety program is focused on ensuring the safety of its O&M personnel, the equipment and treatment processes, and the public. Where hazards are identified, its first hazard-management choice is engineering controls (isolation of source, lockout/tagout procedures, design, process, or procedural changes, monitoring and warning equipment, chemical or material substitution). When and where that is not possible, Veolia Water implements administrative controls such as training, housekeeping, limiting exposure and personal monitoring. The last line of defense involves personal protective equipment (PPE). Veolia Water's safety approach begins with a corporate and management commitment to ensure that staff receive proper training and are committed to safe work practices. This commitment begins at the top with the President of Veolia Water in North America, Laurent Auguste, who has focused the company on safety in all of activities and provided each employee with wristbands that reinforce the company's commitment to "Service First, Safety Always." The visual presence of these wristbands constantly reminds and conveys this message in our daily operations.



- **Customer Service** - Veolia Water works with municipal agencies to ensure responsive customer service. The company offers unmatched experience in all aspects of customer service including meter reading, meter repair and replacement, service turn-on and shut-off, billing and collections, and/or call center management. Veolia Water has extensive experience in managing comprehensive meter reading, testing

and replacement programs. Timely, accurate and efficient water meter reading is a key to accurate bills, satisfied customers and fewer interventions by customer service employees. Veolia Water works with clients to replace meters consistent with their needs and industry standards. In total, Veolia Water provides customer service support to some 30 current municipal contract O&M projects in the U.S. These services address the needs of a customer service base that numbers approximately 180,000 accounts.

- **Engineering and Construction** - Veolia Water's Capital Program Management (CPM) group is part of the regional technical and management resource base that the company provides to governmental and industrial clients. The focus of this group is on providing engineering design and construction support services for the implementation and management of upgrades, improvements and other capital project work at Veolia Water operated and managed facilities.

The CPM group in the South region is composed of senior-level engineering design and construction professionals who can effectively manage and implement design and construction projects, drawing on a combination of in-house resources and expertise, and local firms (pre-qualified subcontractors) that provide design, construction and related expertise. Under this approach, Veolia Water's O&M teams draw on the internal engineering and construction management expertise of the CPM group, and then manage the work of the subcontractors to deliver the design and construction of capital improvements projects as well as new construction.

Additionally, Veolia Water's engineering and construction arm, Veolia Water Solutions and Technologies, enables the firm to effectively manage and implement projects ranging from repairs and capital improvements to full-scale design/build projects. This group has more than 100 years of experience on a wide range of industrial and governmental clients. With personnel resources that include engineering, construction management and other support functions, they provide the staff and other resources needed to deliver engineering and construction services for major repair and capital improvement projects, and they also offer design/build approaches for project work. Using creative process design, Veolia

Water's engineers and engineering partners can design new facilities using the latest technologies or make modifications to existing systems to improve performance and operating costs.

- **Other Technical Support** - Veolia Water's O&M team draw on the range of capabilities offered through their Technical Direction Group (TDG). This group is responsible for centralizing technical knowledge, coordinating technical resources, integrating training and applying the best practices for Veolia Water's project work on a national basis. Internationally, the work of the North American TDG group is supported by Veolia Water's global services Technical Department. This core group of experts provides technical expertise and support services during the development and execution phases of water and wastewater projects throughout the world. Their focus is support for research and development; validation of design/build, design/build/operate and operations, maintenance and management projects; expertise for complex and demanding projects; sizing and process validation; and assistance with project execution, facilities commissioning and operations. This team, composed of some of the leading experts in the water and wastewater industry, is a key benefit to partnering with Veolia Water.

These groups also work closely with Veolia Water's research and development (R&D) group to bring innovations and solutions to the company's projects. Over the past almost 160 years, Veolia Water has developed an innovative mindset to cope with treatment, regulatory and other challenges.

- **Technologies and Equipment** - One of the greatest strengths of Veolia Water is its ability to improve the quality of life for the citizens of a community through application of a wide range of treatment technologies, all while improving health and protecting the environment in the communities served. Through its ultimate parent company, Veolia Eau, Veolia Water provides access to experts that offer unmatched technical support and know-how. In addition, through affiliations with equipment manufacturers and suppliers of virtually every technology required for water and wastewater treatment, Veolia Water can provide the right technology solution for most every need. Clients get answers directly from the people who manufacture and service the industry's leading

equipment brands, providing them with ongoing access to time- and money-saving expertise, technology and equipment.

Veolia Water also uses an Asset Management approach to provide the framework needed to evaluate and prioritize capital investments. The highest-priority investments and repairs for a facility can be determined by combining an assessment of the condition of the equipment with its expected asset life and its operations criticality.

Simply stated, where maintenance management is the overarching program to keep a facility operating consistently and reliably, asset management is a key tool to determine which equipment is critical and which investments are the most economic.

Through an Asset Management focused program, Veolia Water's experts assist asset owners with:

- Lowering operating expenses by ensuring the lowest life-cycle and operating costs.
- Improving customer service by minimizing backups, overflows and main breaks.
- Improving environmental compliance, which reduces the risk of non-compliance and costly emergency situations.
- Improving asset conditions and prolonging asset life.
- Optimizing capital planning to maximize the value of every dollar spent on maintenance and capital programs.
- Gaining institutional knowledge as assessment and operational information is documented and preserved over time.
- Protecting and preserving the environment through sustainable development approaches.

Veolia Water's proprietary and innovative above-ground (AGAM) program is based on principles from the International Infrastructure Management Manual, blended with corporate experience that ensures delivering the safest, most reliable and cost-effective water and wastewater treatment. The company's approach creates an understanding of the full life-cycle costs of assets that assist clients in making strategic investment decisions.

Veolia Water's asset management expertise reflects years of sharing best practices used at hundreds of facilities the company operates on all continents.

Veolia Water has also developed a comprehensive underground asset management (UGAM) plan and approach that follows the National Association of Sewer Service Companies (NASSCO) standards for pipe line and manhole assessment.

Veolia Water's UGAM team in the region includes collection system engineers, operators and technicians who are NASSCO-certified pipe and manhole assessment trained technicians. For perspective, Veolia Water has more NAASCO PACP- and MACP-certified operators than any other operations firm.

Not only are Veolia Water staff highly trained in NAASCO techniques, its technicians are also certified to conduct NASSCO certification training. They even provide that level of training to other wastewater professionals throughout the region, including municipal, professional organizations and other operating-company employees. Their experience and abilities have been demonstrated throughout the region for many of Veolia Water's O&M clients, as well as in standalone collection system projects.

As part of a UGAM approach, Veolia Water assisted in the development and implementation of a unique underground infrastructure asset data management program, InfoNet®.

Finally, one of the greatest strengths that Veolia Water has to offer in North America is the company's ability to improve the quality of life for those served by water and wastewater operations through the application of appropriate treatment technologies — from basic to cutting-edge — while improving health and protecting the environment in their communities. Through the resources of its parent and affiliated companies, Veolia Water has access to international experts who offer unmatched technical support and know-how.

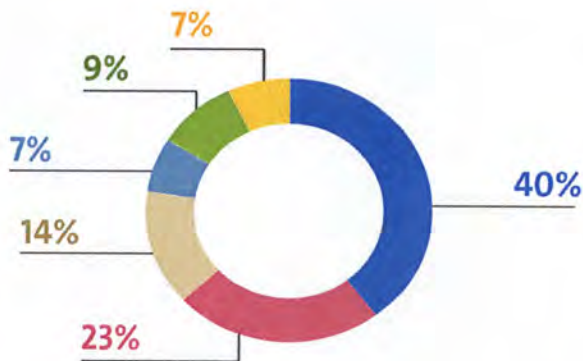
Section 2 – Financial Ability to Provide the Services

Veolia Water North America – South, LLC (Veolia Water) has worked as a partner to the **City of Palmetto, Florida**, for more than 20 years and the firm remains a financially strong partner.

Our regional company is a direct subsidiary of North America's leading water and wastewater operations company, Veolia Water North America Operating Services, LLC.

In terms of financial reporting, the financial information for Veolia Water is consolidated with that of our parent company, whose strength is reflected in continued growth and industry leadership, with revenues of more than \$653 million, spurred by growth in new areas. Nationally, as the industry survey (below) illustrates, our firm remains the leader in the O&M industry, with a market share nearly double that of our nearest competitor.

As a further testament to our company's record of performance, Veolia Water companies in North America enjoyed a 94% contract renewal rate in 2011 and remains the O&M industry leader.



Veolia Water

Revenues: \$653M
Renewal Rate: 94%

Southwest Water Services

Revenues: \$110M*
Renewal Rate: 90%

Severn Trent Services

Revenues: \$153M
Renewal Rate: 68%

American Water

Revenues: \$111M
Renewal Rate: N/R

CH2M Hill OMI

Revenues: \$233M
Renewal Rate: 94%

United Water

Revenues: \$385M
Renewal Rate: 80%

2011 O&M/DBO Market Share of Big-6 U.S. Water Firms.

Source: Public Works Financing (PWF) | March 2012

*Southwest Water Services estimated by PWF.



In 2007, Veolia Water's contract with Tampa Bay Water was amended to include DBO expansion (to 120-MGD capacity) of the Regional Surface Water Treatment Plant. When selected in 2000, Veolia Water led a team that designed, built and now operates this facility. The new contract, amounting to over \$158.4 million, made the treatment facility the nation's largest DBO project. Expansion work was completed ahead of schedule, and the Tampa Bay Water Board of Director's vote amended the term of the agreement through 2023.

Veolia Water companies in North America also maintained more long-term contracts than any of our competitors, with longevity of 40 years or more, which demonstrates our firm's success in customer satisfaction. Our success with performance-based contracts, tying compensation to results, additionally demonstrates our commitment to customer satisfaction.

The Veolia Water companies in North America are also part of a global parent company, Veolia Eau – Compagnie Générale des Eaux S.C.A., a company with revenues of more than \$16.3 billion in 2011. The company traces its history to the establishment of Compagnie Générale des Eaux (CGE) on December 14, 1853.

The Veolia Water companies globally are in turn part of Veolia Environnement, S.A., which is the only global company offering services in the areas of water, waste management, energy and transportation sectors. The firm realized more than \$38 billion in revenues in 2011, has an employee base of over 312,000 in 74 countries and is traded on the New York Stock Exchange.

Today, Veolia Water companies are the global benchmark innovator for water and wastewater partnerships. Whether the measure is customer service, application of operations expertise and/or technology, we provide cost-effective, customized solutions to both large and small clients.

In North America, Veolia Water companies serve ~550 communities and manage ~400 water and wastewater facilities, along with industrial projects throughout the

continent and the Caribbean. Under these contracts we design, build, operate and manage various types of facilities, programs and systems or provide consulting support to our clients.

Locally and globally, the company continues to win very substantial new contracts and is demonstrating true market leadership in North America and around the world.

These substantial achievements include successes in both industrial and municipal markets. Most recent examples include:

- **A \$1.3 billion contract to renovate Paris-area wastewater treatment facility** – One of the largest such contracts in Europe. The plant is the second largest wastewater treatment facilities in the world.
- Veolia Water is the only non-Japanese private operator doing business in Japan and was recently awarded **new water and wastewater contracts with the cities of Hiroshima, Kyoto and Matsuyama** – serving more than 1.2 million people.
- Veolia Water was selected by **Nagpur, the 10th largest city in India**, for a 25-year contract to upgrade its drinking water network and improve the city's water availability on a 24/7 basis to all areas of the city – a first in India and one that will serve all 2.7 million people, a third of which live in slums.
- In North America, Veolia Water has signed **substantial new landmark contracts**, as referenced in this document, with **New York City's** Department of Environmental Protection and with the **City of Winnipeg**, Manitoba, Canada (pop. 800,000).
- **CONSOL Energy** selected Veolia Water to design, build and soon operate a new state-of-the-art mine water treatment system that will feature a zero liquid waste discharge system.
- Another example is a design-build-operate contract with **Plains Exploration & Production Company** for a produced water reclamation facility at a San Luis Obispo County, California, oil-producing facility that will generate a very high-quality recycled water from oilfield process water.

Through this base of experience and our ongoing industry success, Veolia Water is uniquely positioned to deliver innovative solutions as the global leader in water and wastewater services and technologies.

**WASTEWATER PRIVATIZATION CONTRACT
FOR WASTEWATER SERVICES FOR THE CITY OF PALMETTO**

THIS AGREEMENT is made on this ____ day of August 2012, the City of Palmetto, Florida (hereinafter "CITY"), whose address for any formal notice is 516 8th Avenue West, Palmetto, Florida 34221 and Veolia Water North America Operating Services, LLC, (hereinafter "VWNAOS") with offices at 14055 Riveredge Drive, Suite 240, Tampa, Florida 33637

WHEREAS, Florida law provides at Florida Statute (F.S.) 153.90 et seq. for the letting of Wastewater Facility Privatization Contracts which are defined in F.S. 153.91(1) as *"a written agreement, or one or more related written agreements, between a private firm and one or more public entities, which provides for the operation, maintenance, repair, management and administration, or any combination thereof, of a wastewater facility for a term of more than 5 years, but not more than 40 years in duration, and which may also provide for the planning, design, construction, improvement, acquisition, financing, ownership, sale and leasing, or any combination thereof, of the wastewater facility";* and

WHEREAS, F.S. 153.91(5) defines "wastewater facility" to mean *"any equipment, building, or other property used or useful in connection with the provision of a wastewater service to the public, including such interests in land as are necessary or convenient to permit a private firm to perform a contract in respect thereto"* (the "Facilities"); and

WHEREAS, the Florida Legislature declared in F.S. 153.90 that *"it is in the public interest of the state to supplement and enhance the authority of public entities to solicit, negotiate, and enter into contracts with private entities for the financing, designing, acquisition, ownership, leasing, construction, improvement, operation, maintenance, and administration, or any combination thereof, of wastewater facilities"* and it is *"the intent of the Legislature that the provisions of this act be liberally construed in order to accomplish their purposes and that the provisions of this act shall be in addition and supplemental to powers conferred by any other law";* and

WHEREAS, F.S. 153.92 provides that *"Any public entity may enter into a wastewater facility privatization contract"* and *"may make such other agreements and perform such other acts consistent with law, as are determined by the public entity to be necessary or convenient to effectuate the wastewater facility privatization contract."*

WHEREAS, the CITY is allowed to enter into a Wastewater Facility Privatization Contract by conducting a public interest hearing that satisfies the requirements of F.S. 180.301; and

WHEREAS, the Florida Legislature specifically provides that the competitive bidding requirements of F.S. 287.055 (Competitive Negotiation Act) do not apply to the letting of a Wastewater Facility Privatization Contract under F.S. 153.90 et seq. and F.S. 180.301; and

WHEREAS, this Agreement for Wastewater Services (the "Agreement") constitutes a Wastewater Facility Privatization Contract under Florida law, and the CITY has duly approved the Agreement as provided in F.S. 153.90 et seq. and F.S. 180.301; and

WHEREAS, the CITY has prepared a statement showing that the foregoing Wastewater Facility Privatization Contract is in the public interest that includes a summary of VWNAOS' experience in water, sewer, or wastewater reuse utility operation and the financial ability of VWNAOS to provide the services provided herein; and

WHEREAS, the Agreement provides for VWNAOS to operate, maintain, repair, manage, administer the CITY's Facilities and for VWNAOS to provide planning, design, construction, improvement, and financing in connection with the CITY's Facilities.

CITY and VWNAOS agree:

1. **GENERAL**

1.1 All definitions of words or phrases used in this Agreement are contained in Appendix A.

1.2 All grounds, facilities, equipment, and vehicles now owned by CITY or acquired by CITY shall remain property of CITY.

1.3 This Agreement shall be governed by and interpreted in accordance with laws of the State of Florida. Venue for any disputes with respect to this Agreement shall be in courts in and for Manatee County, Florida.

1.4 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party will assign this Agreement without the prior written consent of the other party, provided, however, that such consent shall not be unreasonably withheld.

1.5 All notices shall be in writing and transmitted by certified mail to the address noted above, in care of the respective party's Authorized Representative. Additionally, notices may be delivered to VWNAOS's authorized representative on site at the Project. All notices shall be deemed effective (i) when delivered personally or by counter mail services, or (ii) when actually received by the party for which the notice is intended, if the notice is given in any other manner.

1.6 This Agreement, including Appendices A through F and the Domestic, Wastewater Facility Permit, constitute the entire Agreement of the parties. This Agreement may be modified only by written agreement signed by both parties. Whenever used, the term "CITY" shall mean the City of Palmetto, acting, by and through its City Commission. Whenever used the term "VWNAOS" shall Veolia Water North America Operating Services, LLC acting by and through its officers, agents, directors, and employees. The parties agree that each party had equal input into the drafting of this Agreement such that no provision of the Agreement shall be construed strictly against one party as to drafting thereof.

1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. "

1.8 It is understood that the relationship of VWNAOS to CITY is that of independent contractor. The services to be provided under this agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract

operators similarly situated.

1.9 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), licensee(s), power(s) or privilege(s).

2. **SCOPE OF SERVICES - VWNAOS**

VWNAOS shall:

2.1 Within the design capacity and capability of the Project, further described in Appendix B, manage, operate, and maintain the Project so that effluent discharged from the Wastewater Treatment Plant and reclaimed water produced by the Wastewater Treatment Plant meet the requirements specified in Appendix C. VWNAOS may alter the process and/or facilities to achieve the objectives of this Agreement; provided, however, that no alteration shall be without CITY's written approval.

2.2 Manage, operate, inspect, and maintain, in compliance with accepted industry standards and in compliance with all applicable local, State and Federal laws, rules, regulations, statutes, permits, standards, and ordinances, the wastewater pumping stations and related equipment. Facility grounds shall be properly maintained, with grounds regularly mowed, and overall appearance continually kept in good condition. The CITY shall be responsible for mowing the banks around the existing holding pond.

2.3 Within 180 days of the end of the first five (5) years of the Term, within 180 days before the end of the ten (10) year term, and within 180 days before the expiration of any renewal term, VWNAOS shall provide the CITY with an evaluation of the performance, efficiency and maintenance of the WWTP. VWNAOS will prepare the report at no cost to the CITY and the CITY shall maintain the right to have the report reviewed by a third party at the CITY's sole expense.

2.4 Provide and document all Maintenance for the Project. The CITY shall have the right to inspect these records during normal business hours. Maintenance program will include documentation of critical spare parts inventory.

2.5 Provide and document all Repairs, Chemical, Laboratory Services, and Sludge Disposal costs for the Project (the "Annual Limit Accounts"). The Annual Limit Account allowances during the first sixteen months of this Agreement (September 1, 2012 to December 31, 2013), which are included in the first year Base Fee, are as follows (these are annual limits that will be billed on a monthly basis at 1/12 the Annual Limit Account for each month of the sixteen month period):

Repairs	\$70,087.00
Chemicals	\$236,904.00
Laboratory Services	\$84,927.00
Sludge Disposal	\$102,795.00_

Total Allowances

\$494,713.00

CITY shall pay for all Repairs, Chemicals, Laboratory Services, Sludge Disposal cost(s) in excess of the corresponding Annual Limit Account provided all overages are documented. VVNAOS shall rollover any unused monies in the Annual Limit Accounts to the following year or refund any unused balance to the CITY. VVNAOS shall notify the CITY in writing, any time that the cost(s) for Repairs, Chemicals, Laboratory Services or Sludge Disposal reaches 85% and 100% of the allowances. The Annual Limit Accounts cannot be exceeded without CITY's prior written authorization.

2.6 Provide CITY with an accounting of the Annual Limit Accounts for Repairs, Chemicals, Laboratory Services, Sludge Disposal, and any Additional Services and/or Capital Projects on a monthly basis. VVNAOS will provide CITY with a detailed invoice of Repairs, Chemicals, Laboratory Services, Sludge Disposal, Additional Services and Capital Projects, including all costs over the corresponding allowances. The amounts invoiced for Chemicals, Laboratory Services and Sludge Disposal shall not include any labor costs for VVNAOS's staff assigned to the Project nor any mark-up. Amounts invoiced for Repairs and Additional Services and/or Capital Projects will be subject to markup in accordance with Sections 2.16 and 2.17.

2.7 Rebate CITY the remaining balance, of the Repairs, Chemicals, Laboratory Services and Sludge Disposal annual cost allowances, to the extent actual annual costs for such items are less than the Annual Limit Account in any year of this Agreement. The CITY will pay or reimburse VVNAOS for any costs incurred by VVNAOS in excess of the Annual Limit Accounts, with CITY's prior written authorization pursuant to Section 2.5.

2.8 Pay all Cost(s) incurred in normal Project operations, including the Maintenance and Repair of all Project equipment and facilities. The first Four Thousand Dollars (\$4,000.00) of all Maintenance and/or Repairs will be paid by VVNAOS from the Repairs annual cost allowance in Article 2.5. VVNAOS shall submit a Maintenance and/or Repairs recommendation request to CITY for any item in excess of Four Thousand Dollars (\$4,000.00) in writing and shall proceed only upon the written approval of CITY. In any emergency affecting the safety of persons or property, VVNAOS may act without written amendment or change order, at VVNAOS's discretion, to prevent damage, injury or loss. Approval may be in verbal form should the request be deemed an emergency repair/replacement necessary to comply with the Wastewater Facility Permit or to control conditions that would have an adverse impact to the general public's health and welfare followed by a written approval.

2.9 Provide a list of capital needs along with cost estimates for the Wastewater Treatment Facility and Lift stations each year prior to June 1.

2.10 Staff the Project with employees who have met the licensing and certification requirements of the State of Florida, as applicable, and provide copies to the CITY of all licenses. VVNAOS shall provide ongoing training and education for appropriate personnel in all necessary areas of modern wastewater process control, operations, maintenance, safety, management, and supervisory skills. Furthermore, VVNAOS covenants and agrees that it and its employees shall be bound by the Standards of Conduct of the State of Florida Statutes, Chapter 112.313, as it relates to work performed under this Agreement and agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed. VVNAOS shall comply with all federal, state, and local laws, regulations and

ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or natural origin in the performance of work under this Agreement. VWNAOS shall ensure that all personnel, support personnel, and other agents are fully qualified and capable of performing their assigned tasks and shall provide the necessary training for its personnel assigned to the project in the areas of operations, maintenance, safety, laboratory, energy management and other similar areas. VWNAOS shall notify and obtain approval from the CITY of any change or substitution to VWNAOS's key personnel before said changes can become effective.

2.11 Prepare all Domestic Wastewater Facility Permit reports related to services provided in and under this Agreement, and submit these to the CITY for certification and transmittal to appropriate agencies.

2.12 Provide for the disposal of screenings, grit, sludge and scum to the existing approved disposal sites or other sites as may be acquired and approved through applicable regulatory agencies. It shall be the sole right and responsibility of CITY to designate, approve, or select disposal sites to be used by VWNAOS for CITY's waste materials. All waste and/or byproduct treated and/or generated during VWNAOS's performance of services is and shall remain the sole and exclusive property of CITY. All manifests and other documentation required for disposal of waste shall be signed by the CITY.

2.13 Perform and/or provide all laboratory testing and sampling required by the Domestic Wastewater Facility Permit related to services provided in and under this Agreement. VWNAOS shall provide all quarterly monitoring for the Reclaim Water monitoring wells.

2.14 Provide a physical inventory of CITY vehicles and equipment that are being used at the Project and a general statement as to the condition of each vehicle and piece of equipment within forty-five (45) days after the beginning of each contract year.

2.15 Provide twenty-four (24) hour per day access to Project for CITY personnel. Visits may be made at any time by any of CITY's employees, consultants or contractors so designated by CITY. Keys or transmitters for Project shall be provided to the CITY by VWNAOS. All visitors to the Project shall comply with VWNAOS's operating and safety procedures.

2.16 Perform Repairs that are incidental to the Scope of Services or as directed by CITY. Repairs costs will include the sum of all necessary components to complete the specific Repair activity in full (i.e. labor, chemicals, materials, supplies, utilities, equipment, subcontractors, specialty subcontractors, other outside services, etc.), such that the specific Repair activity is not separated into pieces for the purpose of determining the overall cost.

2.17 Perform Additional Services and/or implement Capital Projects that are incidental to the Scope of Services as directed by CITY. Such Additional Services and Capital Projects will be subject to a markup on VWNAOS' Costs to be negotiated and agreed to in writing which shall not exceed ten percent (10%). .

2.18 Operate the facilities in a manner such that odor and noise shall be controlled within the design capacity and parameters of the facilities.

2.19 Maintain all Project warranties, guaranties and licenses that have been granted to CITY on new equipment purchased by CITY for use as part of the Project and assist CITY in enforcing equipment warranties and guarantees. VWNAOS shall provide CITY with full documentation that preventative maintenance is being performed on CITY owned equipment in accordance with manufacturers' recommendations at intervals and in sufficient detail as may be determined by CITY. This maintenance program shall include documentation of corrective and preventative maintenance and a spare parts inventory.

2.20 Staff the project 7 days a week for sixteen (16) hours a day, in accordance with the Domestic Wastewater Facility Permit, along with night and weekend work as necessary. VWNAOS personnel shall be available on call twenty-four (24) hours per day, seven (7) days per week to respond to emergencies (i.e. alarms, complaints, equipment failures, etc.). Except as provided above, emergency labor provided for call outs not related to the facilities described in Appendix B will be documented by VWNAOS and a detailed invoice will be submitted to the CITY for reimbursement at a rate of actual Cost per hour.

2.21 Provide a full time, on-site Project Manager. The assigned Project Manager shall be mutually agreed to by CITY and VWNAOS. The Project Manager shall initially be Ray D'Aiuto.

2.22 If requested by the CITY Representative and agreed to by VWNAOS, VWNAOS shall purchase Consumables and Fixtures (defined below) as agent of the CITY in connection with the operation, management, maintenance and improvement of the CITY's Facilities as provided below:

a. Fixtures and Consumables. For the purposes of this Section, the term "Fixtures" shall include equipment, machinery, spare parts and other improvements which are integrated in or become fixtures of the Facilities. The term "Consumables" shall include electricity, chemicals and other items that are used in connection with the operation of the Facilities.

b. Authority. VWNAOS is authorized by the CITY to act as its agent for purposes of purchasing Fixtures and Consumables for the sole ownership, use and benefit of the CITY in the operation, management, maintenance and improvement of the Facilities. VWNAOS is authorized and directed to purchase, as agent for the CITY, such Fixtures and Consumables as may be necessary or helpful in the operation of the Facilities. The existence of the above agency relationship shall be disclosed to vendors, suppliers and other providers of such Fixtures and Consumables to the extent required effectuating the purposes of this agency. VWNAOS and the CITY shall work together to take any actions required to accomplish the objectives of this paragraph.

c. Direction, Supervision, Control. The CITY shall have the right and authority to approve proposed purchases of Fixtures and/or Consumables in, and VWNAOS shall periodically report to the CITY, as may be reasonably requested or required under the Agreement, regarding the Fixtures and Consumables purchased under the above authority. Fixtures and Consumables shall only be purchased and used for the sole ownership, use and benefit of the CITY in the operation, management, maintenance and improvement of the Facilities.

d. Title. Notwithstanding anything to the contrary contained herein, all right title and interest in and to the purchased Fixtures and Consumables shall be held by and pass directly to the CITY, however, VWNAOS may hold title as nominee of the CITY when determined to be expedient by the Parties but this arrangement shall in no event change or affect the ownership of the Fixtures and Consumables by the CITY.

e. Reimbursement. The CITY shall reimburse VWNAOS for all costs and expenses incurred by VWNAOS in connection with the purchase of Fixtures and Consumables as agent for the CITY in accordance with the terms of this Agreement,

f. Taxes. Notwithstanding anything to the contrary contained herein the Parties intend that all purchases of Fixtures and Consumables that VWNAOS makes as agent for the CITY under the Agreement shall be exempt from Florida sales and use tax to the greatest extent allowed by law. VWNAOS is authorized and directed to use the CITY's sales and use tax exemption certificate(s) in connection with the purchases of Fixtures and Consumables for the CITY, and VWNAOS may present such sales and use tax exemption certificate(s) to vendors, suppliers and other providers of such Fixtures and Consumables in connection with such purchases. In the event that sales or use taxes are due and payable on the purchase of any Fixtures or Consumables at the time of purchase or subsequently determined to be due at a later date, the CITY agrees to immediately reimburse VEOLIA for such sales and use taxes if paid by VWNAOS pursuant to this Agreement.

2.23 The intent of the CITY is to have VWNAOS operate, maintain, repair, manage, administer the CITY's Facilities and provide planning, design, construction, improvement, financing in connection with the CITY's Facilities to the full extent allowed by F.S. 153.90 et seq. The initial scope of services covers the Facilities described in Appendix B. The CITY shall have the right to amend Appendix B at its discretion to add to the list of Facilities covered by the Agreement and the services provided by VWNAOS, and in such event, the parties will negotiate an appropriate change to the Base Fee by mutual agreement.

2.24 The CITY agrees to retain to provide and/or perform and VWNAOS agrees to provide and/or perform engineering, design and construction services ("Capital Improvements") in connection with the Facilities during the term of the Agreement. All such work will be subject to mutual agreement of the parties and shall be documented as a work assignment issued under this Agreement. All such work will be performed under the terms and conditions contained in Appendix G.

2.25 If mutually agreed to by the CITY and VWNAOS, VWNAOS will finance all or part of the Capital Improvements covered by Section 2.24 above. In the event that Veolia finances Capital Improvements, the parties shall negotiate the terms of repayment and default at the time of financing.

2.26 VWNAOS' Authorized Representative shall be Ray D'Aiuto.

3. SCOPE OF SERVICES - CITY

CITY shall:

3.1 Fund, subject to the CITY approving the Capital Expenditure Budget to include funding of the item for fiscal year, all Capital Expenditures or grant approval for VWNAOS to make reimbursable Capital Expenditures at cost with markup as provided in Section 2.17, such costs to be reimbursed to VWNAOS within sixty (60) days. Any loss, damage, or injury resulting from CITY's failure to provide capital improvements when reasonably requested by VWNAOS, shall be the sole responsibility of CITY if, pursuant to industry standards, the requested capital improvement was necessary.

3.2 Provide approval for VWNAOS to perform Repairs, provide Additional Services, fund Capital Expenditures and/or implement Capital Projects. Any loss, damage, or injury resulting from CITY's failure to provide capital improvements when reasonably requested by VWNAOS, shall be the sole responsibility of CITY if, pursuant to industry standards, the requested capital improvement was necessary.

3.3 Maintain all existing Project warranties, guarantees, easements, and licenses that have been granted to CITY.

3.4 Pay all property, franchise, or other taxes associated with the Project other than taxes imposed on VWNAOS's income.

3.5 Provide VWNAOS, within a reasonable time after request any piece of CITY's heavy equipment that is available so that VWNAOS may discharge its obligations under this Agreement in the most cost effective manner. Availability of equipment will be subject to the CITY's reasonable discretion. Provision of such equipment shall be made without cost to VWNAOS, with the exception of costs to repair damage done at the fault of VWNAOS.

3.6 Provide all licenses for CITY vehicles used in connection with the Project.

3.7 Provide for VWNAOS's use all CITY vehicles and equipment currently in use at the Project, including vehicles described in Appendix D.

3.8 Pay all electric costs associated with the operation of the Project.

3.9 CITY's authorized representative shall be the Mayor or the Mayor's designee, as identified in writing by the Mayor.

4. COMPENSATION

4.1 Beginning on September 1, 2012, to December 31, 2012, CITY shall pay VWNAOS as compensation for services under this Agreement a Base Fee of \$55,579.50 per month. The City shall also provide the monthly limit account charges described in Section 2.5 of the Agreement in the amount of \$41,226.08. Beginning January 1, 2013, and continuing through December 31, 2013, CITY shall pay VWNAOS as compensation for services under this Agreement a Base Fee of \$60,526.58 per month (i.e., an annual Base Fee of \$726,319.00), and shall provide the monthly limit account charges described in Section 2.5 of the Agreement in the amount of \$41,226.08. The subsequent annual Adjusted Base Fee(s) shall be determined as hereinafter specified.

4.2 The Adjusted Base Fee shall be negotiated annually prior to June 30 for the

subsequent CITY fiscal year. Should the CITY and VWNAOS fail to agree, the Adjusted Base Fee will be determined by application of the Base Fee adjustment formula shown in Appendix E.

4.3 The parties shall negotiate each fiscal year the Annual Limit Accounts for Repairs, Chemical, Laboratory Services and Sludge Disposal listed in Article 2.5. Should CITY and VWNAOS fail to agree, the Repair, Chemical, Laboratory Services, Sludge Disposal, and Additional Services and/or Capital Improvement cost allowances will be determined by the application of the same adjustment formula referred to in Article 4.2.

4.4 VWNAOS will true-up the Annual Limit Accounts with the CITY at the end of each year in accordance with Sections 2.5, 2.6 and 2.7 above.

4.5 In the event that a change in the scope of services provided by VWNAOS occurs, including but not limited to; legal or regulatory requirement changes, reporting requirements, monitoring requirements, level of treatment requirements, personnel qualifications or staffing required by any governmental agency having jurisdiction over such changes, CITY and VWNAOS will negotiate a commensurate adjustment to the Base Fee or Adjusted Base Fee, as appropriate.

5. PAYMENT OF COMPENSATION

5.1 One-twelfth (1/12) of the total annual Base Fee for the current fiscal year shall be due and payable on the first of the month for each month that services are provided. One-twelfth (1/12) of the Annual Limit Accounts shall be paid on the same schedule as the payment of the monthly share of the Base Fee.

5.2 All other compensation to VWNAOS is due on receipt of VWNAOS's itemized invoice and payable within thirty (45) days.

5.3 Any monies arising from Article 2.7 will be paid to CITY within ninety (90) days after the end of each contract year or the receipt of the invoice from VWNAOS, as applicable.

5.4 CITY shall pay interest at an annual rate equal to the Nations Bank's prime rate plus one half percent (0.5%), said amount of interest is not to exceed and limitation provided by law, on undisputed payments not paid within the required time period provided in this Agreement, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

6. INDEMNITY, LIABILITY AND INSURANCE

6.1 VWNAOS shall indemnify CITY and hold it harmless from any claims, damages, fines, fees, expenses, costs or demands by third parties arising from:

- a. VWNAOS' operation, control and maintenance of the Project not in conformance with the terms and conditions of this Agreement; and
- b. Any default of VWNAOS under this Agreement;

- c. The negligence of VWNAOS and its agents, contractors or employees or any of them in connection with the operation, control and maintenance of the Project, etc.; and
- d. Any damage to the property of CITY, not otherwise covered by insurance as provided herein, or others or injury to any person on or about the Project caused by VWNAOS, its agents, contractors or employees; and
- e. Any legal or administrative proceeding related to the entering into this Agreement or the retaining of VWNAOS for actions taken pursuant to this Agreement or in violation or contradiction of state statute; and
- f. Any legal or administrative proceedings occasioned by VWNAOS in which CITY is made a party without CITY's fault; and
- g. All reasonable costs, reasonable attorney's fees and reasonable expenses incurred by CITY in connection with the items indemnified against. VWNAOS shall defend any legal action or proceedings resulting from a claim or demand indemnified against, at its expense, on receipt of proper notice from CITY to do so. Additionally, VWNAOS shall have the exclusive right to select legal counsel to defend the CITY against those claims or demands for which VWNAOS has a legal obligation to indemnify the CITY.

6.2 Subject to the limitations set forth herein, CITY hereby agrees to indemnify for claims brought against VWNAOS for actions related to the operation, maintenance and management of the Project, but only to the extent that the claims are found to result from the negligence of the CITY, its governing body, or its employees. This indemnification shall not be construed to be an indemnification for the acts or omissions of any third parties, independent contractors, or third party agents of the CITY. Nothing contained in this Agreement shall be construed as a waiver of the CITY'S sovereign immunity. This indemnification shall be limited to only such traditional liabilities for which the CITY could be liable under applicable law. Any claims brought against the CITY shall comply with the procedures found in Section 768.28, Florida Statutes. The value of this indemnification is limited as provided in Section 768.28, Florida Statutes. This indemnification shall not include any attorney's fees or costs associated therewith.

6.3 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 loss of profits, loss of opportunity, loss of product or loss of use unless such action or claim is the result of gross negligence or willful conduct of the party sought to be held liable. Any protection against liability for losses or damages afforded any individual or entity by these terms or by law 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.

6.4 VWNAOS shall indemnify the CITY for those fines or civil penalties imposed by a regulatory agency for violations that are the result of VWNAOS's negligence or willful misconduct, including violations of the effluent or reclaimed water quality requirements contained in the Project's Domestic Wastewater Facility Permit. CITY will assist VWNAOS to contest any such fines in administrative proceedings and/or in court prior to any payment by VWNAOS. VWNAOS shall pay the cost of contesting any such fines, including attorney's fees of both VWNAOS and the CITY.

6.5 CITY shall be liable for those fines or civil penalties imposed by any regulatory agencies on CITY and/or VWNAOS that are not a result of VWNAOS' negligence or willful misconduct and are directly related to the ownership of the Project.

6.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix F. Each party shall include the other party as an additional insured on all insurance policies covering the Project (excluding workers compensation) and shall provide the other party with satisfactory proof of insurance. In the event CITY's insurer may not include VWNAOS as an additional insured, CITY may satisfy this requirement by providing VWNAOS copies of its current insurance and agreeing hereby to hold such insurance on VWNAOS's behalf to satisfy the terms hereof. Each party shall additionally provide a waiver of subrogation in favor of the other party, as respects any claims covered or which should have been covered by valid and collectible insurance, including any deductibles or retentions maintained thereunder.

6.7 To the fullest extent permitted by law and notwithstanding any other provision of this Agreement, VWNAOS'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 Section 6.1 of the Agreement, shall be limited to, the greater of,: (i) general money damages in an amount equal to the amount of any proceeds of insurance received by the CITY or to which VWNAOS is entitled pursuant to any general liability insurance or automobile liability policy required to be maintained by VWNAOS hereunder as specified in Appendix F (without regard to the amount of any deductible which may be applicable under any such general liability or automobile liability policy) with respect to such loss; or (ii) to the extent proceeds of insurance are not recovered or such general liability or automobile insurance is not applicable, a cumulative aggregate over the full initial term lease as is of this agreement of an amount not to exceed \$5,000,000.00; provided, however, in the event payments are made to the CITY pursuant to this Article 6 in an amount meeting or exceeding \$2,500,000.00 during the full term of this Agreement, the CITY shall be entitled to terminate this Agreement after allowing VWNAOS thirty (30) days to determine whether to increase the amount of the obligation to the CITY pursuant to this Section 6.7 in which event the City's shall not have the right to terminate.

7. TERM, TERMINATION AND DEFAULT

7.1 The initial term of this Agreement shall be ten (10) years four (4) months, commencing on September 1, 2012 and ending on December 31, 2022. This Agreement shall automatically be extended for five additional 2-year periods, unless canceled in writing by one of the parties hereto at least 120 days prior to the end of the then current term. Any prior

Agreement(s) between the parties shall be terminated immediately upon this Agreement becoming effective..

7.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, except in case of a breach by OWNER for non-payment of VWNAOS's invoices, in which case termination may be immediate by VWNAOS, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.

7.3 Upon notice of termination by CITY, VWNAOS shall assist CITY in assuming operation of the Project. If additional Cost is incurred by VWNAOS at request of CITY, CITY shall pay VWNAOS such Cost in accordance with Article 5.2.

7.4 This Agreement shall terminate at such time as CITY may sell, convey or transfer its wastewater treatment plant or system, or a substantial part thereof, to another governmental agency to provide services. CITY shall give VWNAOS as much advance notice as possible prior to any such sale, transfer or conveyance.

8. LABOR DISPUTES AND FORCE MAJEURE

8.1 In the event activities by CITY's employee groups or unions cause a disruption in VWNAOS's ability to perform at the Project, CITY, with VWNAOS's assistance, or VWNAOS at its own option, may seek appropriate injunctive court orders. During any such disruption, VWNAOS shall operate the facilities on a best efforts basis until any such disruptions cease.

8.2 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which are directly attributed to such litigation, in addition to any other relief to which it may be entitled.

8.3 Neither party shall be liable for its failure to perform its obligations under this Agreement if performance is made impractical, abnormally difficult, or abnormally costly, as a result of any unforeseen occurrence beyond its reasonable control. The party invoking this Force Majeure clause shall notify the other party immediately by verbal communication and in writing by certified mail of the nature and extent of the contingency within ten (10) working days after its occurrence.

Both parties indicate their approval of this Agreement by their signatures below and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been taken.

**VEOLIA WATR NORTH,
AMERICA OPERATING
SERVICES, LLC**

By: _____

Name: _____

Title: _____

Date: _____

CITY OF PALMETTO

By: _____
Shirley Groover Bryant, Mayor

Date: _____

ATTEST:

Jim Freeman, City Clerk

APPENDIX A

DEFINITIONS

A.1 "Additional Services" means services incidental to items included in the annual list of capital needs, services requested by the CITY that are not included in the VWNAOS Scope of Services as routine services, and/or additional routine services in amounts that exceed those contemplated in the Scope of Services. Such Additional Services may include VWNAOS subcontracting work to specialty subcontractors.

A.2 "Adequate Nutrients" means plant influent nitrogen, phosphorous and iron contents proportional to BODs in the approximate ratio of five (5) parts nitrogen, one (1) part phosphorous, and one-half (0.5) part iron for each one hundred (100) parts of BOD₅.

A.3 "Biologically Toxic Substances" means any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of CITY's Domestic Wastewater Facility Permit. Biologically toxic substances include but are not limited to heavy metals, phenols, cyanides, pesticides and herbicides.

A.4 "Capital Expenditures" means any expenditures for (1) the purchase of new equipment or facility items that cost more than Three Thousand Dollars (\$3,000.00); or (2) major repairs that significantly extend equipment or facility service life and cost more than Four Thousand Dollars (\$4,000.00); or (3) expenditures that are planned, non-routine, and budgeted by CITY.

A.5. "Capital Improvement Program" means the Program that is developed by VWNAOS and reviewed annually to implement Capital Projects that will improve the operation of the CITY's Facilities, expand the capacity of the CITY's Facilities, and/or are required by Changes in Law or Uncontrollable Circumstances. The CITY may elect to request that VWNAOS provide and/or perform the items included in the Capital Improvement Program, including Capital Projects, use their own forces, or procure them through other means as provided in this Agreement.

A.6 "Capital Project" means a capital addition, improvement or upgrade to the System to be performed by VWNAOS which is of a long-term character or effect, such as land, buildings and Equipment, requested by the CITY and agreed to by VWNAOS. A Capital Project shall not include maintenance of Equipment or the Facilities unless otherwise noted herein.

A.7 "Cost" means the total of all costs determined on an accrual basis in accordance with generally accepted accounting principles, including but not limited to direct labor, labor overhead, chemicals, materials, supplies, utilities, equipment, Maintenance, Repair and outside services.

A.8 "Domestic Wastewater Facility Permit" means the current State of Florida Domestic Wastewater Facility Permit number FL002040I (Major) which expires June 16, 2015 and any

subsequent renewals.

A.9 "Laboratory Services" means the use of a sub-contractor to provide testing of samples.

A.10 "Maintenance" means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or VWNAOS to maximize the service life of the equipment, sewer, vehicles and facility.

A.11 "Project" means all equipment, vehicles, grounds and facilities described in Appendix B and, where appropriate, the management, operations and maintenance of each.

A.12 "Repairs" means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally resulting from failure or to avert a failure of the equipment, sewer, vehicle or facility or some component thereof.

A.13 "Sludge Disposal" means the removal of sludge from the Wastewater Facility by use of a sub-contractor in compliance with the Domestic Wastewater Facility Permit.

A.14 "Unforeseen Occurrence" means any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement; including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of public enemy, war, blockade, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any local, province, administrative agency or government body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body, (iv) labor disputed, strikes work stoppages, but excluding labor disputes, strikes work slowdowns or work stoppages by employees of VWNAOS; and (v) loss or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

A.15 "Wastewater Pumping Station" means the facility to pump sewage from a wet well through a force main to a gravity system or to the Wastewater Treatment Facility. This includes, but not limited to all pumps, electrical components, access hatches, piping from the wet well through the stations valve pit including plug valves and check valves, fencing, landscaping and grounds.

APPENDIX B

LOCATION OF PROJECT AND LIFT STATIONS

B.1 VWNAOS agrees to operate, maintain, repair, manage, administer and to provide planning, design, construction, improvement, financing in connection with the following CITY Facilities:

- a) All equipment, vehicles as set forth in Appendix D, grounds (except as otherwise provided for in Section 2.2) and facilities now existing within the current property boundaries of or being used to operate City's Wastewater Treatment Facility located at: 1400 28th Avenue West, Palmetto, Florida 34221.
- b) All equipment, ground and facilities now existing within the current property boundaries of wastewater pumping stations described as follows:

<u>Number</u>	<u>Address</u>	<u>Name</u>
No.1	1310 28th Avenue West	WWTF'
No.2	708 20th Avenue West	20th Ave & 8th St
No.3	300 13th Avenue West	Riverside Dr & 13th Ave W
No.4	1300 13th Street West	Fairgrounds 13th Ave & 13th St
No.5	600 16th Street West	Public Works
No.6	500 5th Street West	Jet 5th Ave & 5th St
No.7	405 17th Street West	Youth Center 4th Ave and 17th St.
No.8	900 9th Avenue East	Colonial
No.9	1000 1st Avenue Ct. East	Overpass 1st St. Ct & 2nd Ave
No. 10	311 4th Street West	Little Jet 4th St/ Wisconsin
No. 11	900 9th Avenue East	Little Colonial
No. 12	1235 8th Avenue West	12th St & 8th Ave
No. 13	1016 12th Avenue East	Moorehead Industrial Park
No. 14	7 51 10th Street East	Palm Bay Mobile Home Park
No. 15	1507 20th Avenue West	Flagstone Ac & Palm Lake
No. 16	4449 13th Street West	Heritage Bay
No. 17	1697 17th Street West	1600 17th Street W
No.18	700 North Haben Blvd.	School for the Arts
No.19	4307 10th Street West	Bradenton Yacht Club
No. 20	1911 8th Avenue West	1900 8th Ave/ Carriage Court
No. 21	511 3rd Street West	500 3rd St Dr.
No.22	1401 14th Avenue West	Church on the Rocks
No.23	4708 17th Street West	Amberwyn Snead Island
No. 24	2320 14th Dr. W.	Terra Ceia Bay Golf and Tennis
No.25	102 8th Street West	Palmetto Trace
No. 26	Canal Road	Winn Dixie
No. 27	24 th Court West	Mangrove Point Snead Island
No.28	320 10 th Ave E	North Shore @Riviera Dunes
No. 29	1650 12 th St.E.	Canal Road Industrial Park
No. 30	210 12th Ave E	Peninsula & Hammocks @ Riviera
No. 31	210 1st St E	Commercial@ Riviera Dunes
No. 32	808 Riviera Dunes Way	Island @ Riviera Dunes
No. 33	101 US 41 N.	Estuary Park Restrooms

No. 34	3614 10 th Lane W.	River bay Town Homes
No. 35	1925 24th St Circle W	Bocage Subdivision
No. 36	2719 4 th Ave. W.	Oak Bend
No. 37	1700 21 st . W.	Fairway Estates
No. 38	601 US 41 N.	Estuary North
No. 39	TBD	Sanctuary Cove #1
No. 40	TBD	Sanctuary Cove #2
No. 41	TBD	Sanctuary Cove #3

B.2 VWNAOS and CITY agree that CITY shall have the right to amend Section B.1 above, as may be necessary or the CITY may determine to do from time to time, and in such event, the parties will negotiate an appropriate change to the Base Fee by mutual agreement. Any such amendments shall be in writing, signed by both parties, and properly incorporated into this Agreement.

APPENDIX C

DOMESTIC WASTEWATER FACILITY PERMIT AND PROJECT CHARACTERISTICS

C.1 VWNAOS will operate Project so that effluent will meet the requirements of Domestic Wastewater Facility Permit No. FL0020401 (copy attached), which permit expires on June 16, 2015, as same may be amended from time to time, and any other applicable permits. VWNAOS shall be responsible for meeting the effluent quality requirements of CITY's Domestic Wastewater Facility Permit unless one or more of the following occurs: (1) the Project influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances that cannot be removed by the existing process and facilities; (2) dischargers into CITY's sewer system violate any or all regulations as stated in CITY's Industrial Water Ordinances(s), Sewer Ordinance(s) or other applicable published guidelines; (3) the flow, influent BOD₅, and/or suspended solids exceeds the Project design parameters, which are -a 3-month moving average of 2.4 million gallons of flow per day, 4003 pounds of BOD₅ per day, 4003 pounds of suspended solids, and a daily peaking factor of 1.5 times flow; (4) the Project is inoperable or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes, or other causes beyond VWNAOS's control; or (5) the effluent discharged exceeds the Permit discharge parameter which is 1.4 million gallons per day (3 MADF). Should any of these situations occur, VWNAOS will use its best efforts to meet the requirements of the Domestic Wastewater Facility Permit.

C.2 In the event anyone of the Project influent characteristics, suspended solids, BOD₅, or flow, exceeds the design parameters stated above, VWNAOS shall return the plant effluent to the characteristics required by the Domestic Wastewater Facility Permit in accordance with the following schedule after Project influent characteristics return to within design parameters.

<u>Characteristics Exceeding Design Parameters by</u>	<u>Recovery Period Maximum</u>
10% or less	5 days
Above 10% Less than 20%	10 days
20% and above	30days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then VWNAOS will have a thirty (30) days recovery period after the influent is free from said substances or contains Adequate Nutrients.

C.3 VWNAOS shall not be responsible for fines or legal action as a result of discharge violations within the period (and the subsequent recovery period) that influent exceeds design parameters, does not contain Adequate Nutrients, or contains Biologically Toxic Substances.

APPENDIX D

VEHICLE DESCRIPTION

CITY agrees to provide the following equipment to VWNAOS to assist in the operation and maintenance of the Project:

E.1 Portable Generator 60 KV A

E.2 Lift Station Vehicle

E.3 Two (2) Gators

E4 Portable Trash Pump

All VWNAOS personnel operating a CITY vehicle or equipment shall comply with all applicable laws of the State of Florida, as well as, any additional regulations, rule, policy or procedure of CITY.

VWNAOS and CITY agree that CITY and VWNAOS shall have the right to amend APPENDIX D as may be necessary from time to time. Any such amendment shall be in writing, signed by both parties, and properly incorporated into this Agreement.

APPENDIX E

NOTE: THIS IS STILL BEING DISCUSSED

BASE FEE ADJUSTMENT FORMULA

ABF for second year of Agreement = BF x AF

ABF for years subsequent to second year of agreement = [ABF of previous year] x AF

Where

BF = Base Fee specified in Article 4.1 (fee for first full year of Agreement - 2013)

ABF = Adjusted Base Fee

AF = $1 + 0.5 [(CPI - CPI_0) / CPI_0 + (CPI-S - CPI-S_0) / CPI-S_0]$

CPI = CPI-U U.S. City Average, All Items

(CUUR0000SA0) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the month four (4) months prior to the beginning of the period for which the Adjusted Annual Fee is being calculated.

CPI_0 = CPI-U U.S. City Average, All Items

(CUUR0000SA0) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the month sixteen (16) months prior to the beginning of the period for which the Adjusted Annual Fee is being calculated.

CPI-S = CPI-U U.S. City Average, Water and Sewer and Trash Services

(CUUR0000SEHG) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the month four (4) months prior to the beginning of the period for which the Adjusted Annual Fee is being calculated.

$CPI-S_0$ = CPI-U U.S. City Average, Water and Sewer and Trash Services

(CUUR0000SEHG) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the

month sixteen (16) months prior to the beginning of the period for which the Adjusted Annual Fee is being calculated.

If the CPI is no longer published at the time that adjustment is to be calculated, or if the base or method of calculation used for the CPI is altered, the calculation shall be made using a comparable similar index or method mutually agreed upon by the City and VWNAOS.

APPENDIX F
INSURANCE COVERAGE

VWNAOS shall maintain:

1. Statutory workers' compensation for all of VWNAOS's employees at the Project as required by the State of Florida in amounts not less than One Million Dollars (\$1,000,000.00) in liability for each accident, One Million Dollars (\$1,000,000.00) for each employee per disease, and with not less than One Million Dollars (\$1,000,000.00) policy limit.
2. Commercial general liability insurance in an amount not less than Three Million Dollars (\$3,000,000.00) combined single limits for bodily injury and/or property damage.
3. Commercial Automobile liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limits for bodily injury and/or property damage.

CITY shall maintain:

1. Property damage insurance for all property including vehicles and equipment owned by CITY and operated by VWNAOS under this Agreement. Any property, including vehicles, not properly or fully insured being the financial responsibility of CITY.

Each party's insurer shall provide at least ten (10) days notice of the cancellation of any policy, including without limitation, workers compensation insurance, it is required to maintain under this Agreement.

APPENDIX G

DESIGN, PLANNING, ENGINEERING AND CONSTRUCTION OF CAPITAL PROJECTS

1. Capital Project Procurement Process. VWNAOS shall assist the CITY in the preparation of the specifications for Capital Project pertaining to the Facilities during the term of the Agreement. VWNAOS shall submit to CITY a proposal to perform the Capital Project, either as Construction Manager, or Contractor, depending upon the wishes of the CITY and after review of the cost of the Capital Project, which may include the planning, design, engineering and construction of the Capital Project. VWNAOS will perform any engineering using licensed engineers as required by law. VWNAOS may bid out major parts of the work in advance of reaching agreement with the CITY for a Guaranteed Maximum Price for the Capital Project. The scope of work, compensation and terms of the Capital Project will be documented in a work assignment issued under this Agreement.
2. Design Phase Services
 - a. VWNAOS will be compensated for the Design Phase Services as agreed to by the parties in writing. The Design Phase may include the bidding out of major parts of the proposed Capital Project and VWNAOS' determination and recommendation to the CITY of the lowest responsible bidders for each part of the bid work.
 - b. At the end of the Design Phase Services, VWNAOS will provide the CITY with a Guaranteed Maximum Price ("GMP") for the Construction Phase of the Project that includes the subcontracted parts of the work agreed to by the parties.
 - c. During the Design Phase, VWNAOS may include the following Design Phase Services:
 - (i) General Coordination.
 - (ii) Scheduling
 - (iii) Budget and Cost Consultation.
 - (iv) Coordination of Design and Contract Documents.

(v) Construction Planning.

- (1) Identify for and recommend to CITY the need for purchase of items requiring extended delivery times ("long lead items"), and expedite the procurement of such items to ensure their delivery by the required dates. If agreed to by the parties, issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.
- (2) Review the drawings
- (3) Schedule and conduct pre-bid conferences with interested bidders, subcontractors, material suppliers, and equipment suppliers, and record minutes of same.
- (4) Coordinate and develop bid packages and work scope descriptions for each separate bid category that represent the entirety of the scope of the Work for each phase and stage of the Project.
- (5) Advertise and solicit either competitive bids or competitive sealed proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work. VVNAOS may seek to perform portions of the work itself if VVNAOS submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if CITY, in its sole discretion, determines that VVNAOS's bid proposal provides the best value for CITY.
- (6) Assist CITY in obtaining all applicable risk management, code, and regulatory agency reviews and approvals for the Project or any portion thereof including, without limitation, the TCEQ, EPA, the fire department providing fire protection, and all other agencies with jurisdiction over the Project.
- (7) Advise CITY of any tests to be performed, and assist CITY in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants.
- (8) Review contract documents to ensure that they contain adequate provision for all temporary facilities necessary to enable the Subcontractors to perform their work, and provisions for all of the job site facilities necessary to manage, inspect, and supervise construction of the Work.

- (9) Initiate, maintain, and supervise all safety precautions and programs in connection with the Work. VWNAOS shall provide recommendations and information to CITY with respect to the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. VWNAOS shall verify that such assignments with respect to the Subcontractors are included in the contract documents.
- (10) Provide an analysis of the types and quantities of labor required for the Project and review the appropriate categories of labor required for critical phases or Stages. Make recommendations for actions, which will minimize adverse effects of labor shortages.

d. **Guaranteed Maximum Price (GMP)**

When the drawings and specifications are sufficiently complete for all or a portion of the Work, the CITY may request for VWNAOS to submit a GMP with the contract time and date of Substantial Completion. If the CITY accepts the proposal, VWNAOS shall proceed with the construction phase of the Capital Project.

3. **Construction Phase Services**

- a. The Construction Phase shall be deemed to commence upon the earlier of (i) the date specified in a Notice to Proceed issued by CITY after approval by CITY of a GMP for the Work or portion of the Work specified in such Notice to Proceed, (ii) the issuance of a purchase order by VWNAOS for materials or equipment for the Project after prior written authorization by CITY, or (iii) award of a Subcontract in accordance with the requirements of this Contract and after prior written authorization by CITY. Design Phase Services may overlap Construction Phase Services.
- b. In implementation of the responsibilities and duties of VWNAOS for the Construction Phase Services, VWNAOS may provide the following services as agreed by the parties in writing:
 - (i) **Project Control.**
 - (1) VWNAOS shall perform the Work, depending upon the role of VWNAOS, in strict accordance with the terms agreed to by the parties including the Schedule approved by CITY. VWNAOS shall award, , as either construction manager or contractor, as appropriate, all Subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project.

- (2) Monitor the Work of the Subcontractors as required and coordinate such Work with the activities and responsibilities of the Project with a goal to attain completion of the Project at a cost not to exceed the GMP, and to attain Substantial Completion by the date agreed to by the parties.
 - (3) Attend Project progress meetings scheduled by CITY no less often than once per month, and fully advise the Project Team at such meetings as to Project status.
 - (4) Schedule, direct and attend regular meetings with other members of the Project Team during the construction of the Project.
 - (5) Coordinate and provide general direction over the Work and progress of the Subcontractors of the Project.
 - (6) Supervise and direct the Work
 - (7) Provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the agreement of the parties.
 - (8) Obtain all required building or other construction permits and special permits for permanent improvements as required by law or the Contract Documents.
 - (9) Assist the CITY in obtaining all approvals required from authorities having jurisdiction over the Project.
 - (10) Inspect the Work of Subcontractors to ensure conformance with the contract documents.
- (ii) Scheduling.
- (1) Perform Project scheduling
 - (2) Provide regular monitoring, updating, and reissuing of all the Project Schedules as construction progresses
 - (3) Incorporate activities of the Subcontractors and other parties affecting the progress of the Work
 - (4) Include CITY's occupancy requirements and occupancy priorities.

- (5) Evaluate Subcontractor's personnel and equipment, and availability of supplies and materials, with respect to each Subcontractor's ability to meet the Schedule. Recommend action to CITY when any Subcontract requirements are not met, or appear unlikely to be met.

(iii) Cost Control.

- (1) Maintain cost accounting records in good form on expenditures and materials.
- (2) Prepare and administer, and provide to CITY, Subcontractors' schedule of values or pay items, Subcontractors' sworn statements and waivers of lien as required, contract and disbursement summaries, change order listings and change orders, and budget cost summary reports as required by CITY.
- (3) VWNAOS shall promptly identify all variances between estimated costs and actual costs.

(iv) Change Orders.

Develop and implement a system acceptable to CITY for the preparation, review and processing of change order requests.

- (v) Safety. VWNAOS is solely responsible for all safety precautions and programs in connection with the Work. VWNAOS shall review the safety programs developed by each of the Subcontractors and prepare and submit to CITY a comprehensive safety program which complies with all applicable requirements of the Occupational Safety and Health Act of 1970, and all other applicable state, local, or federal laws or regulations. VWNAOS shall ensure compliance by the Subcontractors with their contractual safety requirements.
- (vi) Provide and administer bonds if required from VWNAOS and/or any subcontractor on the Project.

4. Post-Construction Phase Services

In addition to the above, VWNAOS shall also:

- a. Develop Operation and Maintenance cost if applicable and determine the adjustment to the Base Fee that will be required by the Capital Project. The final amount of such adjustment will be mutually agreed to by the parties.

- b. Supervise and manage the warranties provided to the City for the equipment and construction work.
 - c. Receive warranty/guaranty work items from the construction contractors and subcontractors;
5. CITY Right to Perform Capital Projects. CITY may accept the proposal of VWNAOS to act as contractor or construction manager for the Capital Project, or the CITY may engage any another contractor suitable to CITY to construct the Capital Project utilizing the procurement process established pursuant to CITY codes and State law. If CITY engages another contractor, VWNAOS shall be entitled to reasonable compensation for preparing the specifications for the Capital Project and for performing construction management work and working with the contractor during the term of the Capital Project. If the CITY engages a Capital Project Contractor to operate and maintain the Capital Project, VWNAOS shall have no liability, responsibility or obligations with respect to the Capital Project, and VWNAOS will be entitled to an equitable adjustment to the Base Fee or Annual Limit Accounts to account for any increased costs of operations, repair, maintenance and replacement costs associated with the Capital Project.