

**AGREEMENT FOR**  
**OPERATION, MAINTENANCE, MANAGEMENT OF THE UTILITY SYSTEM**  
**BETWEEN THE CITY OF PEMBROKE PINES AND**  
**OPERATIONS MANAGEMENT INTERNATIONAL, INC.**

**THIS AGREEMENT (“Agreement”)**, dated October 1, 2025 (“Effective Date”), is entered into by and between:

**THE CITY OF PEMBROKE PINES**, a municipal corporation of the State of Florida with a business address of **601 City Center Way, Pembroke Pines, FL 33025**, hereinafter referred to as "CITY",

and

**OPERATIONS MANAGEMENT INTERNATIONAL, INC.**, a For Profit Corporation as listed with the California Division of Corporations, authorized to do business in the State of Florida, with a business address of **6312 S. Fiddlers Green Circle, Suite 300N, Greenwood Village, CO, 80111**, hereinafter referred to as "CONTRACTOR" or "OPERATOR". "CITY" and "CONTRACTOR" may be collectively referred to herein as "Parties" and individually as "Party"

**WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and OPERATOR agree as follows:

**I. ARTICLE 1- PREAMBLE**

- 1.1 In order to establish the background, context and frame of reference for this Agreement, and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow, and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.
- 1.2 The City of Pembroke Pines provides water and wastewater services to residents and businesses located within the City’s utility service areas.

- 1.3 Operations Management International, Inc., has been under contract with the City since February 13, 2015 to perform the operation, maintenance, and management of the City’s utility system and to provide customer service, meter reading, and utility billing services (the “Existing Agreement”) throughout the City’s utility service areas.
- 1.4 The Existing Agreement between the City and Operations Management International, Inc., expires on October 1, 2025.
- 1.5 The City Commission desires to enter into a new agreement with Operations Management International, Inc., to continue providing and performing the operation, maintenance, and management of the City’s utility system and to provide customer service, meter reading, and utility billing services.
- 1.6 The City Commission recognizes that Operations Management International, Inc., has provided the services required under the Existing Agreement in a satisfactory manner for the last ten (10) years.
- 1.7 The daily provision of water and sewer services to the City’s residents and businesses is a complex endeavor directly impacting the life, health, and welfare of the citizens, residents, and visitors of the City of Pembroke Pines.
- 1.8 Operations Management International, Inc., has thoroughly demonstrated its significant familiarity with the City’s utility system as well as its ability to provide the services under the proposed agreement in the same form and manner that it has provided since 2015.
- 1.9 Under the Existing Agreement with Operations Management International, Inc., the City has been able to limit utility rate increases to the amount prescribed by annual consumer price index adjustments.
- 1.10 The City’s Administrative Staff has provided that the selection of a new firm to begin providing water and sewer services throughout the City will result in a costly six (6) month overlap between the present and future providers.
- 1.11 Staff has further provided that the introduction of a new contractor who is unfamiliar with the City’s utility system may result in an unnecessary risk to the health, safety, and welfare of the City’s residents and businesses.
- 1.12 The ongoing professional contractual relationship between the City of Pembroke Pines and Operations Management International, Inc., has fostered a familiarity and understanding between both parties of the needs, expectations, and demands of the City’s residents and the City’s government related to the provision of the services required herein.
- 1.13 Ensuring the continued and trusted provision of such essential services to the citizens,

residents, business owners, and visitors of the City of Pembroke Pines is of significant importance to the City Commission, benefit to the City's residents, and a matter of public health, safety, and welfare.

- 1.14 Section 35.18(C)(8) of the City Code of Ordinances provides that contracts for services may be exempt from competitive bidding requirements under the City's Procurement Code upon specific factual finding a simple majority affirmative vote of the City Commission declaring that the process of competitive bidding and competitive proposals is not in the best interest of the City.
- 1.15 The Parties now wish to enter into this Agreement.

## **II. ARTICLE 2-DEFINITIONS**

Wherever used in this Agreement the following terms shall have the meanings indicated which are applicable to both the singular and plural thereof:

- 2.1 **"Agreement"** means this Agreement, as may be amended from time to time, entered into by and between CITY and OPERATOR covering the services to be performed, any exhibits that are attached to the Agreement or made a part thereof; and any other documents which are incorporated in or referenced in the Agreement and made a part thereof. Below is a list of Exhibits to this Agreement:
- A. List of Key Performance Indicators
  - B. List of CITY Permits issued by Regulatory Agencies
  - C. Capacity and Characteristics of the Facilities
  - D. List of Facilities
  - E. CITY Owned Equipment
- 2.2 **"Annual Fee"** means a predetermined, fixed lump sum for OPERATOR'S services. The Annual Fee includes, but is not limited to, cost, overhead and profit.
- 2.3 **"Applicable Law"** shall mean (i) all of the permits required for the performance by the parties under this Agreement, (ii) all State or federal constitutional restrictions, (iii) all State laws, rules, regulations or directives, (iv) all CITY ordinances, laws or directives, (v) all federal or State judicial judgment, order or decree, (vi) all federal, State or CITY administrative orders or directives, which are in effect during the term of this Agreement, or subsequently enacted, adopted, promulgated, issued or enforced during the term of this Agreement, or subsequently enacted, adopted, promulgated, issued or enforced, and (vii) all federal, State or CITY consent decrees, stipulations or settlement agreements, in any manner relating to the operation, management, maintenance, repair, upgrade,

enhancement, retirement or expansion of the Facilities.

- 2.4 **"BCHD"** means the Broward County Health Department.
- 2.5 **"BDEP"** means the Broward County Department of Environmental Protection.
- 2.6 **"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 any of CITY's Permits as listed in Exhibit B. Biologically Toxic Substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.
- 2.7 **"Bonds"** means the performance bond and other instruments securing OPERATOR'S performance, if applicable.
- 2.8 **"Capital Expenditures"** means capital expenditures that are planned, non-routine and budgeted as separate capital expenditures by CITY.
- 2.9 **"Change Order"** means a document which is signed by OPERATOR and CITY and authorizes an addition, deletion or revision in the Services, or an increase to the contract price or the contract time, issued on or after the effective date of the agreement.
- 2.10 **"CITY"** means the City of Pembroke Pines.
- 2.11 **"Contract Documents"** means the documents outlined in Article 18 of the agreement.
- 2.12 **"Contract Price"** means the Annual Fee as outlined in Article 6.1 of this Agreement.
- 2.13 **"Cost"** means all direct costs and indirect costs, to include overhead and profit except where additional compensation is warranted pursuant to Article 8 and Article 20, determined on an accrual basis in accordance with generally accepted accounting principles.
- 2.14 **"Customer Service"** means providing appropriate personnel for utility customer service including but not limited to account setup and maintenance, monthly account billing and delinquency processing, new service request and deposit processing, answering customer questions, walk-in payments, and investigating customer complaints.
- 2.15 **"Day"** shall constitute a calendar day of 24 hours measured from midnight to the next midnight.
- 2.16 **"Facilities"** means the water treatment facility, waste water treatment facility, lift stations, booster stations, water meters, water meter boxes and lids, water distribution and waste water collection systems for the City of Pembroke Pines, including to those City owned assets set forth in Exhibit D , including, but not limited to, all equipment, instrumentation,

pumps, mains, lines, parts, processes, wells, tanks, treatment facilities, disposal facilities, computers, SCADA systems, communications systems, valves, generators, and solids processing facilities.

- 2.17 **"FDEP"** means the State of Florida, Department of Environmental Protection.
- 2.18 **"Maintenance"** means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or by OPERATOR or otherwise required under standard industry practices to maintain the facilities in good to excellent condition, ordinary wear and tear excepted, and to maximize the service life of the Facilities
- 2.19 **"Maintenance and Repair Expenditures"** means the Costs for Maintenance and Repair activities, including but not limited to equipment, parts, replacement parts, supplies and labor, but shall not include costs for labor ordinarily staffed at the Project.
- 2.20 **"Maintenance and Repair Budgetary Limit"** means the Maintenance and Repair Expenditures allocated by CITY in the annual City Budget, as more fully described in Article 6.2, below.
- 2.21 **"Meter Reading"** means providing appropriate personnel to provide meter reading services as more specifically set forth in Section 4.1.17
- 2.22 **"Operator"** means the person, firm or corporation with whom CITY has entered into the Agreement for the performance of the Services as defined by the Agreement.
- 2.23 **"Permit"** means permits necessary to operate the Pembroke Pines Water and Wastewater Treatment Facilities. See Exhibit "A" for a listing of all permits.
- 2.24 **"Project"** means all the work performed pursuant to the Agreement at the Facilities.
- 2.25 **"Repairs"** means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, or facilities or some component thereof.
- 2.26 **"Reports"** means all annual reports including monthly operating reports, annual reports and any other reports as required by the Permit or manufacturers.
- 2.27 **"Services"** means the Scope of Services outlined in Article 4 of the Agreement.
- 2.28 **"Service Area"** shall include all utility users within the city limits of the City of Pembroke Pines as well as those customers who are presently provided utility services by the City of Pembroke Pines as of the date of this Agreement. Increases to the Service Area shall be determined as set forth in Article VIII
- 2.29 **"SFWMD"** means South Florida Water Management District
- 2.30 **"Subcontractor"** means an individual, firm or corporation who enters into a Contract

with OPERATOR for the performance of any part of OPERATOR'S Services.

- 2.31 **"Unforeseen Circumstance(s)"** shall mean 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, lightning, tornado, fire, explosion, flood, acts of terrorism; (ii) preliminary or final order of any local, state or federal court, administrative agency or governmental body of competent jurisdiction; (iii) any change in any Applicable Laws as defined herein; (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of OPERATOR; (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation, maintenance, management and repair of the Project where backup power generation is not available; and (vi) failure of Facility's design or technology. An Unforeseen Circumstance shall not include:

- 2.31.1 General economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;
- 2.31.2 Changes in the financial condition of the CITY, the OPERATOR, or any of their affiliates or Subcontractors;
- 2.31.3 Any impact of prevailing wage laws on the OPERATOR'S costs, if applicable, provided however that such requirements or demands may constitute a change of law entitling the OPERATOR to additional compensation;
- 2.31.4 The consequence of OPERATOR error, including any errors of OPERATOR affiliates or Subcontractors; and/or
- 2.31.5 Litigation against the CITY and/or OPERATOR.

### **III. ARTICLE 3-CITY'S REPRESENTATIVE**

- 3.1 It is understood that the CITY shall designate, in writing, at the time of execution of the Agreement, a representative that shall be the sole and exclusive contact for the OPERATOR and act on its behalf with respect to the Services provided under this Agreement.
- 3.2 The CITY'S REPRESENTATIVE shall be authorized to transmit instructions, receive information, and make decisions with respect to the performance of the Services.
- 3.3 The CITY'S REPRESENTATIVE may designate a designee or designees to work with OPERATOR on a day-to-day basis. Such designee or designees' role shall be limited to obtaining information from OPERATOR and coordinating the work of CITY's other contractors. The designee or designees shall have no authority to direct or otherwise impact the work of OPERATOR beyond minor logistical planning, and the CITY's

REPRESENTATIVE shall retain sole authority with respect to acting on the CITY's behalf. The OPERATOR shall maintain a responsive and responsible relationship with the designee(s).

#### **IV. ARTICLE 4-SCOPE OF SERVICES & OPERATOR RESPONSIBILITIES**

##### **4.1 Operation and Maintenance/Staffing for Water and Wastewater Treatment Plants and Collection and Distribution Systems**

4.1.1 The scope of services shall include all operation, maintenance, management, and analysis activities required to operate the water treatment plant, waste water treatment plant, lift stations, SCADA system, booster station, water meters, water meter boxes and lids, water distribution systems and waste water collection systems as well as those facilities defined in Paragraph 2.16 of this agreement as well as Exhibit D. OPERATOR shall maintain, manage, and repair the Facilities identified in Exhibit D and shall perform the services set forth in this Agreement with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same or similar services. The scope of services shall include but not be limited to the following:

4.1.2 Within the design capacity and capability of the Wastewater Treatment Plant ("WW Plant"), as set forth in Exhibit C, manage, operate, and maintain the WW Plant so that effluent discharged from the WW Plant meets the requirements set forth in CITY's Permits, unless one or more of the following occurs: (in which case, CITY shall be responsible for additional Costs and OPERATOR shall be relieved of any performance requirements to the extent caused by the following): (1) WW Plant influent does not contain Adequate Nutrients to support operation of the WW Plant's biological processes and/or contains Biologically Toxic Substances that cannot be removed by the existing processes and facilities; (2) dischargers into Owner's sewer system violate any or all regulations as stated in the applicable sewer ordinance, and (3) the flow, influent biochemical demand (BOD<sub>5</sub>) and/or total suspended solids (TSS) exceeds the WW Plant's design parameters; in which case Exhibit C, specifies responsibilities.

4.1.3 Within the design capacity and capability of the Water Treatment Plant ("WTR Plant"), manage, operate, and maintain the WTR Plant so that finished water discharged from the WTR Plant meets the requirements specified by the State of Florida, U.S. EPA, and Broward County for Public Water Systems and National Primary Water Treatment Regulations as outlined in Exhibit C. OPERATOR shall be responsible for meeting potable water quality limitations established therein unless the raw water supply contains materials or liquids which detrimentally affect the machinery, infrastructure or processes.

4.1.4 OPERATOR will be responsible for the operation and maintenance of the lift stations. Maintenance of lift stations includes regular pressure cleaning and

removal of build-up including fats, oils and grease by vacuum truck or other acceptable means. Removal of excessive buildup of fats, oil and grease shall be provided by OPERATOR up to 40 events per month, the excess of which shall be provided by CITY. The OPERATOR shall notify the City each time the quantity of cleanings reached 40 events per month. OPERATOR shall not be liable for events which result from CITY's failure to perform these cleanings.

- 4.1.5 OPERATOR shall provide a sufficient number of certified qualified personnel, including management, administrative, operational, technical and clerical, who meet relevant legal requirements and certifications regarding operation and maintenance according to the State of Florida and permit requirements and are capable and demonstrate experience necessary to operate and maintain the Facilities. OPERATOR shall consult with OPERATOR's technical subject matter expertise as needed to maintain optimal plant operations.
- 4.1.6 OPERATOR shall provide ongoing training and education for appropriate personnel in all necessary areas of modern process control, operations, laboratory, energy management, customer service, maintenance, repair, safety, supervisory skills and emergency operations. Training sessions shall be documented, and a summary shall be provided in the monthly operating report as required in Section 4.
- 4.1.7 OPERATOR shall develop and implement an organized in-house safety program that will include regularly scheduled safety training sessions for all plant personnel; standard operating procedures for chemical handling, confined space entry, and emergency response; and the care and use of the proper safety equipment to perform these procedures.
- 4.1.8 OPERATOR shall provide water and wastewater plant operators in accordance with 62-699FAC "Treatment Plant Classification and Staffing." An OPERATOR meeting the lead operator classification level of the plant (Class A) shall be available as needed to initiate appropriate action in a timely manner twenty-four (24) hours per day.
- 4.1.9 The CITY shall have the right to request OPERATOR to change or remove any personnel if the CITY suspects there are grounds to do so, in accordance with applicable Law. Such request shall be provided to OPERATOR in writing, including a description of the grounds for removal or dismissal. If OPERATOR confirms CITY allegations, OPERATOR shall change or remove the personnel in question.
- 4.1.10 OPERATOR shall assume full responsibility for the continuous operation of the Facilities (subject to the limitations set forth in this Agreement and Exhibit C) and shall operate, manage, maintain, repair and monitor the Facilities in accordance with the requirements established by the Applicable Laws and the



Permits listed in in Exhibit B. OPERATOR shall be fully responsible for meeting or exceeding the general performance requirements of these Permits.

4.1.11 OPERATOR shall have access to the CITY's Supervisory Control and Data Acquisition (SCADA) hardware and software. All telecommunications costs related to the software components of the SCADA system are the responsibility of the CITY. Access to the SCADA system shall be provided to CITY Administration at all times.

#### 4.1.12 Generators

4.1.12.1 OPERATOR shall be responsible for maintaining the CITY's stationary and portable generators as listed in Exhibit "D" which pertain to the treatment plants, east wellfield, and water booster stations only. The OPERATOR shall be responsible for providing maintenance including all labor:

- a) Maintenance shall include oil changing, annual oil testing and other scheduled services as recommended by the manufacturer. All parts and consumables shall be considered maintenance and repairs costs under Section 6.2 of this Agreement.
- b) Repairs outside of the capabilities and capacity of the existing Project staff shall be performed by a manufacturer's factory authorized personnel and shall be considered maintenance and repairs costs under Section 6.2 of this Agreement but coordinated by the OPERATOR.
- c) The OPERATOR shall keep accurate records of all maintenance and repair via the City's electronic work management system or, if this is not supported by the system, via an electronic data base provided by the OPERATOR. Such data base shall be accessible to the CITY. In the event that CITY has reason to believe that a repair has been necessitated because of OPERATOR's failure to maintain the equipment in question in accordance with the terms of this Agreement, CITY may request records of repair and maintenance activities. As of the date of this Agreement, without records, the OPERATOR may be liable for all repair costs.

4.1.12.2 OPERATOR shall have access to the portable generators and portable bypass pumps provided by the CITY for emergency purposes. The CITY is responsible for fuel.

4.1.13 OPERATOR shall meet with representatives of the CITY as needed and as

requested by the CITY or, at minimum at least monthly, to review operations, reports and costs. OPERATOR shall maintain meeting minutes and make the minutes available to the CITY. OPERATOR shall maintain a professional, responsible and responsive working relationship with representatives of the CITY, regulatory authorities, suppliers of materials, utilities and services, and the public. OPERATOR's technical subject matter experts shall meet with CITY staff as requested, which shall not exceed a frequency of once per quarter unless there are extenuating circumstances.

4.1.14 While performing services under the Agreement, all personnel shall wear uniform shirt with the logo of the OPERATOR and shall wear a CITY identification tag.

4.1.15 While performing services under the Agreement, required personnel shall be equipped with communication equipment, including but not limited to cellular telephones. A list of all cellular telephone numbers of such personnel shall be submitted to the City Manager or designee at the time of execution of the Agreement and such list shall be updated and included in the OPERATOR's monthly reports.

4.1.16 All consumable materials and spare parts shall be provided by OPERATOR. All parts and consumable materials procured by OPERATOR under this Section shall be considered maintenance and repairs costs to be reimbursed to OPERATOR under Section 6.2 of this Agreement. All consumable materials and parts shall comply with applicable City standards or requirements.

4.1.17 OPERATOR shall develop a program to periodically calibrate meters, lab equipment, handheld or field analyzers and air quality gas monitoring systems used to measure flow to include those meters that require calibration as part of the CITY's operating permit and maintain and provide the calibration records to the CITY as part of the monthly operating report. Meters requiring calibration by a specialized third party shall be subcontracted and treated as a Maintenance and Repair Expenditure.

#### **4.2 Operation and Maintenance/Staffing for Customer Service, Utility Billing, and Meter Reading**

4.2.1 OPERATOR shall maintain, manage, and operate the Utility System's Customer Service, Billing and Meter Reading Functions to include the system(s) provided by the City for meter reading, and shall commit to maintaining a level of customer support meeting the industry standards of timeliness, accuracy, and customer account management.

4.2.2 OPERATOR shall function from the CITY designated customer service center where customers may pay bills, make service requests (turn-ons, turn-offs,

temporary meters, etc.), file complaints and suggestions, report abnormalities and generally receive Basic Billing and Customer Services in a manner consistent with the current operation.

- 4.2.3 OPERATOR shall provide and pay for a sufficient number of qualified personnel, including management, administrative, operational, and clerical, who meet relevant legal requirements and certifications and are capable and demonstrate experience necessary to operate and maintain the Customer Service, Billing, and Meter Reading Functions.
- 4.2.4 While performing services under the Agreement, required personnel shall wear uniform shirt with the logo of the OPERATOR or business casual attire and shall wear a CITY identification tag. Identification tags to be provided by CITY.
- 4.2.5 While performing services under the Agreement, department management personnel shall be equipped with communication equipment, including but not limited to cellular telephones. A list of on-call cellular telephones shall be submitted to the City Manager or designee at the time of execution of the Agreement and such list shall be updated in OPERATOR's monthly reports.
- 4.2.6 OPERATOR shall provide training for personnel in areas including but not limited to, operation, maintenance, safety, and customer service skills.
- 4.2.7 OPERATOR shall develop and implement a proper safety program in accordance with applicable laws and standards. All portions of the program shall be adhered to.
- 4.2.8 OPERATOR shall provide the CITY with mail courier services at the same level of service as currently being provided.
- 4.2.9 OPERATOR shall be required to utilize the CITY's current Utility Billing Software for the management of customer information and the processing of monthly utility bills. OPERATOR shall also be required to utilize CITY's meter reading devices and systems.
  - 4.2.9.1 The CITY will be responsible for providing OPERATOR with IT support for the maintenance of the utility billing software and the meter reading devices. Requests for such support will be made through the CITY'S REPRESENTATIVE or designee in a timely manner as to not impact the meter reading or billing schedule.
  - 4.2.9.2 The OPERATOR shall be required to participate in the development, testing, implementation and training of one utility billing software upgrade (ERP) with support personnel as needed to meet ERP schedule and as to not impact the meter reading or billing schedule.

- 4.2.9.3 Operator shall maintain thorough notes, and file the notes (electronic or hard copy) no later than the next business day in the CITY's current Utility Billing Software and ensure open government access to the information, timely billing and timely, accurate communications with the customer.
- 4.2.10 In addition to billing customers for utility purposes, the CITY's utility billing system also includes the billing of residential and commercial garbage collection and disposal. The OPERATOR shall be required to work with the CITY's Sanitation Department Manager in coordinating the billing of and delinquent collection of such services together with the monthly billing for Utilities.
- 4.2.11 OPERATOR shall compose and prepare utility bill files for transmission to the City bill printing and mailing contractor. The CITY shall be responsible for payments to the bill printing and mailing contractor for their service. Customer bills shall be prepared in such cycles as currently used by the CITY, unless otherwise mutually agreed upon between the Parties. Any billing error or omission on the part of OPERATOR shall be corrected at no cost to the CITY. Correction of any errors in the tariffs, rates, charges and instructions furnished to OPERATOR by the CITY will be made by OPERATOR in an expedited manner. Costs incurred by OPERATOR to correct any error caused by OPERATOR shall be the responsibility of OPERATOR. Corrections related to acts of the CITY personnel or events, shall be charged to the CITY as an Additional Service in an amount to be established upon review with the CITY'S REPRESENTATIVE and subsequent approval by the CITY Commission.
- 4.2.12 CITY shall have the sole authorization to establish the message/content on the reverse side of the customer bill. The OPERATOR shall coordinate with CITY'S REPRESENTATIVES on a monthly basis to establish the information to be included on the reverse side of the bill.
- 4.2.13 OPERATOR shall maintain a customer service center within the space designated and agreed upon by both parties at the time of signing of this agreement. OPERATOR will utilize the space currently provided by the CITY for its own use relating to the purpose of servicing the water utility billing and collection activities, inclusive of telephone, furnishings and computer systems currently in place. Correction of safety issues and security shall be provided by the City. OPERATOR will not be required to pay rent for the use of this space. CITY will be required to provide copiers, copier paper, ink, supplies, computers, printers, landline phones, and service contracts for CITY-owned equipment when applicable. CITY shall be required to replace above said equipment when needed based on a request from the OPERATOR and approval of the CITY'S REPRESENTATIVE.
- 4.2.14 OPERATOR shall respond in a timely manner to all customers and City inquiries and acknowledge such inquiries in writing or by phone within 24 hours. Such inquiries include, by way of example and not limitation, bill and payment inquiries

and inquiries pertaining to service, initiation and termination, damage or defects to meter boxes and lids, meter re-reads, meter change out requests and meters, meter lids and meter box replacements. OPERATOR will be responsible for the installation of new meters for new accounts as requested by the City.

4.2.15 The OPERATOR is also responsible for the inspection and appropriate maintenance and replacement of meter boxes and lids as follows:

4.2.15.1 OPERATOR shall inspect meter boxes and lids during its monthly meter reading, for those meters that are manually read. If OPERATOR observes a safety hazard, OPERATOR will repair the box during such inspection, provided that such meter lid and box is a standard size.

4.2.15.2 If the repair requires non-standard equipment or materials, OPERATOR will secure the area and order the necessary parts for repair and repair the area within a reasonable time.

4.2.15.3 In the event that OPERATOR is unable to inspect a meter box or lid because it is located on private property and OPERATOR is denied access by the owner of said property and/or meter box or lid is obstructed, OPERATOR shall notify CITY of the lack of access, and shall not be required to take further action until access is secured by the City.

4.2.15.4 All supplies required for the repair or replacement of meter lids and boxes shall be considered a Maintenance and Repair Expenditure. CITY shall ensure an adequate supply of standard meter boxes and lids are available for OPERATOR to perform its obligations under this section and will ensure non-standards meters and lids are available for expeditious orders. OPERATOR shall advise CITY of appropriate quantities for order.

4.2.15.5 OPERATOR acknowledges that the safety of the public is a paramount concern, and operator assumes any and all liability for claims to the extent such claims are resulting from OPERATOR's failure to perform its obligations regarding meter lids and boxes, as set forth above.

4.2.16 OPERATOR shall be responsible for setting up new accounts, reviewing the account applications, computing necessary deposits in accordance with the CITY ordinance, closing accounts, and relaying this information, when necessary, to the appropriate CITY personnel. All new installation fees must be collected prior to issuance of work orders for meter installation.

4.2.17 OPERATOR shall enter all information detailed in 4.2.16 into CITY's Utility Billing System and verify it for quality assurance, no later than the next business day.

4.2.18 OPERATOR shall be responsible for maintaining the customer information in an

accurate manner. This will include information such as deposits, new accounts, file information, and changes to accounts and charges, within the billing software capabilities.

- 4.2.19 Customer accounts shall be closed upon the request of the customer. No customer account shall be deleted.
- 4.2.20 If at any time OPERATOR discovers unauthorized meter installation and/or a meter set without a deposit, OPERATOR will notify CITY's field service representative who then may issue notice to the property that service will be terminated unless a deposit is provided, or as otherwise dictated by the CITY Ordinance.
- 4.2.21 OPERATOR shall provide staff for walk-in customer service, for setting up temporary meters. In addition to the receipt of payment at the customer service center, OPERATOR shall process payments transmitted by mail, third party cash collector, or web-based access.
- 4.2.22 In no event shall the rendition by OPERATOR of Basic Billing and Customer Service on behalf of the CITY be construed as rendering OPERATOR being responsible for the sufficiency of rates to meet the CITY's financial responsibilities and OPERATOR hereby disclaims such responsibility.
- 4.2.23 It is further understood and agreed by the Parties that all funds collected by OPERATOR from the CITY's customers are the exclusive property of the CITY and are to be deposited into CITY's accounts by all means necessary, including electronic transfer upon receipt, and OPERATOR has no claim, counterclaim, right of set-off or any other right to such funds pursuant to this Agreement or otherwise. At a minimum, all receipts will be accounted for daily and deposited by wire transfer or delivered to the CITY's Finance Department or physically transfer to the CITY's designated bank by CITY designated means, by 2:30 PM of the next business day following the date of the receipt or other designated time as established by the 3<sup>rd</sup> party contract between the CITY.
- 4.2.24 OPERATOR shall continue the use of the local telephone number that is available to every customer 24 hours per day. The phone number will be manned during normal business hours. OPERATOR shall provide an offsite call center to receive and direct all phone calls after hours and on weekends and holidays. All calls will receive prompt response, and all options of telephone coverage shall be mutually agreed between OPERATOR and the CITY.
- 4.2.25 OPERATOR shall maintain an "on-call" staff to respond to all calls for emergency service within one hour from the time the OPERATOR receives the call.
- 4.2.26 OPERATOR shall be responsible for the initial enforcement of delinquent customer accounts including the following:

4.2.26.1 OPERATOR shall be responsible for answering questions regarding delinquent account information. It shall be the responsibility of OPERATOR's customer service personnel to respond to these questions and attempt to receive payment in order to rectify the delinquent situation wherever possible to the best of its ability. If not resolvable, the OPERATOR shall work out a payment arrangement with the customer and present the payment arrangement to the CITY's customer service representative for review and CITY approval.

4.2.26.2 OPERATOR shall be responsible for delivering delinquent notices to each individual customer as agreed to by the CITY and, if necessary, to issue any work orders for discontinuation of service, or as dictated by the CITY's Code of Ordinances.

4.2.26.3 If an inactive account remains delinquent for more than sixty (60) calendar days, or as CITY Ordinance dictates, OPERATOR shall turn over to the CITY's collection agency. Collection agency services shall be at cost to the CITY. OPERATOR will not be obligated to initiate any lien and foreclosure actions or other legal proceedings in a court of competent jurisdiction to collect delinquent customer accounts.

4.2.26.4 OPERATOR shall make reasonable efforts to collect all utility revenue in an efficient manner with due consideration to customers.

4.2.26.5 Whenever customers raise questions, point out billing errors, express concerns, or otherwise dispute any bill, OPERATOR shall attempt to resolve them in an expeditious manner. If a resolution requires additional research to respond to a customer's dispute, OPERATOR will document each stage of the dispute process. Parameters will be established upon direction of the CITY'S REPRESENTATIVE, in relation to any customer which requires any additional consideration as to disputes or extension of payment due dates. Service personnel that are working with a customer under such circumstances as dictated by the CITY'S REPRESENTATIVE must report that fact to the field service personnel so that customers will not experience discontinuance of service before dispute or past due resolution occurs.

4.2.26.6 OPERATOR shall make reasonable efforts to support delinquent account turn-offs, turn-ons and service disconnects. OPERATOR shall maintain sufficient personnel to process a minimum of 30 turn-offs per day, Monday through Wednesday.

4.2.26.7 To meet the requirements of the Florida Department of Environmental Protection and the City Cross Connection Control Program (CCCP), OPERATOR shall install a Dual Check Device (DuC) when a new residential water service connection or a new water meter replacement is required. The DuC shall require the resident to install an expansion tank or pressure relief valve on the house

water system as required by the Florida Building Code.

4.2.26.8 The CITY explicitly agrees that it has provided notice to the residents of the City regarding the requirements of the CCCP and the requirement to install the DuC, and that property owners are responsible for ensuring that the requirements of the Florida Building Code are met. OPERATOR shall have no obligation to confirm or inspect that the requirements of the Florida Building Code have been met by the property owner and shall not be liable for any damages caused by a property owner's failure to meet these requirements.

4.2.26.9 The OPERATOR shall supply a doorknob hanger notice to each property owner at the time of the installation of the DuC by the OPERATOR. The language of the doorknob hanger shall be provided by the CITY.

4.2.26.10 In accordance with CCCP, and unless otherwise directed by CITY, OPERATOR will be responsible for the administration of this program as established by the City Ordinance. Administration includes: data entry of required information provided by the City Building and Engineering Department into City Owned and maintained software; notification letters generated from the system as required by the ordinance will be sent to customers; provide data available through the system for CCCP Annual Report.

4.2.26.11 OPERATOR will provide certified staff to conduct the required testing services for City owned backflow devices. OPERATOR is not responsible for Fire Service connections equipment or testing.

### **4.3 Maintenance and Repair**

4.3.1 OPERATOR shall perform all inspection and maintenance as well as repairs on the facilities identified in 2.16, including activities associated with the usual and customary repairs, in accordance with the terms of this Section 4.2.26.11.

4.3.2 OPERATOR shall develop and implement a preventive Maintenance program, a copy of which shall be delivered to the CITY for review and comment no later than ninety (90) calendar days after commencement of this Agreement. Such program shall include all lubrications, adjustments, inspections, monitoring and Repairs as necessary to maintain the Facilities throughout the term of this Agreement. The maintenance program must include documentation of corrective and preventive maintenance and a spare parts inventory.

4.3.3 OPERATOR shall develop and/or supply and utilize computerized programs for maintenance, process control, cost accounting, and Quality Assessment/Quality Control.

4.3.4 The OPERATOR shall be responsible for the timely restoration of all road, sidewalk, curb, and landscape Repairs as a result of routine and/or emergency repairs of water and sewer lines in accordance with the following:



4.3.4.1 Roadway repairs, curbs, sidewalk repairs and tree and shrub restoration shall be performed by OPERATOR to CITY standard specifications and details.

4.3.4.2 Repairs to sod and irrigation shall be performed by the OPERATOR. The cost of materials for sod and irrigation repair shall be treated as Maintenance and Repair Expenditures under Article 6.2.

4.3.4.3 OPERATOR shall perform all Maintenance of Traffic (MOT) for vehicles and pedestrians.

4.3.5 OPERATOR shall be responsible for routine and emergency repairs to CITY water and sewer lines, as follows:

4.3.5.1 OPERATOR shall be responsible for the cost of all labor and subcontractor costs required for utility excavation and repairs up to a depth of four (4) feet. Labor, materials and costs for utility repairs requiring excavation in excess of 4 ft. shall be performed by a Subcontractor and considered a Maintenance and Repair Expenditure.

4.3.5.2 Notwithstanding the foregoing, any labor, materials and costs for distribution or collection line Repairs due to incorrect utility locates or not following proper protocol for locating the utility by a third party shall be invoiced in accordance with Article 20. Cost incurred by the OPERATOR will be invoiced to the CITY per Article 20. These costs will include labor, OPERATOR owned vehicle cost, equipment rentals, sub-contractor cost and miscellaneous safety cost.

4.3.6 OPERATOR shall maintain and exercise the City's fire hydrants once annually to include painting of hydrants once every four years.

#### **4.4 Collection and Disposal of Lime Sludge and Biosolids**

4.4.1 Water Treatment Plant Lime Sludge.

4.4.1.1 OPERATOR shall manage the collection of lime sludge on-site at the Water Treatment Facility.

4.4.1.2 OPERATOR shall work with the CITY's contractor and coordinate on behalf of the CITY for the removal and transport of lime sludge from the treatment facility to a legal disposal site.

4.4.1.3 OPERATOR shall maintain all manifests or other documentation required for disposal of sludge and process solids, and such documentation shall be signed by OPERATOR, as agent of the CITY and a copy provided to the CITY'S REPRESENTATIVE, except for manifests for Hazardous Waste, which shall be signed by the CITY.

4.4.1.4 OPERATOR shall assist CITY Administration with any and all procurement related to the removal of lime sludge from the CITY's Water Treatment Facility.

4.4.1.5 All costs associated with Lime Sludge disposal will be the responsibility of the CITY.

#### 4.4.2 Wastewater Treatment Plant Biosolids

4.4.2.1 OPERATOR shall operate and maintain the biosolids management systems at the Wastewater Treatment Facility.

4.4.2.2 OPERATOR shall work with the CITY's contractor, and coordinate on behalf of the CITY for the removal and transport of biosolids from the treatment facility.

4.4.2.3 OPERATOR shall maintain all manifests or other documentation required for disposal of biosolids, and such documentation shall be signed by OPERATOR, as agent of the CITY and a copy provided to the CITY'S REPRESENTATIVE.

4.4.2.4 All costs associated with Biosolids disposal will be the responsibility of the CITY.

#### 4.5 Testing and Laboratory Analysis

4.5.1 OPERATOR shall perform all laboratory testing and sampling presently required by CITY Permits, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders, agreements and decrees. OPERATOR shall deliver and certify such results to the CITY and submit the results to the required regulatory agencies.

4.5.2 OPERATOR's failure to meet or exceed the applicable performance or Permit requirements will only be excused in those instances where the failure was caused by Unforeseen Circumstance or as otherwise set forth in Exhibit C. In the event an Unforeseen Circumstance prohibits OPERATOR from meeting the applicable performance requirements, OPERATOR shall immediately take all reasonable steps to bring the Facilities into compliance with the performance requirements, as more fully set forth in Exhibit C.

4.5.3 All laboratory tests required by the Permit shall be performed by a laboratory that has been certified by the FDEP, the National Environmental Laboratory Accreditation Conference (NELAC) and approved by the CITY for any specific method or analysis combination that is used to comply with the Permit.

- 4.5.4 All laboratory tests needed for process control shall be performed by the OPERATOR using certified personnel and applicable procedures described in DEP-SOP-001/01 (January 2002), as may be amended.
- 4.5.5 OPERATOR shall conduct analysis of any repeated or persistent non-compliance issues and recommend remedial measures to the CITY for system modifications, if appropriate.
- 4.5.6 All laboratory testing services shall be considered Maintenance and Repair Expenditures in accordance with Article 6.2.

#### **4.6 Records and Reports**

- 4.6.1 OPERATOR shall prepare and process comprehensive monthly reporting to the CITY of the Facilities operating parameters, maintenance plans and activities, improvement activities, treatment results, equipment and parts inventories, manpower utilization and other relevant information in accordance with all Applicable Laws and Rules/Regulations.
- 4.6.2 OPERATOR shall prepare and submit to the CITY all Reports and all other information required by, and in accordance with the Permits and manufacturers' warranties which are presented by the CITY to OPERATOR at the commencement of this Agreement, as well as monitoring and measurement logs.
- 4.6.3 OPERATOR shall prepare a monthly and year-to-date financial summary of the expenditures set forth under Article 6.2. This report shall be submitted as part of the appropriate monthly report.
- 4.6.4 Once each year, OPERATOR shall submit a Report by September 30<sup>th</sup> which records significant events of the past year, describes the status of the Facilities and compares the status of planned activities.
- 4.6.5 OPERATOR shall maintain safety records in connection with its operation of the Facilities and performance of Services under this Agreement. The OPERATOR must record the relevant details regarding any accidents or injuries occurring at the Facilities. The OPERATOR shall prepare a monthly report for the CITY detailing its safety record.
- 4.6.6 OPERATOR shall prepare all federal, state and local permit plant performance Reports for both the water and wastewater treatment plants and submit a copy to CITY. OPERATOR is responsible for transmittal to appropriate authorities, as required by permits and all Applicable Laws.
- 4.6.7 OPERATOR shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall provide these reports to the CITY in a timely manner.

- 4.6.8 OPERATOR shall provide all documents in draft form to the CITY prior to submittal to any regulatory agency or manufacturers, as requested. Final copies of all Reports shall be provided to the CITY.

#### **4.7 Permits**

- 4.7.1 OPERATOR shall provide timely information for which it has in its possession for the processing of renewals and for all for review by the permitting regulatory agencies. CITY will be responsible for payment of all permit renewal fees and providing all engineering services required as part of the permitting process. A listing of all permits can be found in Exhibit B to this agreement.
- 4.7.2 OPERATOR shall assume responsibility for payment of any penalties, fines, damages or recovery costs and the CITY'S expenses, including attorneys' fees, expenses, fees and costs, to defend any claim from Federal, State, or Local agencies arising out of, related to or resulting from OPERATOR'S negligence in performing the services set forth under the terms of this Agreement, violations of any laws and permits, faulty operation or operation not in conformance with applicable law or the permit. Both parties agree in good faith to cooperate in the defense or appeal of any assessment of fines or civil penalties by any governing body.
- 4.7.3 OPERATOR shall maintain compliance with all required Permits, licenses and authorizations, as set forth in Exhibit C.

#### **4.8 Manufacturers' Warranties**

- 4.8.1 OPERATOR is responsible for conducting all services necessary to maintain existing warranties and obtain all manufacturers' warranties on equipment purchased on behalf of the CITY and shall assist the CITY in enforcing manufacturers' warranties and guarantees.
- 4.8.2 OPERATOR shall provide the CITY with full documentation as part of the monthly operating report per Section 4.6.2 that preventive maintenance is being performed on all CITY-owned equipment in accordance with manufacturers' recommendations at intervals and in sufficient detail as may be determined by the CITY.
- 4.8.3 OPERATOR shall be responsible for notifying the CITY of any required modifications in the Facilities or treatment processes in accordance with all warranties and applicable laws. OPERATOR shall not be responsible for any violations of applicable laws and conditions under the warranties due to failure of the Facilities design and construction.

#### **4.9 Inspection Processes**

- 4.9.1 OPERATOR shall conduct a yearly comprehensive plant inspection with

representatives of the CITY to evaluate and document condition of the Facilities, safety issues or other concerns. OPERATOR shall inspect Facilities and CITY-owned equipment and notify the CITY of specific capital expenditure needs annually.

#### **4.10 Security and CITY Access**

4.10.1 OPERATOR shall maintain security at the water and wastewater treatment plants on a twenty-four (24) hour, seven (7) days per week basis. Security shall include personnel site-wide inspection once per shift including perimeter fencing, and gates signage, tanks, buildings spills, safety hazards and the like. Vendor costs associated with gate-control room communications, cameras and automated alarm monitoring, where applicable, shall be paid for by the CITY as a Maintenance and Repair Expenditure.

4.10.2 OPERATOR shall provide twenty-four (24) hour per day access to all Facilities for CITY personnel designated by CITY'S REPRESENTATIVE. OPERATOR shall provide master keys for the Facilities to the CITY.

4.10.3 OPERATOR shall ensure that visitors to the Facilities shall comply with OPERATOR operating and safety procedures.

#### **4.11 Large User Agreement with the City of Hollywood**

4.11.1 The OPERATOR shall assist City Administration with the management of the Large User Agreement with the City of Hollywood.

4.11.2 CITY is responsible for coordinating with the City of Hollywood on a monthly basis to read the master meter.

#### **4.12 Use of City Equipment**

4.12.1 The CITY will provide the OPERATOR with its exclusive use of the CITY-owned equipment as depicted in Exhibit E appended to this Agreement.

4.12.2 The OPERATOR shall be responsible for providing fuel, routine repairs, maintenance, and insurance on all CITY-owned equipment set forth in Exhibit E. OPERATOR shall perform all routine Repairs and Maintenance on such equipment, including but not limited to providing all labor, parts and supplies, which shall not be considered Maintenance and Repair Expenditures under Article 6.2, as follows:

4.12.2.1 Routine Maintenance shall include all oil, filters, lubrication, additives, battery, brakes and tires as well as other consumables recommended by the manufacturer. OPERATOR will use Project staff to perform routine Maintenance to the fullest extent possible,

and the labor of such Project staff shall not be considered a Maintenance and Repair Expenditure. Routine repair shall include all repairs out of warranty to a limit of \$3,000.00 for parts and labor per incident. Repairs above this limit shall be considered Maintenance and Repair Expenditures under Article 6.2 of this Agreement in their entirety, but coordinated by the OPERATOR.

- 4.12.2.2 The OPERATOR shall keep accurate records of all Maintenance and Repair, in accordance with the documentation standard for Maintenance and Repairs Expenditures under Article 6.2. In the event that CITY reasonably believes that a Repair has been necessitated due to OPERATOR's failure to provide routine maintenance in accordance with the terms of this Agreement, OPERATOR must provide appropriate Maintenance Records. If OPERATOR cannot provide such Maintenance records on a piece of CITY-owned equipment set forth in Exhibit E which is in need of Repair, OPERATOR may be liable for Repair costs, to the extent to which the cause of the failure of the equipment is reasonably related to the undocumented Maintenance, limited to the depreciated value of the equipment at issue.
- 4.12.2.3 The OPERATOR shall be fully responsible for any misuse or neglect of CITY owned equipment by its employees.
- 4.12.2.4 Periodic or emergency use of CITY equipment not included in Exhibit E such as shared use equipment, bypass pumps and temporary generators by OPERATOR shall be provided by the CITY when reasonably requested by the OPERATOR. While in possession of such equipment, OPERATOR shall not be responsible for costs related to routine Maintenance.
- 4.12.2.5 Non-routine Repairs to extend the equipment life (i.e.: hydraulic systems, engines, cylinders, etc.) are not the responsibility of OPERATOR. OPERATOR shall be liable for non-routine repair costs if the repairs are caused by OPERATOR's failure to perform maintenance in accordance with standard industry practice.
- 4.12.2.6 In the event that substitute equipment is needed while the equipment listed in Exhibit E is out of service for Repair, the costs for the substitute equipment shall be considered a Maintenance and Repair Expenditure, except when such Repair is due to OPERATOR'S failure to maintain such equipment in accordance with the above provisions in which case it shall be the responsibility of OPERATOR.

- 4.12.2.7 The CITY shall replace equipment, in accordance with Exhibit E, as it becomes obsolete or reaches the end of its useful life in accordance with the Fleet Capital Equipment Program (CEP) Points Replacement Guidelines. The OPERATOR shall request replacements of CITY owned equipment by January 15<sup>th</sup> of any year during the contract period for the equipment to be replaced within that fiscal year with brand new equipment. Should equipment condition approach end of useful life post January 15, the City shall replace that equipment in the following fiscal year.
- 4.12.2.8 Any equipment needed by the OPERATOR that is not provided in Exhibit E shall be provided at the expense of the OPERATOR unless agreed upon by the CITY'S REPRESENTATIVE in accordance with Article 6.2.
- 4.12.2.9 The OPERATOR shall be responsible for the safe keeping of all CITY-owned equipment that is under the direct control of the OPERATOR.
- 4.12.2.10 Equipment rental for special or unusual circumstances may be treated as a Maintenance and Repair Expenditure on a case-by case basis if pre-approved by CITY'S REPRESENTATIVE.

#### **4.13 Additional Scope Items**

- 4.13.1 OPERATOR shall perform water and sewer valve exercising and maintenance completed within a five (5) year frequency, which shall be agreed upon by OPERATOR and the CITY. The OPERATOR shall keep accurate records of all valve exercising and maintenance via the City's electronic work management system or, if this is not supported by the system, via an electronic data base provided by the OPERATOR. Such data base shall be accessible to the CITY.
- 4.13.2 OPERATOR shall clean all gravity sewer lines on a five (5) year frequency and will work with the CITY to develop a priority cleaning plan for segments that are identified as requiring more frequent cleaning. The OPERATOR shall keep accurate records of all gravity sewer line cleaning via the City's electronic work management system or, if this is not supported by the system, via an electronic data base provided by the OPERATOR. Such data base shall be accessible to the CITY.
- 4.13.3 OPERATOR shall perform asphalt and concrete repairs less than one hundred (100) square feet upon direction from the CITY and in compliance with CITY requirements. The OPERATOR shall keep accurate records of all repairs via the City's electronic work management system or, if this is not supported by the system, via an electronic data base provided by the OPERATOR. Such data base shall be accessible to the CITY

## **V. ARTICLE 5-TERM**

- 5.1 The term of this Agreement shall commence on October 1, 2025 (“Effective Date”) and shall remain in effect through September 30, 2030. Thereafter, this Agreement may be renewed for one (1) additional five (5) year, term pursuant to mutual agreement of the Parties, not less than 120 days prior to expiration.

## **VI. ARTICLE 6-COMPENSATION**

Compensation under this Agreement shall consist of the following:

- 6.1 The Annual Fee for Services for the period starting on the first year of the effective date set forth in Article 5.1 and ending one year later shall be TEN MILLION, NINE HUNDRED NINE THOUSAND, SEVEN HUNDRED TWENTY-SIX DOLLARS AND EIGHTY-ONE CENTS (\$10,909,726.81).
- 6.2 In addition to the Annual Fee, CITY will reimburse the OPERATOR monthly for Maintenance and Repair Expenditures as follows:
- 6.2.1 Maintenance and Repair Expenditures shall be paid for by OPERATOR and submitted for reimbursement on a monthly basis by the OPERATOR in a separate invoice from the Annual Fee.
- 6.2.2 Individual Maintenance and Repair Expenditures over TWO THOUSAND, FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500) shall require prior written approval by the CITY’S REPRESENTATIVE. This shall not include certain routine Maintenance and Repair Expenditures (such as laboratory fees) which the CITY REPRESENTATIVE shall pre-approve annually.
- 6.2.3 The CITY shall respond to OPERATOR requests for Maintenance and Repair Expenditures over TWO THOUSAND, FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500) within five (5) business days (unless such request is categorized as urgent by OPERATOR in which case, the CITY shall respond in reasonable time). If the CITY fails to respond within five (5) business days to such request (or request additional time for extenuating circumstances), OPERATOR shall notify the CITY of its intent to proceed and shall consider the request approved, unless directed by the CITY not to proceed.
- 6.2.4 The total annual aggregate of Maintenance and Repair Expenditures are not intended to exceed the CITY’s Maintenance and Repair Budgetary Limit and may not without written approval from the CITY’S REPRESENTATIVE. The CITY shall be responsible to track the total annual aggregate of Maintenance and Repair Expenditures. The CITY shall give OPERATOR notice when 80% of the Maintenance and Repair Limit has been expended.



- 6.2.5 CITY and OPERATOR will work together to establish an adequate Maintenance and Repair Budgetary Limit to keep the CITY's facilities in good working order. Notwithstanding anything in this Agreement, OPERATOR shall not be responsible for CITY's failure to approve a Maintenance and Repair Expenditure, as reasonably requested by the OPERATOR.
- 6.2.6 Work beyond the capabilities of the existing project staff will be sub-contracted. Such sub-contracted costs shall be considered a Maintenance and Repair Expenditure.
- 6.2.7 If equipment is required by OPERATOR to perform its obligation under this Agreement, OPERATOR shall either purchase such equipment or may request CITY (through the CITY REPRESENTATIVE) to purchase such equipment. If the CITY elects to purchase such equipment, and the cost of which is in excess of TWO THOUSAND, FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500), such equipment shall be purchased directly by the CITY.
  - 6.2.7.1 Such equipment shall be asset tagged in accordance with CITY requirements by CITY staff.
  - 6.2.7.2 If CITY does not provide such equipment, OPERATOR may elect to do so, with the understanding that such equipment remains the property of the OPERATOR.
  - 6.2.7.3 Equipment valued less than TWO THOUSAND, FIVE HUNDRED DOLLARS AND ZERO CENTS (\$2,500) may be paid for as a Maintenance and Repair Expenditure and shall be logged in the CITY small equipment list.
- 6.2.8 The following OPERATOR expenditures may not be charged against the Maintenance and Repair Limit:
  - 6.2.8.1 Salaries, Wages, and Benefits for OPERATOR's employees.
  - 6.2.8.2 Uniform Expenses for OPERATOR employees.
  - 6.2.8.3 Cellular Phone Expenses for OPERATOR employees.
  - 6.2.8.4 Personal Protective Equipment for OPERATOR employees including, but not limited to, hard hats, safety vests and shirts, safety glasses, worker gloves, uniforms and safety equipment needed for OSHA compliance.

- 6.2.8.5 Hand Tools for OPERATOR employees including, but not limited to, battery powered hand tools, wrenches, ratchets, screwdrivers and the like.
- 6.2.8.6 Fuel for OPERATOR owned and leased vehicles, CITY provided vehicles and equipment in Exhibit E and periodic use of CITY equipment not including by-pass pumps and emergency generators.
- 6.2.8.7 Vehicle maintenance and repairs for OPERATOR vehicle.
- 6.2.8.8 Insurance.
- 6.2.9 Expenditures which are the CITY's direct responsibility, or which require a Change Order may not be charged as Maintenance and Repair Limit Expenditures.
- 6.2.10 Starting on October 1, 2026 and on October 1<sup>st</sup> for every consecutive year thereafter, for the entire term of the Agreement, the Annual Fee as described in Section 6.1 shall be automatically adjusted according to the Consumer Price Index for All Urban Consumers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series ID:CUUR0000SEHG01 – Water and Sewerage Services for the month of April, or four percent (4%), whichever is less, but not less than zero.
- 6.3 OPERATOR may modify the process and/or Facilities to achieve the objectives of this Agreement and charge the modification costs as a Maintenance and Repair Expenditure; provided, however, OPERATOR shall obtain the prior written approval from the CITY'S REPRESENTATIVE. Otherwise, the City retains the right to make such changes on a capital improvements basis.

## **VII. ARTICLE 7-PAYMENT PROCEDURES**

- 7.1 OPERATOR shall submit monthly invoices for the Annual Fee as set forth in Article 6.1 in a format approved by the CITY Manager no later than the 1st day of the month before the month in which services are provided.
- 7.2 OPERATOR shall submit monthly invoices for the reimbursement of Maintenance and Repair Expenditures as set forth in Article 6.2 in a format approved by the City Manager no later than the 30th day of the following month for which such expenditures were procured by the OPERATOR which shall include all required back up documentation to support the amount.
- 7.3 CITY shall process all submitted invoices from the OPERATOR on a monthly basis. OPERATOR shall be paid the Annual Fee as set forth in Article 6.1 in twelve (12) equal

monthly installments, plus the Maintenance and Repair Expenditures paid by OPERATOR for the prior month. The CITY shall pay the OPERATOR for all approved invoices, in a manner consistent with the Local Government Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes. For purposes of this Section 7, CITY shall review and approve all properly documented invoices within a reasonable time and promptly communicate to OPERATOR any disputed expenditures and the cause for the dispute. Undisputed Maintenance and Repair Expenditures shall be paid in accordance with Section 7.4.

- 7.4 Any monies payable by the CITY pursuant to Section 6.2.2 shall be paid within thirty (30) calendar days from submittal of approved invoices.
- 7.5 In the event that CITY disputes any portion of an invoice submitted by OPERATOR, CITY shall communicate such dispute in writing to OPERATOR and the undisputed portion of such invoice shall be deemed approved.

## **VIII. ARTICLE 8-CHANGES IN THE SCOPE OF SERVICES**

A Change in the Scope of Services shall occur as a result of:

- 8.1 Any change in Facilities operations, personnel qualifications or staffing or other cost which is mandated or otherwise required by a change in any Applicable Law or Permit, or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change or any Unforeseen Circumstance.
- 8.2 Increases or decreases of not less than ten percent (10%) in the raw water treatment, the raw wastewater treatment as demonstrated by a twelve-month floating average compared to the twelve-month period ending on the effective date of this Agreement.
- 8.3 Material increases or decreases in the CITY's Service Area, or a 10% increase in the System Parameters set forth in Appendix C.3. and C.4 or more than 3 additional facilities to the facilities set forth in Exhibit D.
- 8.4 Capital improvements or changes to existing processes at the Facilities by or at the request of the CITY which result in the change by OPERATOR of its methods or costs of operation of the Project.
- 8.5 Services otherwise excluded from the Scope of Services.
- 8.6 For increases or decreases in the Scope of Services, as set forth in Sections 8.1 through 8.4, the Annual Fee shall be adjusted by an amount equal to OPERATOR'S additional Cost associated with the Change in Scope plus fifteen percent (15%). For Changes in the Scope of Services as set forth in Section 8.5, such changes will be mutually agreed upon by the Parties prior to commencing work. Such Changes in Scope are subject to the CITY's procurement rules and possible CITY Commission action.

- 8.7 Changes to the Scope of Services shall be memorialized by a Change Order.
- 8.8 While requesting changes that would increase, decrease, or otherwise modify the scope of services OPERATOR shall continue work, however, in no event will OPERATOR be compensated for any work that has not been described either herein, in a purchase order, Change Order, or separate written agreement executed by the parties hereto.

## **IX. ARTICLE 9-CITY'S RESPONSIBILITIES**

- 9.1 In addition to the costs set forth elsewhere in this Agreement, CITY shall pay directly for electricity, water, telecommunications services including hardline telephone and internet services, radio system for communication between personnel, chemicals, shared use equipment, fuel for portable generators and by-pass pumps, wastewater and solid waste removal services, grounds/lawn maintenance of Facilities, painting, (not including painting normally involved in Maintenance and Repair of the Facilities), operating supplies, First Aid and safety equipment and supplies (not including Personal protective equipment and supplies), tools (not including hand tools) cleaning and janitorial Supplies, lab supplies, office supplies and Repairs and Maintenance Expenditures, including parts, supplies and equipment to complete all maintenance, for the services set forth in this Agreement. OPERATOR shall use its best efforts to minimize usage of electricity and water.
- 9.2 It is understood that the expenditures set forth in Section 9.1 are necessary for the operation and maintenance of the Facilities in accordance with the terms and standards set forth in this Agreement. Therefore, OPERATOR agrees to communicate in writing to the CITY'S REPRESENTATIVE the urgency of any particular purchase and in the event that the CITY fails to make any of the expenditures in Section 9.1 in a timely manner, OPERATOR shall use best efforts to perform the services, but shall not be liable for any resultant damage fines costs or penalties.
- 9.3 The CITY shall retain ownership of the real and personal property in use at the Facilities. The CITY is a tax-exempt entity. It is the intent of the CITY and OPERATOR that the property shall remain exempt from ad valorem taxation in accordance with Chapter 196, Fla. Stat. as amended from time to time.
- 9.4 CITY shall coordinate with OPERATOR to perform other work at or within the Facilities by the CITY'S own forces, have other work performed by utility owners or directly Contract for such other work. Written notice thereof will be given to OPERATOR prior to starting any other work not previously noticed to OPERATOR in order to minimize disruption or interference with OPERATOR'S obligations under this Agreement.
- 9.5 CITY shall ensure that all CITY personnel and invitees are informed of the OPERATOR'S safety and operating procedures and comply therewith.
- 9.6 Limitations on CITY'S Responsibilities: CITY shall not supervise, direct, or have control or authority over, nor be responsible for, OPERATOR'S means, methods, techniques, sequences, or procedures, or the safety precautions and programs incident thereto, or for

any failure of OPERATOR to comply with Applicable Laws applicable to the performance of the Services. CITY shall not be responsible for OPERATOR'S failure to perform the Services in accordance with the Contract Documents unless such failure to perform by OPERATOR is caused by CITY, CITY'S REPRESENTATIVE, an employee or agent of the CITY or Unforeseen Circumstance.

- 9.7 CITY must provide updated O&M manuals and as-builts drawings when plant modifications or new processes are put online. CITY will provide acceptable training prior to the OPERATOR taking responsibility. Any additional cost for the training or O&M manuals will be the responsibility of the CITY.
- 9.8 CITY shall enforce all City of Pembroke Pine Code of Ordinances and shall be responsible for all costs associated with this enforcement. OPERATOR shall not be responsible for costs incurred as a result of CITY's failure to enforce such ordinances.
- 9.9 CITY shall be responsible for all costs associated with the CCCP system.
- 9.10 CITY shall provide specialty tools for the testing of the CITY owned backflow preventers to include test equipment, valve wrenches, meter and backflow supports and work bench. All repairs to CITY owned backflow devices will be the responsibility of the CITY.

#### **X. ARTICLE 10-SUBCONTRACTORS**

- 10.1 OPERATOR shall be fully responsible to CITY for all acts and omissions of the Subcontractors, Suppliers and other persons directly or indirectly employed by Subcontractors, suppliers and of persons for whose acts any of them may be liable and any other persons and organizations performing or furnishing of the Services under a direct or indirect contract with OPERATOR to the same extent that OPERATOR is responsible for the acts and omissions of persons directly employed by OPERATOR. Nothing in the Contract Documents shall create any contractual relationship between the CITY and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of CITY to pay or to see to the payment of any moneys due any such Subcontractor, supplier or other person or organization except as may otherwise be required by Applicable Laws.
- 10.2 OPERATOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those not acceptable to CITY), whether initially or as a replacement, against whom CITY may have reasonable objection. OPERATOR shall submit names, addresses and contact information of any and all Subcontractors to CITY in writing prior to commencement of services and during project progress if Subcontractors change or are added.
- 10.3 OPERATOR shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Services under a direct or indirect contract with OPERATOR. OPERATOR shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Services to

comply with the requirements imposed on OPERATOR under this Agreement, except that Subcontractors hired by CONTRACTOR to provide services under this Agreement that are limited to obtaining and analyzing samples for the purpose of ensuring the City's continued environmental compliance (the "Environmental Subcontractors") and Craig A. Smith & Associates, LLC, if used by OPERATOR as a subcontractor under this Agreement, shall not be required to comply with the insurance requirement under Section 11.6.6 of this Agreement requiring pollution liability insurance in an amount of no less than \$2,000,000.00 per wrongful act so long as the Environmental Subcontractors and Craig A. Smith & Associates, LLC, provide services under this Agreement that do not require pollution liability insurance. All Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Services shall communicate with the CITY through OPERATOR.

- 10.4 CITY requires the identity of Subcontractors, Suppliers, and other individuals or entities to be submitted to the CITY in advance of the Project for acceptance by CITY. CITY'S acceptance of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. OPERATOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity. No acceptance by CITY of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of CITY to reject defective services.
- 10.5 All Services performed for OPERATOR by a Subcontractor will be pursuant to an appropriate agreement between OPERATOR and the Subcontractor, which specifically binds the Subcontractor to the applicable terms and conditions of the Agreement for the benefit of CITY.
- 10.6 CITY agrees to not offer employment or other compensation to the Project Manager of OPERATOR directly working on this Project, for a period of two (2) years after the end date of this Agreement or said employee's re-assignment from this Project.

## **XI. ARTICLE 11-INSURANCE**

- 11.1 CONTRACTOR expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONTRACTOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, and instrumentalities as herein required.
- 11.2 CONTRACTOR AND ALL SUBCONTRACTORS, SHALL NOT BE ALLOWED TO commence work under this AGREEMENT until the CONTRACTOR has obtained all insurance required by this Insurance Section, including the purchase of a Policy of Insurance naming the City of Pembroke Pines as an Additional Insured (except on the Workers' Compensation and Professional Liability insurance), the Certificate of Insurance evidencing such Policy must be agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines, nor shall any SUBCONTRACTOR be allowed to commence work under this AGREEMENT until the SUBCONTRACTOR complies with the Insurance requirements required by this Insurance Section, including the duty to

purchase a Policy of Insurance which names the City of Pembroke Pines as an Additional Insured (except on the Workers' Compensation and Professional Liability insurance), which Insurance Policy and its terms are agreed to and approved in writing by the Risk Manager for the City of Pembroke Pines.

- 11.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the CITY's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.
- 11.4 Certificates of Insurance shall provide for thirty (30) calendar days' prior written notice to the CITY in case of cancellation or material changes in the policy limits or coverage states that would cause non-compliance with the specific provisions required herein. If the carrier cannot provide thirty (30) calendar days' notice of cancellation, either the CONTRACTOR or their Insurance Broker must agree to provide notice.
- 11.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, the CONTRACTOR shall furnish, at least ten (10) calendar days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONTRACTOR shall neither commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONTRACTOR shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

#### 11.6 REQUIRED INSURANCE

CONTRACTOR shall be required to obtain all applicable insurance coverage, as indicated below, prior to commencing any work pursuant to this Agreement:

Yes No

- ✓ ☐ 11.6.1 Commercial General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Aggregate Reduction: CONTRACTOR shall advise the CITY in the event any aggregate limits are reduced below the required per-occurrence limit. At its own expense, the CONTRACTOR will reinstate the aggregate limits to comply with the minimum requirements and shall furnish the CITY with a new certificate of insurance showing such coverage is in force.

Products & Completed Operations Coverage shall be maintained for the later of three (3) years after the delivery of goods/services or final payment under the Agreement. **The City of Pembroke Pines must be included as an additional insured with respect to this coverage.**

Yes No

- ✓ ☐ 11.6.2 Workers' Compensation and Employers' Liability Insurance covering all employees, and/or volunteers of the CONTRACTOR engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONTRACTOR shall require the subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. Coverage for the CONTRACTOR and all subcontractors shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

If CONTRACTOR claims to be exempt from this requirement, CONTRACTOR shall provide CITY proof of such exemption for CITY to exempt CONTRACTOR.

Yes No

- ✓ ☐ 11.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)  
Combined Single Limit (Each Accident) - \$1,000,000



If work under this Agreement includes transportation of hazardous materials, policy shall include pollution liability coverage equivalent to that provided by the latest version of the ISO pollution liability broadened endorsement for auto and the latest version of the ISO Motor Carrier Act endorsement, equivalents or broader language.

Yes No

- ☐ **x** 11.6.3.1 If CONTRACTOR requests reduced limits under a Personal Auto Liability Policy and it is agreed to by the CITY, coverage shall include Bodily Injury limits of \$100,000 per person/\$300,000 per occurrence and Property Damage limits of \$300,000 per occurrence.

Yes No

- ☒ ☐ 11.6.4 Umbrella/Excess Liability Insurance in the amount of \$5,000,000 per occurrence and in the aggregate as determined appropriate by the CITY depending on the type of job and exposures contemplated. Coverage must be follow form of the General Liability, Auto Liability and Employer's Liability. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. **The City of Pembroke Pines must be included as an additional insured with respect to this coverage.**

Yes No

- ☐ **x** 11.6.5 Professional Liability/Errors & Omissions Insurance with a limit of liability no less than \$1,000,000 per claim or wrongful or negligent act. This coverage shall be maintained for a period of no less than three (3) years after the delivery of goods/services final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first calendar day of service to the CITY.

Yes No

- ☒ ☐ 11.6.6 Environmental/Contractor's Pollution Liability insurance shall be required with a limit of no less than \$2,000,000 per wrongful act. Coverage shall include: CONTRACTOR's completed operations, sudden, accidental and gradual pollution conditions. This coverage shall be maintained for a period of no less than the later of three (3) years after the delivery of goods/services or final payment pursuant to this Agreement. Retroactive date, if any, to be no later than the first calendar day of service to the CITY. **The City of Pembroke Pines must be included as an additional insured with respect to this coverage.**

Yes No

- ☒ ☐ 11.6.7 Crime Coverage shall include employee dishonesty, forgery or alteration, and computer fraud in an amount of no less than \$1,000,000 per loss. If CONTRACTOR is physically located on CITY's premises, a third-party fidelity coverage extension shall apply.

Yes No

- ☒ ☐ 11.6.8 Property/Inland Marine Insurance covering property damage to CITY mobile equipment to be used and maintained by the CONTRACTOR. **The City of Pembroke Pines shall be named as Loss Payee as respects the CITY Equipment.** (CITY shall include a list of Equipment for which the CONTRACTOR will be responsible as part of the Agreement,

subject to additions, deletions, and/or substitutions throughout the term of the Agreement.

#### 11.7 REQUIRED ENDORSEMENTS

- 11.7.1 The City of Pembroke Pines shall be included as an Additional Insured on each of the Liability Policies, on the Commercial General Liability, Auto Liability and Contractor's Pollution Liability required herein.
  - 11.7.2 Waiver of all Rights of Subrogation against the CITY, except on the Professional Liability policy.
  - 11.7.3 Thirty (30) calendar day Notice of Cancellation or Non-Renewal to the CITY.
  - 11.7.4 CONTRACTOR's policies shall be Primary & Non-Contributory.
  - 11.7.5 All policies, where additional insured status is required, shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
  - 11.7.6 The City of Pembroke Pines shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.
- 11.8 Any and all insurance required of the CONTRACTOR pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONTRACTOR and provided proof of such coverage is provided to CITY. The CONTRACTOR and any subcontractors shall maintain such policies during the term of this Agreement.
- 11.9 The CITY reserves the right to request any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement, which shall be mutually agreed to by the parties.
- 11.10 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONTRACTOR has assumed in the indemnification/hold harmless section(s) of this Agreement.
- 11.11 CITY'S Liability and Insurance.
- 11.11.1 CITY shall not be responsible for purchasing and maintaining any insurance to protect the interest of OPERATOR Subcontractors or others on the Project.

## **XII. ARTICLE 12-INDEMNIFICATION**

In consideration of the sum of ten (\$10.00) dollars OPERATOR agrees to the following indemnities, which indemnities shall survive termination or expiration of this Agreement.

- 12.1 OPERATOR shall indemnify, save and hold harmless the CITY, its officers, agents and

employees, from or on account of all claims, damages, losses, obligations, penalties, fines, liabilities and expenses, direct or indirect, including, but not limited to, reasonable fees and charges of engineers, architects, attorneys, OPERATOR and other professionals, all settlements, liens or judgments of any nature, and trial and appellate court and arbitration costs (the "Damages") arising out of or relating to or resulting from the performance of the Services by OPERATOR, OPERATOR'S errors and omissions, or OPERATOR'S compliance or failure to comply with its obligations under the Agreement, excluding claims arising from the negligence of CITY. Such indemnification shall specifically include but not be limited to claims, damages, losses and expenses arising out of or resulting from (a) any and all bodily injuries, sickness, death, disease; (b) injury to or destruction of tangible personal property, including the loss of use resulting there from or which arise from negligent acts or omissions or environmental damage of the OPERATOR performing Services at the Facilities; (c) other such damages, liabilities or losses received or sustained by any person or persons during or on account of any operations connected with the operation, management, Maintenance and Repair, including the warranty period; (d) OPERATOR'S or OPERATOR'S Subcontractors use of any improper materials; (e) any construction defect including patent defects relating solely to Facilities constructed by OPERATOR or Subcontractors; (f) any act or omission of OPERATOR or Subcontractors, agents, servants or employees; (g) the violation of any Applicable Law or any federal, state, county or CITY laws, ordinances or regulations by OPERATOR, its Subcontractors, agents, servants or employees; (h) any patent or copyright infringement; and (i) the breach or alleged breach by OPERATOR of any term of the Agreement, including the breach or alleged breach of any warranty or guarantee.

- 12.2 In the event that any claims are brought or actions are filed against the CITY which arise out of or with respect to the duties and obligations of the OPERATOR as more fully set forth in Article 4.1 of this Agreement for the operation, maintenance and management of the CITY's utility system by Operations Management International, Inc., then said OPERATOR agrees to defend and indemnify the CITY for any such claims or actions regardless of whether such claims or actions are rightfully or wrongfully brought or filed against the CITY. The CITY reserves the right to select its own legal counsel to conduct any defense in any such proceedings and all costs and fees associated therewith including any costs or fees of an appeal shall be the responsibility of and shall be paid by the OPERATOR.
- 12.3 OPERATOR's indemnification shall not be limited to the amount of comprehensive general liability insurance which OPERATOR is required to obtain under the Agreement. Nothing contained herein is intended nor shall it be construed to waive CITY's rights and immunities under the common law or Florida Statute 738.28 as amended from time to time. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party described in this Paragraph and its subparts.

**XIII. ARTICLE 13**  
**OPERATOR'S REPRESENTATIONS AND WARRANTIES.**

In order to induce CITY to enter into this Agreement, OPERATOR makes the following representations:

- 13.1 OPERATOR has examined and carefully studied the Contract Documents (including the Addenda), and the other related data identified in the Proposal Documents.
- 13.2 OPERATOR has visited the site and has become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of Services for the Project.
- 13.3 OPERATOR is familiar with and is satisfied as to all Applicable Laws, and all other federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Project.
- 13.4 OPERATOR is aware of the general nature of the Services to be performed by CITY and others at the site that relates to the Project as indicated in the Agreement.
- 13.5 OPERATOR has correlated the information known to OPERATOR, information and observations obtained from visits to the site, reports and drawings identified in the Agreement and all additional examinations, investigations, and data with the Agreement.
- 13.6 OPERATOR has given the CITY'S REPRESENTATIVE written notice of all conflicts, errors, ambiguities or discrepancies that OPERATOR has discovered in the Contract Documents and the written resolution thereof by the CITY'S REPRESENTATIVE is acceptable to OPERATOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Services.
- 13.7 OPERATOR warrants the following:
  - 13.7.1 Non-Discrimination and Equal Opportunity Employment. During the performance of the Agreement, neither the OPERATOR nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. OPERATOR will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. OPERATOR shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this

nondiscrimination clause. OPERATOR further agrees that OPERATOR will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

13.7.2 Anti-Kickback: The OPERATOR warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the CITY, has any interest, financially or otherwise, in the Project. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

13.7.3 Licensing, Bonds and Permits: The OPERATOR warrants that it shall have, prior to commencement of work under this Agreement and at all times during said work, all required licenses, Bonds and permits whether federal, state, county or CITY.

13.7.4 Public Entity Crime Statement: The OPERATOR warrants that it has not been placed on the convicted vendor list following a conviction for a public entity crime.

13.8 The OPERATOR represents and warrants to the CITY that:

13.8.1 It is financially solvent and has sufficient working capital to perform the obligations under this Agreement;

13.8.2 It is experienced and skilled in the specialized type of Services described in the Agreement;

13.8.3 It is able to provide the labor, materials, equipment and machinery necessary to perform the Services for the agreed upon fees;

13.8.4 It is fully licensed under all Applicable Laws and authorized to do business in the State of Florida in the name of the entity identified as the "OPERATOR" in the Agreement; and

13.8.5 It will comply with all Applicable Laws, and other federal, state and local governmental laws, rules and regulations relating to its responsibilities as set forth in the Contract Documents.

13.9 Truth in Negotiation:

13.9.1 OPERATOR warrants that all cost and pricing data provided to the CITY and CITY during the term of the Agreement shall be complete, accurate and current when provided. Should there be any changes in the Cost and Pricing Data previously submitted, the OPERATOR shall notify and provide the new information to the CITY immediately. CITY shall be entitled to issue an appropriate Change Order to adjust the Contract Price and contract times based on correcting inaccurate or incomplete information provided by OPERATOR.

- 13.9.2 Despite any provisions in the Contract Documents to the contrary, any amounts paid by CITY to OPERATOR in excess of that to which OPERATOR is entitled under the Agreement shall be reimbursed by OPERATOR to CITY. The making of Final Payment to OPERATOR shall not be a waiver of CITY'S right to reimbursement from OPERATOR nor shall it discharge OPERATOR'S obligation to refund the overpayment. The terms of this Article shall survive the CITY'S making final payment.
- 13.9.3 OPERATOR shall insert a provision containing all the requirements of this Article, in all Subcontracts between OPERATOR and Subcontractors, Engineers or Suppliers or other persons, altering the section only as necessary to identify properly the contracting parties.
- 13.10 Both Parties warrant and represent that their employees have received sexual harassment training and that both Parties maintain appropriate sexual harassment and anti-discrimination policies.
- 13.11 Both Parties warrant and represent that their employees will abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes.
- 13.12 OPERATOR shall maintain a Drug-Free workplace as that term is defined in Florida Statutes.

#### **XIV. ARTICLE 14-TERMINATION**

- 14.1 CITY may elect to terminate all, or a portion of the Services provided by OPERATOR in this Agreement, for cause or convenience, by giving OPERATOR written notice of at least three hundred sixty-five (365) calendar days prior to the effective date of termination. Upon receipt of written notice of termination, OPERATOR shall not enter into any third-party agreements and shall incur only those expenses specifically approved or directed in writing by the CITY Manager. Upon written notice of termination, the CITY Manager may elect not to use the services of OPERATOR.
- 14.2 OPERATOR may terminate the Agreement at any time by giving the CITY written notice of at least 180 calendar days prior to the effective date of termination.
- 14.3 In the event that this Agreement is terminated for convenience, the OPERATOR shall be paid for any Services performed up to the date of termination. Upon receipt of a notice of termination, the OPERATOR shall perform only those services specified by the CITY Manager and shall not incur additional expenses without the CITY Manager's prior written approval.
- 14.4 CITY may, if OPERATOR neglects to perform Services properly or to perform any provision of the Agreement, or does, or omits to do, anything whereby safety or operations may be endangered or whereby damage or injury may result to person or property, after forty-eight (48) hours' written notice to the OPERATOR, without prejudice to any other remedy CITY may have, make good all Services, material, omissions or deficiencies, and

may deduct the cost therefore from the amount included in the Contract Price due or which may thereafter become due to the OPERATOR, but no action taken by CITY hereunder shall affect any of the other rights or remedies of CITY granted by this Agreement or by law or otherwise relieve the OPERATOR or the OPERATOR'S surety from any consequences or liabilities arising from such acts or omissions.

- 14.5 Upon termination or expiration, any compensation payable by CITY to OPERATOR, including, but not limited to the final monthly payment in the event of expiration, shall be withheld, as reasonable, until all Reports, CITY owned equipment, and inventory, facility access equipment, and data or documents that are the property of the CITY, are provided to CITY.
- 14.6 Upon termination or expiration, the CITY shall not be liable to OPERATOR for any additional compensation, consequential or incidental damages, lost profits, or any other compensation, beyond the compensation structure specifically provided for in this Agreement.
- 14.7 Upon termination or expiration of this Agreement and all renewals and extensions of it, OPERATOR will return the Facilities to CITY in the same condition as they were upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by OPERATOR for use in the operation or maintenance of the Services shall remain the property of OPERATOR upon termination of this Agreement unless the property was directly paid for by CITY or CITY specifically reimbursed OPERATOR for the cost incurred to purchase the equipment or personal property or this Agreement provides to the contrary.

## **XV. ARTICLE 15-EVENT OF DEFAULT**

In the absence of Unforeseen Circumstances, the following shall constitute default and give the CITY or the OPERATOR the right to terminate this Agreement for cause, without payment to OPERATOR for Services or the provision of services to the CITY beyond date of termination:

- 15.1 Should the CITY or OPERATOR persistently fail to perform the Services required under this Agreement, or materially and repeatedly cause the work to be rejected as defective; cause any material portion of the Facilities to be rejected by any governmental entity; persistently fail or refuse to promptly make any or all necessary Repairs, including repairing work found to be defective; or
- 15.2 Should the CITY or OPERATOR become insolvent, be declared bankrupt, make an assignment for the benefit of creditors, or fail to pay Subcontractors or suppliers promptly in accordance with the terms of its Subcontractors; or
- 15.3 Should the CITY or OPERATOR fail to pay required taxes (unless being disputed pursuant to Applicable Laws), or fail to maintain required insurances and guarantees, or otherwise fail to pay any of its material obligations under this Agreement, or otherwise repudiates the terms of this Agreement.

- 15.4 Upon default by the CITY or OPERATOR, the CITY or OPERATOR may terminate the Agreement provided that written notice of such default is first provided and the default is not cured or corrected within sixty (60) calendar days of receipt of such notice. In the event that the nature of the default cannot be cured within a sixty (60) calendar day period, then the CITY or OPERATOR may, at its sole discretion, extend the cure period to such time as the breach could reasonably be cured.
- 15.5 If and when any default of this Agreement occurs, the CITY or OPERATOR may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the CITY or OPERATOR. Nothing contained in this Agreement shall limit the CITY or OPERATOR from pursuing any legal or equitable remedies that may apply.

#### **XVI. ARTICLE 16-TRANSITION/PHASE-OUT PERIOD**

- 16.1 In the event of termination or expiration, OPERATOR and the CITY shall cooperate in good faith in order to effectuate a smooth and harmonious transition from OPERATOR to the CITY, or to any other person or entity the CITY may designate and to maintain during such period of transition the same scope of Services provided to the CITY pursuant to the terms of the Agreement.
- 16.2 OPERATOR will take all reasonable and necessary actions to transfer all books, records and data of the CITY in its possession in an orderly fashion to either the CITY or its designee in a hard copy and computer format.
- 16.3 Upon completion of the transition period and in further event that the CITY is unable to procure the same level of Services through its own means at such time of termination or expiration, the then pending term of this Agreement shall be extended by the written request of the CITY Manager and agreement by the OPERATOR in one hundred twenty (120) calendar day increments or until the CITY is capable of rendering such Services.
- 16.4 The compensation to be paid during this period shall be prorated pursuant to Article 6 upon termination or expiration.

#### **XVII. ARTICLE 17-PERFORMANCE BOND**

- 17.1 Within fifteen (15) calendar days after commencement of contract and in any event prior to commencing work, the OPERATOR shall execute and furnish to CITY a performance bond written by a corporate surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years. The surety shall hold a current certificate of authority from the Secretary of Treasury of the United States as an acceptable surety on federal bonds in accordance with United States Department of Treasury Circular No. 570. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular and the excess risks must be protected by



coinsurance, reinsurance, or other methods, in accordance with Treasury Circular 297, revised September 1, 1978 (31DFR, Section 223.10, Section 223.11). Further, the surety company shall provide CITY with evidence satisfactory to CITY, that such excess risk has been protected in an acceptable manner. The surety company shall have at least the following minimum qualification in accordance with the latest edition of A.M. Best's Insurance Guide, published by Alfred M. Best Company, Inc., Ambest Road, Oldwick, New Jersey 08858: A to A+.

- 17.2 The bond is required and must be approved by the CITY. The penal sum stated in the bond shall be \$5,000,000. The performance bond shall be conditioned that the CONTRACTOR perform the contract in the time and manner prescribed in the contract.
- 17.3 Maintenance of said bond and the performance by Contractor of all of the obligations under this paragraph shall not relieve Contractor of liability under the default provisions set forth in this Contract or from any other liability as a result of any breach hereunder. The performance Bond may be "called" in the event of any default hereunder by Contractor. The calling of the Bond shall in no manner restrict or preclude any additional or further remedies available to CITY against Contractor for breach, default or damages hereunder.

#### **XVIII. ARTICLE 18-CONTRACT DOCUMENTS**

The Contract Documents listed below, which are listed in their order of precedence for the purpose of resolving conflicts, errors and discrepancies, by this reference shall become a part of the Agreement as though physically attached as a part thereof:

- 18.1 Contract for Operations and Maintenance
- 18.2 Exhibits to this Agreement
- 18.3 The documents listed above shall be incorporated into this Agreement (except as expressly noted otherwise above).
- 18.4 There are no Contract Documents other than those listed above in this Article.

#### **XIX. ARTICLE 19 RECORDS/RIGHT TO INSPECT AND AUDIT**

- 19.1 Ownership of all documents, including but not limited to drawings, as-builts, plans and specifications and related computerized documents utilized or prepared by the OPERATOR in the performance of the Services shall remain with the CITY. The OPERATOR, any Subcontractors or Supplier or other person or organization performing or furnishing any of the Services under a direct or indirect Agreement with the CITY shall not reuse any documents without the prior written consent of the CITY.
- 19.2 Upon termination or expiration of the Agreement, OPERATOR shall take all reasonable

and necessary actions to transfer all records, including but not limited to, books, logs, data reports, receipts of the CITY in its possession in an orderly fashion, to either the CITY or its designee in a hard copy and electronic format.

- 19.3 OPERATOR shall maintain copies of all written correspondence, electronic mail, records of conversation, receipts, and reports related to the operation and maintenance of the Facilities, and all records retention requirements outlined in the Permit in an organized manner in an obvious and readily accessible location at the Facilities and available for inspection at any time.
- 19.4 CITY reserves the right to review all documents in draft form prior to OPERATOR'S submittal to the regulatory agency and be copied on all final documents submitted.
- 19.5 OPERATOR shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, OPERATOR shall:
  - 19.5.1 Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service;
  - 19.5.2 Provide the public with access to such public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed that provided in Chapter 119, Fla. Stat., or as otherwise provided by law;
  - 19.5.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and meet all requirements for retaining public records and transfer to the CITY, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the agency.
- 19.6 The CITY shall have the right to immediately terminate this Agreement for the refusal by the OPERATOR to comply with Chapter 119, Florida Statutes. The OPERATOR shall retain all records associated with this Agreement for a period of five (5) years from the date of expiration of this Agreement.
- 19.7 CITY reserves the right to audit, at the CITY's expense, the records (pertaining to this project) of OPERATOR at any time during the performance and term of the Agreement and for a period of three (3) years after termination or expiration of this Agreement. If required by CITY, OPERATOR agrees to submit to an audit by an independent certified public accountant selected by CITY. OPERATOR shall allow CITY to inspect, examine and review the records of OPERATOR at any and all times during normal business hours during the term of the Contract. If an auditor determines that the OPERATOR was paid for Services not performed or paid in excess of materials provided, the OPERATOR shall reimburse the CITY for such overpayment.

**XX. ARTICLE 20**  
**UNFORESEEN CIRCUMSTANCES, EMERGENCIES AND HURRICANE**  
**PREPAREDNESS**

OPERATOR shall prepare and update an Emergency Preparedness Plan for the Facilities. OPERATOR shall provide resources for responding to emergency situations and unanticipated system failures on a 24-hour basis and in accordance with the OPERATOR'S Emergency Preparedness Plan, if applicable.

- 20.1 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, OPERATOR is obligated to act in a timely manner and to use OPERATOR'S best efforts to prevent threatened damage, injury or loss. OPERATOR shall give CITY prompt verbal, followed by written, notice if OPERATOR believes that an Unforeseen Circumstance has damaged or altered the Facilities or Contractor's ability or cost to comply with its performance obligations under the terms of the Contract. OPERATOR shall be responsible for acting in an emergency situation in accordance with applicable laws and regulations.
- 20.2 OPERATOR shall use best efforts to secure or remove from the Facilities, prior to a storm event, any materials or equipment which could cause bodily injury, damage to the CITY'S installations and/or public or private property or that may result in a loss of equipment or supplies. Site excavations shall be required to be secured and/or backfilled. In the event of the issuance of a storm warning, the CITY will attempt to notify the OPERATOR, however, the OPERATOR is responsible for preparing for a storm event. The OPERATOR shall take the necessary precautions to protect the walking and motoring public from harm due to OPERATOR'S work activity.
- 20.3 Either party may, acting reasonably and in good faith, order the Services to be stopped if a condition of imminent danger exists. The OPERATOR shall be responsible to act in a manner consistent with its obligations under this Agreement and good industry practice to ensure compliance with all safety requirements and the safety of all persons and property at the Facilities.
- 20.4 In any emergency threatening the safety of persons or property, OPERATOR may act upon verbal approval by CITY'S REPRESENTATIVE or at OPERATOR reasonable discretion, to prevent threatened damage, injury or loss.
- 20.5 OPERATOR shall be responsible for any hazardous environmental conditions to the extent created by the OPERATOR, Subcontractors, Suppliers, or anyone else for whom OPERATOR is responsible. If OPERATOR encounters a hazardous environmental condition or if OPERATOR or anyone for whom OPERATOR is responsible creates a hazardous environmental condition, OPERATOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all performance of Services in connection with such condition and in any area affected thereby; and (iii) notify CITY and immediately thereafter confirm such notice in writing.

- 20.6 To the extent OPERATOR makes expenditures pursuant to this Section to correct or mitigate an Emergency, and so long as and to the extent such Emergency results from an Uncontrollable Circumstance or does not result from the OPERATOR's failure to properly perform or comply with the terms and provisions of this Agreement, the CITY shall reimburse the OPERATOR for all reasonable expenditures, plus a reasonable markup of fifteen percent (15%) for overhead and profit. OPERATOR shall give CITY prompt verbal notice followed by notice in writing when practicable, if OPERATOR believes that an emergency or other Unforeseen Circumstance has resulted in a significant change in the Facilities or OPERATOR's obligations under the Contract Documents.
- 20.7 In the event of any emergency condition involving the Facilities which is found by the CITY to present a significant, immediate danger to public health, whether the cause of OPERATOR or otherwise, and OPERATOR is either unable or unwilling to correct such condition, CITY may replace OPERATOR without notice during the emergency condition, provided that at the conclusion of any condition, OPERATOR shall be reinstated by CITY. Provided further, however, that CITY shall not be obligated to reinstate OPERATOR at the conclusion of the emergency condition and may terminate this Agreement if OPERATOR'S inability or unwillingness to correct such condition itself constitutes grounds for termination of this Agreement as provided under Article 14. OPERATOR shall not be entitled to any compensation for the time in which it was removed.
- 20.8 If the emergency condition is found to have been caused by the fault, action, inaction, omission or negligence of OPERATOR, OPERATOR shall be liable for the costs incurred by CITY in replacing OPERATOR, remedying the emergency condition, and repairing any damage caused thereby, or making compensation to CITY or other governmental entity, the Facilities, or any effected third party.

## **XXI. ARTICLE 21-ASSIGNMENT/SUBCONTRACTS**

- 21.1 This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONTRACTOR shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.
- 21.2 It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

## **XXII. ARTICLE 22-SEVERABILITY**

- 22.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

### **XXIII. ARTICLE 23-REMEDIES**

- 23.1 If and when any default of this Agreement occurs, the CITY or OPERATOR may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages and specific performance. Such remedies may be exercised in the sole discretion of the CITY or OPERATOR. Nothing contained in this Agreement shall limit the CITY or OPERATOR from pursuing any legal or equitable remedies that may apply.

### **XXIV. ARTICLE 24-COUNTERPARTS AND EXECUTION**

- 24.1 This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

### **XXV. ARTICLE 25-NOTICES**

- 25.1 Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONTRACTOR and CITY designate the following as the respective places for giving of notice:

**FOR OPERATOR:** Operations Management International, Inc.,  
Attn: OMFS Counsel  
6312 S. Fiddlers Green Circle Suite 300N  
Englewood, CO 80111

**FOR CITY:** Charles F. Dodge, City Manager  
City of Pembroke Pines  
601 City Center Way, 4th Floor  
Pembroke Pines, Florida 33025  
Telephone No. (954) 450-1040

**COPY TO:** Samuel S. Goren, City Attorney  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No. (954) 771-4500  
Facsimile No. (954) 771-4923

## **XXVI. ARTICLE 26-INDEPENDENT CONTRACTOR**

- 26.1 The Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that OPERATOR is an independent contractor under the Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. OPERATOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out OPERATOR's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under the Agreement shall be those of OPERATOR, which policies of OPERATOR shall not conflict with CITY, State, or Federal policies, rules or regulations relating to the use of OPERATOR's funds provided for herein. OPERATOR agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. The Agreement shall not be construed as creating any joint employment relationship between OPERATOR and the CITY and the CITY will not be liable for any obligation incurred by OPERATOR, including but not limited to unpaid minimum wages and/or overtime premiums.
- 26.2 OPERATOR shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with OPERATOR. This Agreement shall not be construed as creating any joint employment relationship between OPERATOR and the CITY, and the CITY will not be liable for any obligation incurred by OPERATOR, including but not limited to unpaid minimum wages and/or overtime payments.

## **XXVII. ARTICLE 27-GOVERNING LAW AND VENUE**

- 27.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all actions or claims arising out of or related to this Agreement shall be in Broward County, Florida.

## **XXVIII. ARTICLE 28-ATTORNEYS' FEES**

- 28.1 In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

## **XXIX. ARTICLE 29-EXTENT OF AGREEMENT**

- 29.1 This Agreement represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. In the event of a conflict between this Agreement, **Exhibit "A", Exhibit "B", Exhibit "C", Exhibit "D", and Exhibit "E"**, this Agreement shall govern, then

**Exhibit “A”, Exhibit “B”, Exhibit “C”, Exhibit “D”, and Exhibit “E”.**

**XXX. ARTICLE 30-CUMULATIVE REMEDIES**

- 30.1 The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Applicable Laws or by special warranty or guarantee, or by other provisions of the Agreement, and the provisions of this paragraph will be as effective as if repeated specifically in the Agreement in connection with each particular duty, obligation, right, and remedy to which they apply.

**XXXI. ARTICLE 31-SURVIVAL OF OBLIGATIONS**

- 31.1 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive expiration or termination of the Agreement.

**XXXII. ARTICLE 32-ADVERTISING**

- 32.1 No advertising shall be permitted upon any part of the site or structures located on the site. News or press releases pertaining to the Services, work product(s), or performance of OPERATOR under this Agreement or the Services to which it relates shall be at the sole discretion of CITY.

**XXXIII. ARTICLE 33-PUBLIC RECORDS**

- 33.1 The City of Pembroke Pines is a public agency subject to Chapter 119, Florida Statutes. The OPERATOR shall comply with Florida’s Public Records Law. Specifically, the OPERATOR shall:
- 33.1.1 Keep and maintain public records required by the CITY to perform the service;
  - 33.1.2 Upon request from the CITY’s custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
  - 33.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, OPERATOR shall destroy all copies of such confidential and exempt records remaining in its possession after the OPERATOR transfers the records in its possession to the CITY; and

- 33.1.4 Upon completion of the Agreement, OPERATOR shall transfer to the CITY, at no cost to the CITY, all public records in OPERATOR's possession. All records stored electronically by the OPERATOR must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.
- 33.2 The failure of OPERATOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

**IF THE OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
601 CITY CENTER WAY, 4th FLOOR  
PEMBROKE PINES, FL 33025  
(954) 450-1050  
[drogers@ppines.com](mailto:drogers@ppines.com)**

**XXXIV. ARTICLE 34-SCRUTINIZED COMPANIES**

- 34.1 OPERATOR, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in Iran Terrorism Sectors List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:
- 34.1.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- 34.1.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
- 34.1.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Iran Terrorism Sectors List,



created pursuant to Section 215.473, Florida Statutes; or

34.1.2.2 Is engaged in business operations in Syria.

#### **XXXV. ARTICLE 35-EMPLOYMENT ELIGIBILITY**

35.1 **E-Verify** OPERATOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

##### **35.1.1 Definitions for this Section.**

35.1.1.1 “Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

35.1.1.2 “Contractor” includes, but is not limited to, a vendor or consultant.

35.1.1.3 “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

35.1.1.4 “E-Verify system” means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

35.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:

35.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

35.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Pembroke Pines. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Pembroke Pines; and

35.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status

of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

### XXXVI. **ARTICLE 36-MISCELLANEOUS**

36.1 **Legal Representation.** It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

36.2 **No Contingent Fees.** CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

36.3 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

36.4 **Signatory Authority.** Upon CITY's request, CONTRACTOR shall provide CITY with copies of requisite documentation evidencing that the signatory for CONTRACTOR has the authority to enter into this Agreement.

36.5 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

36.6 **Exhibits.** Each exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits, if not physically attached, should be treated as part of this Agreement and are incorporated herein by reference.

36.7 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

36.8 **Waiver.** Failure of CITY to insist upon strict performance of any provision or condition of this Agreement, or to execute any right therein contained, shall not be construed as a waiver or relinquishment for the future of any such provision, condition, or right, but the same shall remain in full force and effect.

36.9 **Attorneys' Fees.** In the event that either party brings suit for enforcement of this Agreement, each party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

36.10 **Protection of CITY Property.** At all times during the performance of this Agreement, CONTRACTOR shall protect CITY's property from all damage whatsoever on account of the work being carried on under this Agreement.

36.11 **Human Trafficking.** Pursuant to Section 787.06(13), Fla. Stat., nongovernmental agencies contracting with CITY are required to provide an affidavit attesting that the nongovernmental agency does not use coercion for labor or services as defined within Section 787.06, Fla. Stat. By executing this Agreement and submitting the executed required affidavit, the CONTRACTOR represents and warrants that it does not use coercion for labor or services as provided by state law.

36.12 **Antitrust Violations.** Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering into this Agreement, CONTRACTOR certifies neither it nor its affiliate(s) are on the antitrust violator vendor list at the time of entering this First Amendment. False certification under this paragraph or being subsequently added to that list will result in termination of this Agreement, at

the option of the CITY consistent with Section 287.137, Florida Statutes, as amended.

36.13 **Public Entity Crimes**. Pursuant to Section 287.133(2)(a), Fla. Stat., a person or affiliate, as defined in Section 287.133(1), Fla. Stat., who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity; and may not transact business with any public entity in excess of thirty-five thousand dollars (\$35,000.00) for a period of thirty-six (36) months following the date of being placed on the convicted vendor list. By executing this Agreement, the CONTRACTOR represents and warrants that neither it nor any of its affiliates is currently on the convicted vendor list.

36.14 **Compliance with Statutes**. It shall be the CONTRACTOR's responsibility to be aware of and comply with all statutes, ordinances, rules, orders, regulations and requirements of all local, City, state, and federal agencies as applicable.

**SIGNATURE PAGE AND  
AFFIDAVIT OF COMPLIANCE WITH  
HUMAN TRAFFICKING LAWS FOLLOW**

**IN WITNESS OF THE FOREGOING**, the Parties have set their hands and seals the day and year first written above.

**CITY:**

CITY OF PEMBROKE PINES, FLORIDA

APPROVED AS TO FORM:

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

BY: \_\_\_\_\_

MAYOR ANGELO CASTILLO

ATTEST:

\_\_\_\_\_

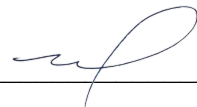
BY: \_\_\_\_\_

CHARLES F. DODGE, CITY MANAGER

DEBRA E. ROGERS, CITY CLERK

**CONTRACTOR:**

**OPERATIONS MANAGEMENT  
INTERNATIONAL, INC.**

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

Printed Name: \_\_\_\_\_  
Gregory Fischer

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

**AFFIDAVIT OF COMPLIANCE WITH HUMAN TRAFFICKING LAWS**

In accordance with section 787.06 (13), Florida Statutes, the undersigned, on behalf of the entity listed below (“Entity”), hereby attests under penalty of perjury that:

1. The Affiant is an officer or representative of the Entity entering into an agreement with the City of Pembroke Pines.

2. The Entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled “Human Trafficking”.

3. The Affiant is authorized to execute this Affidavit on behalf of the Entity.

4. I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

5. Pursuant to Sec. 92.525(2), Fla. Stat., under penalties of perjury, I declare that I have read the foregoing affidavit of compliance with Human Trafficking Laws and that the facts stated in it are true.

FURTHER AFFIANT SAYETH NAUGHT.

DATE: 6/10/2025

ENTITY: **OPERATIONS MANAGEMENT INTERNATIONAL, INC.**

SIGNED BY: 

Gregory Fischer

NAME: \_\_\_\_\_

President

TITLE: \_\_\_\_\_