

CITY OF NEW BEDFORD

MASSACHUSETTS

Department of Public Infrastructure

Wastewater Division



CONTRACT

FOR

OUT – OF - CITY

PRIMARY LONG TERM SLUDGE DISPOSITON

Volume II

CITY OF NEW BEDFORD, MASSACHUSETTS

REQUEST FOR PROPOSALS

FOR

OUT-OF-CITY

PRIMARY LONG-TERM SLUDGE DISPOSITON

April 4, 2016

VOLUME II

AGREEMENT
FOR
OUT-OF-CITY
PRIMARY LONG-TERM SLUDGE DISPOSITON

Between

THE CITY OF NEW BEDFORD

AND

_____, 2016

AGREEMENT
FOR
OUT-OF-CITY
PRIMARY LONG-TERM SLUDGE DISPOSITON

This AGREEMENT is made as of the _____ day of _____, 2016, by and between the City of New Bedford, a municipal corporation of the Commonwealth of Massachusetts having its principal offices at City Hall, 133 William Street, New Bedford, Massachusetts 02740 (hereinafter referred to as the "City") and _____ a _____ corporation, having offices at _____, _____, (hereinafter referred to as the "Contractor").

WHEREAS, the City has entered into the Second Modified Consent Decree in connection with Civil Action Nos. 87-2497-T and 87-2498-T, by and among the United States Environmental Protection Agency ("EPA"), the Commonwealth of Massachusetts Department of Environmental Protection ("DEP"), the conservation Law Foundation of New England, Inc., and the City (the "Consent Decree"); and

WHEREAS, the City currently operates a secondary wastewater treatment plant, located at 1000 South Rodney French Boulevard in the City (the Wastewater Treatment Plant); and

WHEREAS, the City currently provides wastewater and sewerage treatment services to the residents of the City, such services being essential to the health, safety and welfare of the general public; and

WHEREAS, the City has developed a long-term plan, implemented on or prior to August 22, 1996, in compliance with the Consent Decree, that entails the management of dewatered Sludge (such term and all other capitalized terms not otherwise defined herein having the meanings set forth in Article 1 of this Agreement) generated in the City by entering into an Agreement for the loading, transportation, and Disposal or Processing and Beneficial Reuse of City Sludge and the Disposition of Final Product, Residue, Bypass Waste, and Unacceptable Sludge; and

WHEREAS, the City has issued a Request for Proposals for the loading, transportation, and out-of-City Disposal or Processing and Beneficial Reuse of City Sludge (the "RFP"). ; and

WHEREAS, the Contractor submitted a proposal in response to the RFP and has been selected in accordance therewith in consideration of its technical and cost proposals, along with its representation that It can perform the obligations set forth herein, in compliance with said Consent Decree, while meeting the highest professional standards; and

WHEREAS, the City's objective is to manage its Sludge in an environmentally sound and economically feasible manner, consistent with applicable Federal, state and local laws and regulations.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto mutually agree as follows.

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions. When capitalized and used in this Agreement the following terms have the meanings set forth below:

"Acceptable Sludge" means all Sludge which at the time title thereto is transferred to the Contractor in accordance with the Contract:

(a) contains at least either approximately four and five tenths (4.5%) percent to and including approximately ten (10%) percent solids (liquid) or approximately fifteen (15%) percent to and including approximately twenty three (23%) percent solids (Cake) and (b) does not contain Hazardous Waste and (c) does not exceed maximums set forth in Appendix 1, Synagro Testing Requirements.

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls or is controlled by or is under common control with such Person.

"Agreement" means this Agreement for Out-of-City Primary Long-Term Sludge Disposition between the Contractor and the City, together with all the Schedules included herewith, as the same may from time to time be amended, modified, or supplemented in accordance with the terms hereof.

"Alternate Disposition Services" means, the providing of Disposition of City Sludge by the Contractor through the use of an Alternate Facility.

"Alternate Facility" means, an out-of-City Disposal Facility or Facilities or Processing Facility or Facilities other than the Primary Facility that is designated for Disposition of Acceptable Sludge, Unacceptable Sludge, Residue, Bypass Waste, or Final Product in accordance with this Agreement and described in Schedule 5.

"Beneficial Reuse" means, the environmentally sound use of Final Product in accordance with applicable Federal, Commonwealth, and state laws, rules, regulations, and

policies for landfill cover, soil amendment, soil additives, fertilizer, land reclamation, raw materials, and other similar uses.

“Billing Period” means, each calendar month, except that (a) the first Billing Period shall begin on the Commencement Date and shall continue to the last day of the calendar month in which such date occurs and (b) the last Billing Period shall end on the last day of the final Contract Year.

“Business Day” means, each Monday, Tuesday, Wednesday, Thursday and Friday which is not a Legal Holiday.

“Bypass Waste” means, Acceptable Sludge that has been tendered to the Contractor for which Disposition is not provided at the Primary Facility for any reason.

“CERCLA” means, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

“C.F.R.” means, the Code of Federal Regulations.

“Change in Law” means, (i) a change after the Contract Date in any Federal, Commonwealth, state, county, or other local law, ordinance, code, rule, regulation or similar legislation, or change in interpretation thereof, which establishes requirements resulting in operating or capital costs more burdensome to the City or Contractor other than those in effect on the Contract Date or agreed to by the Contractor in Schedule 2; (ii) a change after the Contract Date in any Federal, state, county, or local tax law.

“City” means, the City of New Bedford, Massachusetts.

“City Sludge” means, Sludge that is made available to the Contractor by the City for loading pursuant to this Agreement, including but not limited to Excess City Sludge.

“C.M.R.” means, the Code of Massachusetts Regulations.

Commencement Date means, October 3, 2016, the date upon which the Contractor commences the performance of services under this Agreement.

“Commissioner” means, the Commissioner of the Department of Public Infrastructure, or his designated representative, agent, or employee.

“Commonwealth” means, the Commonwealth of Massachusetts or any agency, department, commission, or instrumentality thereof.

“Confidential Information” means, that information now or hereafter owned or controlled by the Contractor and identified in writing as such pursuant to the provisions of

Section 14.18 which: constitutes trade secrets; the public disclosure of which could cause substantial injury to the Contractor's competitive position; or specifically or by necessary implication is exempted from disclosure by statute, provided that any such information which becomes a part of general knowledge shall not be deemed Confidential Information unless such information becomes part of general knowledge as a result of disclosure which is not permitted pursuant to Section 14.18 by the City or its officers, employees, agents or representatives.

"Consulting Engineer" means any consulting engineering firm designated by the City to advise the City relating to sludge management, and designated to the Contractor in writing by the City.

"Contract Date" means, the date upon which the Agreement shall be effective, as set forth in Section 15.

"Contract Year" means, the consecutive twelve-month period beginning July 1 and ending June 30, except that the first Contract Year shall commence on the Contract Date and shall end on the date of the termination of this Agreement, and in the case of said first and last Contract Years, the obligations of the parties hereto shall be adjusted to reflect the actual length of such Contract Years.

"Cost Substantiation" means, with respect to any cost, a certificate delivered at least once each month signed by an authorized representative of the Contractor setting forth, in reasonable detail, the amount of the basis for such cost and stating that such cost was or will be actually incurred as a direct result of an event giving the Contractor the right to reimbursement under this Agreement and further stating that such cost is a competitive and reasonable price (including direct and indirect costs and overhead) for the service or materials supplied.

"CPIU" shall mean the Consumer Price Index, All Items, for Urban Wage Earners and Clerical Workers for Boston, Massachusetts, Statistical Area, as published by the U.S. Department of Labor in the Bureau of Labor Statistics CPI Detailed Report for Selected Areas in Table 11, Series ID CWURA103SA0 for the month of November in the year immediately prior to the year in which the calculation to which CPIU applies is made; provided that for the calculation of the Escalation Factor for City Sludge with a solids content of four and five tenths (4.5%) to and including approximately ten (10%) percent, the index referred to herein shall be for the month of November 2016. If, at any time that escalation is to be calculated in accordance with this Agreement, CPIU is not available or is substantially altered with respect to base, component elements, timing, or publication, a comparable index satisfactory to the Contractor and the City shall be used.

"CPIU BASE" shall mean the Consumer Price Index, All Items, for Urban Wage Earners and Clerical Workers for the Boston, Massachusetts, Statistical Area, as published by the U.S. Department of Labor in the Bureau of Labor Statistics CPI Detailed Report for Selected

Areas in Table 11, Series ID CWURA103SA0 for the month of July, 2016. If CPIU Base is not available or is substantially altered with respect to base, component elements, timing, or publication, a comparable index satisfactory to the Contractor and the City shall be used.

“Department” or “DPI” means the City Department of Public Infrastructure.

“DEP” means the Department of Environmental Protection of the Commonwealth.

“Disposal” means the act of, or making of arrangements for, the discharging, depositing, injecting, dumping or placing of Acceptable Sludge, Bypass Waste, Final Product, Residue, Unacceptable sludge or any other material into or on any land for final Disposal other than Beneficial Use.

“Disposal Facility” means the duly permitted and lawfully operating management facility or facilities and standby facility or facilities designated by the Company in Schedule 6, which shall be capable of lawfully receiving all Acceptable Sludge, Unacceptable Sludge, Bypass Waste, Residue, and Excess City Sludge (in each case, excluding any Hazardous Waste), tendered to the Contractor by the City.

“Disposition Facilities” means the Primary Facility, the Alternate Facility, and the Disposal Facility.

“Dispute” has the meaning set forth in Section 14.17.

“Dry Ton” means the unit of weight (in short Tons) of dewatered Sludge representing the weight of Sludge free from moisture.

“Environmental Laws” means all Federal, Commonwealth, state, and local laws, rules, ordinances, rulings and regulations relating to pollution or protection of human health or the environment (including ,without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including, without limitation, laws, rules, ordinances, rulings and regulations relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacture, processing, refining distribution, use, treatment, storage, Disposal, transport, recycling, reporting or handling of Hazardous Materials, and including without limitation such laws, rules, ordinances, rulings and regulations as applied to or on account of its generation and/or Disposition of sludge.

“Escalation Factor” has the meaning set forth in Section 6.2.

“Estimated Annual Service Fee” has the meaning set forth in Section 7.1.

“Event of Default” means those events of default as described in Sections 9.1 and 9.2 of this Agreement.

“Excess City Sludge” means City Sludge tendered to the Contractor in amounts in excess of 7,000 dry tons per year.

“Final Product” means the material produced as a result of Contractor’s method of Processing Sludge and which is intended for Beneficial Reuse, including but not limited to heat dried Sludge, Sludge pellets, fuel, composted Sludge, and other materials that may be marketed in compliance with all applicable legal requirements.

“Force Majeure” means any act, event or condition if the same has had, or may reasonably be expected to have, a material adverse effect on the rights or the obligations of the parties under this Agreement, or give rise to a claim for adjustment of the Service Fee, and if such act, event or condition is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement and is the direct and proximate cause of such failure to perform or comply. Schedule 2 sets forth all Force Majeure events that, to the best knowledge of the Contractor, after reasonable investigation, and to the knowledge of the City, have occurred as of the Contract Date. Force Majeure shall include, but not be limited to, any of the following:

- (a) An act of God, landslide, lightning, earthquake, flood, acts of the public enemy, war, blockade, insurrection, riot, or civil disturbance, not including reasonable anticipated weather conditions normal for the geographic area of the place of performance of Contractor’s obligations; and
- (b) A Change in Law.
- (c) A delay in Contractor receiving any governmental permit or permission required to perform under this Agreement so long as Contractor demonstrates that it has diligently pursued such permit or permission.

It is expressly understood and agreed that, notwithstanding any other provision of this definition, the following shall not constitute Force Majeure:

- (i) Adverse changes in the financial ability of any party to this Agreement to perform its obligations hereunder;
- (ii) the consequences of errors of design, construction, start up, operation or maintenance of the Disposition Facilities on the part of the Contractor or any of its employees, agents, contractors, subcontractors, suppliers, or affiliates;
- (iii) the failure of the Contractor to maintain in force patents or licenses in connection with the technology necessary to operate or maintain the Disposition Facilities, provided that a Change in Law giving rise to the need to secure such patents or licenses shall remain an event of Force Majeure;
- (iv) the failure of any supplier to deliver to the Contractor any necessary materials, equipment, or parts for the operation of the Disposition Facilities;

- (v) the lack of fitness for use, or the failure to comply with specifications or design, of any materials, equipment, or parts constituting part of the Disposition Facilities, provided that such lack or failure shall not have been the result of the occurrence of a Change of Law;
- (vi) any commercial or economic frustration of purpose, or impracticability of technology to perform, provided that a Change in Law giving rise to the need for any technology not included in the Disposition Facilities shall remain an event of Force Majeure; and
- (vii) labor disputes.

"Force Majeure Amount" or "FMA" means those fees payable to the Contractor by the City for as a result of certain Force Majeure Events as calculated pursuant to Section 6.4.

"Fuel Surcharge" has the meaning as set forth in Schedule 8

"Governmental Approval" means (a) any authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, exemption, filing, variance, claim, order, judgment, decree or publication of, by or with, (b) any notice to, (c) any declaration of or with, or (d) any registration by or with, any Government Authority, relating to the operation of the Primary Facility, the Alternate Facility, or the disposal Facility and the performance by Contractor of its obligations under this Agreement, including but not limited to any consent or approval contemplated by the Consent Decree.

"Government Authority" means any United States Federal, Commonwealth, state, municipal, local, territorial, or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body.

"Guarantee" the guarantee of the Contractor's performance under this Agreement executed by the Guarantor, in the form set forth in Schedule 3.

"Guarantor" means STI, which is executing the Guarantee simultaneously with the execution of this Agreement by the City and the Contractor.

"Hazardous Waste" means materials that (i) the Processing or Disposing of which would subject the City or the Contractor to liability under or would otherwise contravene Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq. and analogous Commonwealth and state laws or (ii) contains 50 ppm or more of polychlorinated biphenyls (PCBs). Hazardous Waste does not include either Acceptable Sludge or Unacceptable Sludge.

“Initial Term” has the meaning set forth in Section 3.1.

“Legal Holiday” means (i) the day on which the following are observed by the City: New Year’s Day, Martin Luther King Day, Presidents Day, Patriots Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas Day, and (ii) such other legal holidays as may be designated from time to time by the City.

“M.G.L.” means Massachusetts General Law.

“Pass-through Costs” means those costs for which the Contractor is entitled to reimbursement through the Service Fee pursuant to Article 6.

“Person” means any individual or business or governmental entity, including, without limitation, any corporation, partnership, government agency, or business trust.

“Primary Facility” means the out-of-City Sludge Disposition facility, which may be a Processing or Disposal facility, to be utilized by the Contractor as the primary means for providing Disposition services pursuant to this Agreement, including the land, all real estate improvements, and any Sludge Processing equipment, buildings, and related facilities, as described in Schedule 4.

“Processing” means, in reference to Sludge, the treatment operations associated with the dewatering, drying, stabilizing, gasification, incineration, chemical treatment, composting, and/or preparing of Sludge in a manner intended to achieve compliance with 40 C.F.R. Part 503 and 310 C.M.R. 32.00 as a Process to Reduce Pathogens necessary for final Disposition.

“Receiving Time” means, the hours during which the Contractor shall receive and transport City Sludge at the Wastewater Treatment Plant, which shall be between 7:00AM and 10:00 PM seven (7) days a week.

“Renewal Term” has the meaning set forth in Section 3.2.

“Residue” means all material other than Final Product remaining after Processing of Acceptable Sludge by Contractor.

“Schedule” means an exhibit, schedule or annex which is incorporated in, and made a part of, this Agreement, as such Schedule may be modified or supplemented from time to time in accordance with this Agreement.

“Service Fee” means those fees payable to the Contractor by the City for the Disposition of City Sludge as calculated pursuant to Article 6 of this Agreement.

“Service Fee Increase Limitation” means a limitation on the increase in the arithmetic average Service Fee expected to occur during the six (6) Billing Periods following any such increase, above which this Agreement may be terminated in accordance with Section 6.5 and Article 9, if, as a result of such increase the Service Fee will be greater than or equal to one hundred fifty percent (150%) of the arithmetic average Service Fee during the six (6) months immediately preceding such period of six (6) months after giving effect to all the adjustments required by Article 6.

“Sludge” means, the liquid, semisolid, or solid substances, including primary and secondary sludge, sludge cake and scum, produced by a sewage treatment plant as a result of the sewage treatment process, but not including grit and screenings.

“Technical Specifications” means, the technical specifications for the provision of Sludge removal and transportation services set forth in Schedule 1.

“Ton” means, a short ton of two thousand (2,000) pounds.

“Transportation Fee”, means the cost associated with the transportation of City Sludge from the City’s Wastewater Treatment Facility to the Contractor’s Primary Disposal Facility.

“Type I Sludge” means, Sludge that meets the requirements for Type I Sludge set forth at 310 C.M.R. 32.00, as amended from time to time.

“Type II Sludge” means, Sludge that meets the requirements for Type II Sludge set forth at 310 C.M.R. 32.00, as amended from time to time.

“Unacceptable Sludge” means, all Sludge which is made available to the Contractor by the City other than Acceptable Sludge.

1.2 Construction

In this Agreement:

- 1.2.1 the term means “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement;
- 1.2.2 words of the masculine gender shall mean and include correlative words of the feminine and neuter genders, and words importing the singular number shall mean and include the plural number or vice versa if the context so requires;
- 1.2.3 any headings preceding the text of the several Articles and sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, and shall not affect its meaning, construction, or effect;

- 1.2.4 all Schedules or Exhibits attached to this Agreement shall be considered to be incorporated within any section or Article hereof solely by reference thereto;
- 1.2.5 all references to the term of this Agreement, without further specification, shall include all renewal terms (if any);
- 1.2.6 references to Exhibits, Schedules, or Sections without further identification of the document in which they are located are references to Exhibits to, Schedules to, or Sections of this Agreement, as the case may be; and
- 1.2.7 in the event of any conflict or inconsistency between this Agreement and any Exhibit, or Schedule, the provisions of this Agreement shall control.

2 BASIC OBLIGATIONS AND DUTIES

2.1 Obligations of Contractor

2.1.1 As more fully set forth in this Agreement, including without limitation Article 4 and 5, on and after the Commencement Date, the Contractor shall load, transport, and Dispose of or Process and market all City Sludge in accordance with this Agreement. Specifically:

2.1.1.1 The Contractor shall load and transport all Sludge, including Acceptable Sludge and Unacceptable Sludge, utilizing personnel, vehicles, and equipment provided by Contractor, all in accordance with Schedule 1, and the Contractor shall provide transportation of the City Sludge in tanker trucks with a capacity not to exceed nine thousand (9,000) gallons,

2.1.1.2 The Contractor shall either Dispose of or Process and market all Acceptable Sludge in accordance with this Agreement.

2.1.1.3 Unless otherwise determined pursuant to Subsection 2.1.1.4 or 2.1.1.5, all Sludge delivered to the Contractor is presumed to be Acceptable Sludge. In the event that any Sludge, as delivered, is determined to be Unacceptable Sludge, the Contractor must notify the City of its intention to treat such Sludge as Unacceptable Sludge. The Contractor shall provide Disposition or cause the Disposition of all Unacceptable Sludge in the most cost effective manner, utilizing entities and methods that are fully licensed and permitted for Disposition. Any determination of Unacceptable Sludge shall be limited to the particular truck load(s) so tested and shall have no application to any other truck loads whether retroactively or prospectively.

2.1.1.4 The Contractor shall at all times have the right and opportunity to test and analyze the Sludge, as well as the obligation to determine whether the Sludge is Acceptable Sludge. All such testing and analysis shall be conducted and performed by Commonwealth or Federal certified laboratories and other qualified personnel; provided, however, that the Contractor shall supply the City with reasonable notice within twenty-four (24) hours after any test that indicates that the Sludge is Unacceptable Sludge and the City shall be given five (5) Business Days to obtain a split sample of any such Sludge.

2.1.1.5 If the City knows or determines that the Sludge to be delivered to the Contractor during a specified period of time will be Unacceptable Sludge, the City shall notify the Contractor, and, except as required by law, the Contractor's testing obligation under Subsections 2.1.1.3 and 2.1.1.4 of this Subsection 2.1.1 shall be suspended with respect to such Sludge designated by the City.

2.1.2 The Contractor shall be responsible for all actions relating to the loading, transportation, Processing and Disposal of the City's Sludge, as well as the costs associated therewith.

2.1.3 the Contractor shall obtain and maintain all Governmental Approvals required for the performance of its obligations under this Agreement. With respect to such Governmental Approvals, on January 15th of each year, the Contractor shall provide the City with an annual environmental report regarding the status of each such Governmental Approval, including but not limited to, the applicability of any new or proposed Federal, Commonwealth state, or local laws or regulations that might affect the ability of Contractor to fulfill its obligations under this Agreement.

2.1.4 The Contractor shall enter into all necessary agreements for the acquisition or provision of any vehicles, containers, equipment, labor, services, machinery or other materials to enable Contractor to perform its obligations under this Agreement.

2.1.5 The Contractor shall comply with all truck and transport routes within the City to and from the Wastewater Treatment Plant as set forth in Schedule 1. Contractor shall not change any such route without having first obtained written approval from the City. In addition to such routes, Contractor shall identify the methods of transportation, including: (i) the number, type and capacity of all vehicles required; (ii) loading times; (iii) transportation permitting requirements. All the information required by this subsection must be provided to the City at least sixty (60) days prior to the Commencement Date.

2.1.6 The Contractor shall be responsible for securing any and all permits required for the hauling of the Sludge. Copies of the applicable permits shall be submitted to the Commissioner prior to the commencement of operations. Any new or revised permits which are required due to a change in or relocation of hauling or Processing operations shall be submitted for the City's approval not less than thirty (30) days prior to the scheduled commencement of said revised services. The Contractor shall certify to the city in writing that all applicable and required permits for this work have been secured and that the permits submitted to the City are true and complete documents.

2.1.7 The Contractor shall perform its obligations under this Agreement despite any strikes, lockout, work slowdown or stoppage or similar industrial disturbance involving employees or agents of Contractor or any subcontractor and shall use reasonable efforts to continue performance when such slowdown, stoppage or disturbance is caused by persons not under its direct or indirect control.

2.1.8 The Contractor shall be responsible for the Disposition of Unacceptable Sludge, Bypass Waste, Residue and Excess City Sludge, and shall notify the City through the provision of manifests or other appropriate documents, of the Disposition location for each shipment of such materials. Any Disposition Facilities utilized by the Contractor for such purposes shall comply with the following requirements.

2.1.8.1 Such Disposition Facility must have all required Federal, Commonwealth, state, and local permits, consents, authorizations, and approvals. Without the consent of the City, the Contractor shall not use such Disposition Facility if there are any objective data evidencing any release of contaminants from such Disposition Facility including but not limited to release to land, ground water, surface water, and the atmosphere, which release does or reasonably could be anticipated to impose liability upon users of that Disposition Facility or the City. Without the consent of the City, the Contractor shall not use any Disposition Facility if there are any suits, actions, proceedings, judgments, claims, clean-up or other remediation orders or directives (including but not limited to those based upon nuisance, negligence, or strict liability) in existence with respect to the design, use, or operation of such Disposition Facility, which do or reasonably could be expected to impose liability upon users of that Disposition Facility or the City. Without the consent of the City, the Contractor shall not use such Disposition Facility if there is any material violation or alleged violation of any order, statute, ordinance, resolution, permit, license, approval, authorization, restriction, or requirement regarding the design, use or operation of such Disposition Facility which does or reasonably could be anticipated to impose liability upon users of that Disposition Facility or the City.

2.1.8.2 The Disposition Facility must have adequate available capacity allocated to the Contractor to accept the amounts of materials projected to require Disposition by the Contractor pursuant to this Agreement. The Contractor's contracts or other arrangements to enable it to perform its obligations with respect to providing such disposition Facility must be satisfactory to the City. The Contractor shall also provide a standby Disposition Facility for use in the event the originally designated Disposition Facility shall become unavailable for any reason. The parties to this Agreement understand and agree that the Contractor is obligated to accept for Processing or Disposal on a continuous basis all City Sludge tendered to the Contractor pursuant to this Agreement.

2.1.8.3 Hazardous Waste tendered by the City shall be handled and disposed of by Contractor in accordance with all applicable laws and regulations at an approved facility and the City shall retain title to such Hazardous Waste.

2.1.9 The Contractor shall Dispose of all Residue and Bypass Waste, whether or not such Residue or Bypass Waste is Hazardous Waste.

2.1.10 If applicable, the Contractor shall be responsible for all aspects of marketing or Beneficial Reuse or other Disposition of Final Product, including but not limited to:

2.1.10.1 securing purchasers for the Final Product;

2.1.10.2 meeting product market specification and requirements; and

2.1.10.3 Disposal of any Final Product if not marketable or able to be Beneficially Reused for any reason including, but not limited to, the classification of such Final Product as Hazardous Waste.

2.1.11 The Contractor shall, subject to the other provisions of this Agreement, modify the Primary Facility, or utilize the Alternate Facility, as required by any applicable Change in Law, a change of market specifications for Final Product, or a change in the characteristics of City Sludge other than a change in the characteristics of such Sludge which renders it Unacceptable Sludge.

2.1.12 The Contractor shall repair, maintain and replace all vehicles, containers, equipment, machinery and any other items utilized in Contractor's performance of the obligations set forth in this Agreement.

2.1.13 The Contractor shall provide for and ensure the proper and safe operation, maintenance, and replacement of all vehicles, containers, and equipment required to load and transport Sludge to the Primary Facility, the Alternate Facility, or Disposal Facility, as the case may be, as well as adequately qualified, trained, and experienced personnel to operate such vehicles, containers, and equipment, as necessary to fulfill its obligations set forth in this Agreement.

2.1.14 The Contractor shall supply to the City on a semi-annual basis (January 31 and July 31 of each year) a report which states the amount of Sludge that has been (i) loaded, (ii) transported, (iii) Processed, (iv) sold and (v) Disposed of during the six (6) months; and any other information reasonably requested by the City to enable it to monitor Contractor's performance of this Agreement.

2.1.15 The Contractor shall not be relieved of performing any obligation under this Agreement, resulting from or arising out of any of the following unless any of the following events or conditions were caused by an event of Force Majeure:

2.1.15.1 The suspension, termination, revocation, modification, interruption, denial or failure of renewal of any Governmental Approval;

2.1.15.2 The failure of any vendor or subcontractor to furnish equipment, labor, services, machinery, or any other materials in accord with any agreed upon schedule;

2.1.15.3 The default of a product purchaser(s) to take or pay for any quantity of Final Product(s);

2.1.15.4 The unavailability of markets for, or the inability to sell, or Dispose of Final Product is intended;

2.1.15.5 The failure to secure, or unavailability of, Disposition arrangements for Bypass Waste, Residue or any other materials;

2.1.15.6 Modifications of the Disposition Facilities as required by any change in market specifications for Final Product, or for any other reason;

2.1.15.7 The failure to meet product market specifications or requirements;

2.1.15.8 Commercial impracticability or frustration of purpose;

2.1.15.9 Adverse changes in the financial condition of the Contractor;

2.1.15.10 The consequences of errors of design, construction, start-up, operation or maintenance on the part of the Contractor or any of its employees, agents, contractors, subcontractors, suppliers, or Affiliates;

2.1.15.11 The failure of the Contractor to secure patents or licenses in connection with the technology necessary to operate, or maintain the Primary Facility or the Alternate Facility or otherwise to perform its obligations under this Agreement;

2.1.15.12 the lack of fitness for use, or the failure to comply with specifications or design, of any materials, equipment, or parts constituting part of the disposition facilities; or

2.1.15.13 Any impossibility of technology to perform.

2.1.16 Except as specifically provided in Article 6, the costs of continued performance of Contractor's obligations under this Agreement shall be borne in whole by the Contractor, whether or not such costs are incurred as a result of or due to occurrences, happenings, events or reasons beyond the Contractor's control or which were unforeseeable as of the Contract Date.

2.1.17 The Contractor shall allow City personnel and any other representative or designee of City access and inspection rights, with reasonable notice and during normal business hours, to the Disposition Facilities, transport vehicles, and any other equipment or structures utilized by the Contractor in carrying out its obligations under this Agreement, subject to the provisions of Section 5.5.

2.1.18 The Contractor shall provide a written safety program covering its employees and any involved employees of the City which will be designed to assure that no spills occur of the material provided by the City while in the custody and control of the Contractor.

2.1.19 After loading the Sludge pursuant to this Agreement, the Contractor shall perform all sampling and testing obligations under any Environmental Law, including but not limited to the Clean Water Act and successors thereto with respect to Sludge, Bypass Waste and Residue, and shall Dispose of such materials consistent with the obligations of the City under all Environmental Laws, including but not limited to the Clean Water Act and successors thereto.

2.1.20 the Contractor shall take title to all Acceptable and Unacceptable City Sludge immediately upon the initial loading of such Sludge into the Contractor's vehicles or containers as required herein, Title to any Hazardous Waste loaded in Contractor's vehicles or containers shall remain with the City.

2.1.21 The Contractor agrees to provide Disposition of Bypass Waste, Residue, and Unacceptable Sludge by utilizing the Disposition Facility designated in accordance with this Agreement.

2.1.22 The Contractor shall perform its obligations under this Agreement in compliance with all applicable Federal, Commonwealth, state, and local laws, codes, rules, regulations, and similar requirements for zoning, building, safety, employment practices, noise, odors, effluents, and emissions.

2.1.23 The Contractor shall not utilize in the performance of its obligations under this Agreement or incorporate in the Disposition Facilities or utilize in the operation or maintenance thereof any appliance, article, device, process, or other intellectual property that is licensed or patented a trade secret or otherwise owned by a third party unless it has authorization for such use. The Contractor shall pay, and shall hold the City harmless from, all royalty and license fees in connection therewith. No approval of materials or methods by the City shall be deemed a request to furnish any such patented or licensed method of construction, appliance, article or device.

2.2 Obligations of City

The City shall be responsible for the following:

2.2.1 Providing to the Contractor any and all Sludge produced by the City at the City's Sludge dewatering facilities. The City is not obligated to produce any minimum amount of Sludge.

2.2.2 Payment of fees, in accordance with the formula set forth in Article 6 of this Agreement, to the Contractor for the Sludge management services provided in accordance with this Agreement.

2.2.3 Provision of reasonable access for the Contractor to the Wastewater Treatment Plant for the purposes of loading and transporting Sludge from said facilities in accordance with the provisions of this Agreement.

2.2.4 Using its reasonable efforts to cooperate with the Contractor and to respond to the Contractor's reasonable requests for information and assistance, in accordance with the provisions of this Agreement.

2.2.5 Providing to the Contractor, for the purpose of calculating the Estimated Annual Service Fee for the purposes of Section 7.1, the estimated volume of City Sludge to be tendered to the Contractor, based upon the previous twelve (12) months of actual Sludge production.

2.2.6 Complying with all Federal, state and local laws and regulations applicable to the City's performance of this Agreement, including, but not limited to, those applicable to generators pursuant to 40 C.F.R. §§ 503 et seq.

3 TERM OF AGREEMENT

3.1 Initial Term

The initial term of this Agreement shall be for a period commencing on the Commencement Date and ending on the earlier of (i) the date which is five (5) years after the Commencement Date (the "Initial Term"); or (ii) the date of termination of this Agreement as provided for in Article 9. At the end of said term, this Agreement shall expire and all obligations of the parties hereto, except those stated to survive expiration, shall be at an end.

3.2 Renewal Term

To the extent permitted by law, the City may elect to extend the term of this Agreement for one (1) period of not more than ten (10) years and in addition, a second option to extend for period of not more than five (5) additional years (individually, the "Renewal Term", and collectively, the "Renewal Terms"), for a total term, including the Initial Term, of twenty (20) years. Such election shall be made in writing signed by the City at least one (1) year prior to the expiration of the Initial Term or the first Renewal Term, as the case may be, and shall be possible only if this Agreement is in effect at the time of the election. Upon such election, all terms and conditions hereof shall remain in full force and effect.

4 THE DISPOSITION FACILITIES

4.1 Designation of the Disposition Facilities; Obligation to Provide Disposal Facility

4.1.1 The Primary Facility shall be as designated in Schedule 4; the Alternate Facility shall be as designated in Schedule 5; and the Disposal Facility shall be as designated in Schedule 6. The Contractor shall not utilize and/or relocate any facility for the Disposition of Sludge other than the Disposition Facilities without the City's consent but such consent shall not be unreasonably withheld, and shall use the Alternate Facility only in the event of an interruption in the availability of the Primary Facility. In the event the City consents to a new Primary Facility designation by the Contractor pursuant to this Section 4.1.1, the cost to the City may not exceed the pricing contemplated by this Agreement without the consent of the City which may be withheld at the City's sole discretion.

4.1.2 If a Primary or any Alternate Facility is a Processing Facility, the Contractor shall provide a Disposal Facility for Disposal of City Sludge, Excess City Sludge, Residue, Bypass Waste, and Unacceptable Sludge, provided that this requirement shall be satisfied if the Primary or Alternate Facility is a Disposal Facility.

4.2 Environmental Review and Permits

As of the Contract Date, the Contractor has prepared all required environmental notification forms, environmental impact report or reports, or other documents required by the National Environmental Policy Act, the Massachusetts Environmental Policy Act, and Government Authorities with respect to the implementation of this Agreement. The Contractor represents and covenants that the notice of project change, the draft and final environmental impact reports (including any supplemental environmental impact reports, if required) and all permits and permit applications held or prepared by the Contractor in connection with this Agreement: (i) are listed in Schedule 7; (ii) are complete, up-to-date and in good standing; (iii) are sufficient for the operation of the facilities required to perform the Contractor's obligations under this Agreement; (iv) comply in all material respects with all Federal, Commonwealth, state, and local requirements applicable thereto, and if they do not so comply, the Contractor, at its sole cost and expense, shall take any action necessary in order for them so to comply; and (v) to the maximum extent permissible by law and regulation, they can be exercised on the City's behalf in executing the services without further conditions, qualifications, regulatory agency authorization, or other intervention. With respect to future requirements, the Contractor shall submit copies of all environmental impact reports and permit applications to the City at least thirty (30) days prior to the date on which the Contractor intends to submit such documents to the government Authorities having jurisdiction with respect to such documents, and the Contractor shall consult with the City with respect to all proceedings relating to all environmental impact statements and permit applications. The City shall take, at its cost and expense, all such action relating to environmental impact reports and permit proceedings as may not be delegated to the Contractor under applicable statutes and

regulations. The Contractor shall be responsible for satisfying EPA and DEP with respect to (i) the adequacy of all Disposition Facilities utilized by the Contractor, and (ii) the adequacy of the Contractor's Processing of Sludge and Beneficial Reuse of Final Products, and Disposal of Residue, bypass Waste, Excess City Sludge, and Unacceptable Sludge.

4.3 Continuation of Existing Operations

The Contractor acknowledges the necessity for the continuation of existing and proposed activities by or on behalf of the City at the Wastewater Treatment Plant, including but not limited to the operations of and events held at Fort Taber Park adjacent to the Wastewater Treatment Plant. Then Contractor shall not interfere with such activities in the performance of its obligations under this Agreement. In such events, the City will use commercially reasonable efforts to direct the operator of the Wastewater Treatment Plant to adjust operations to avoid the build-up of Sludge during such periods.

5. DISPOSAL OR PROCESSING AND BENEFICIAL REUSE; DELIVERY AND PROCESSING OF SLUDGE

5.1 City Commitment to Tender City Sludge; Contractor Right to Charge City for Disposal

5.1.1 Commencing on the Commencement Date, the City shall tender all City Sludge to the Contractor.

5.1.2 On and after the Commencement Date, the Contractor shall charge the City and the City shall pay the Contractor the Service Fee for City Sludge accepted and for which disposition is provided by the Contractor in accordance with Article 6 and only such Service Fee.

5.2 Commitment to Accept and Process or Dispose of Sludge

5.2.1 On and after the Commencement Date, the Contractor shall accept, transport to, and either (i) Dispose of at the disposal Facility or the Alternate Facility and market or provide other Disposition Services with respect to, all City Sludge tendered to the Contractor by the City, in amounts not exceeding seven thousand (7,000) Dry Tons per Contract Year.

5.2.2 Notwithstanding the seven thousand (7,000) Dry Ton limitation set forth in Section 5.2.1, on and after the Commencement Date, the Contractor shall accept, transport to, and either (i) Dispose of at the Disposal Facility (ii) Process at the Primary or the Alternate Facility and market or provide other Disposition Services with respect to, all Excess City Sludge tendered to the Contractor by the City.

5.3 Responsibility for Work; Response to Emergencies

5.3.1 The Contractor shall provide and pay for all materials, labor, water, tools, equipment, containers, light, power, transportation, permits, and other utilities, and facilities, necessary for the execution of the work required pursuant to this Agreement. The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ anyone not skilled in the work assigned to him.

5.3.2 A representative of the Contractor shall be designated to respond to emergencies twenty-four (24) hours a day every day during the performance of this Agreement. All Contractor personnel shall be qualified for their positions and shall have all necessary licenses required by Federal, Commonwealth, state, and local laws and regulations.

5.4 City's Service Coordinator

5.4.1 The City shall on the Contract Date and from time to time thereafter, designate in writing one person to act as its Service Coordinator, with respect to the day-to-day matters which may arise during the performance of this Agreement, and such person shall have authority pursuant to such written designation to transmit instructions and receive information and confer with the Contractor's Service Coordinator.

5.5 City's Visitation of the Disposition Facilities

5.5.1 The City and its agents and representatives, including the Consulting Engineer, shall have, at any time during the term of this Agreement and upon prior reasonable notice to the Contractor, the right to visit and to have the Contractor take other visitors through the Disposition Facilities in order to observe and to permit others to observe the various services which the Contractor performs, and to cause to be conducted at the City's cost and expense reviews of the Disposition Facilities to determine in general whether the Contractor is in compliance with its obligations under this Agreement; provided, however, that such visitations and reviews shall not interfere with the Contractor's rights and obligations under this Agreement.

5.5.2 In connection with such visitations and reviews, the City shall, on behalf of itself, its agents and representatives, comply, and cause their agents and representatives to comply, with all reasonable rules and regulations adopted by the Contractor, including reasonable, safety-related restrictions on access to portions of the Disposition Facilities and further including a requirement that such person visiting such facilities sign a statement agreeing not to disclose or use any confidential information of the Contractor or its licensor other than for the purpose for which such information was furnished unless such information is in the public domain or is required to be disclosed by law or governmental regulation.

5.6 Record Keeping and Reporting

5.6.1 The Contractor shall on and after the Commencement Date establish and maintain an information system to provide storage and ready retrieval of data regarding its performance of this Agreement, including but not limited to all information reasonably necessary to verify calculations made pursuant to this Agreement. The City may at its cost and expense and with full cooperation of the Contractor, inspect the Disposition Facilities to determine whether the Contractor is accurately recording the information reasonably necessary to make the calculations required by this Agreement. The City shall furnish the Contractor with a copy of the report made as a result of such inspection. If such report shall indicate that the data and other information are not accurate, the Contractor shall have thirty (30) days from receipt of the report to dispute such report or correct any material deficiency. The Contractor shall maintain written daily records of the identity of each vehicle delivering City Sludge to each of the Disposition Facilities and the amount of such City Sludge delivered.

5.6.2 The Contractor shall prepare and maintain adequate books and records and accounts of all transactions related to this Agreement and the City may inspect all records pertaining to billing related to this Agreement during normal business hours on Business Days.

5.6.3 The Contractor shall provide the City in writing, by the tenth (10th) Business Day of each Billing Period, the following operating data for the prior Billing Period, commencing on the tenth (10th) Business Day of the Billing Period following the Commencement Date: (1) the quantity of City Sludge received; (2) the quantity of Excess City Sludge received; (3) the quantity of Unacceptable Sludge received; (4) the total quantity of City Sludge Disposed of at the Disposal Facility; (5) the total quantity of Excess City Sludge Disposed of at the Disposal Facility; (6) the total quantity of the City Sludge Processed at the Primary Facility or the Alternate Facility; (7) the total quantity of Excess City Sludge Processed at the Primary Facility or the Alternate Facility; (8) the total quantity of, if any, and the identity and location of each Disposal Facility to which such Residue has been delivered and the amount delivered thereto; (9) the quantity of Bypass Waste and Hazardous Waste leaving the Primary Facility and the Alternate Facility, if any, and the identity and location of each Disposal Facility to which such Bypass Waste or Hazardous Waste has been delivered and the amount delivered thereto; (10) the amount of Final Product derived from City Sludge and Excess City Sludge sold; and (11) other data related to this Agreement reasonably requested by the City. The Contractor shall maintain all daily weight records for the longer of (i) a period of five (5) years, or (ii) such period as is required by applicable law.

5.6.4 The Contractor shall provide the City and its auditors and engineers with reasonable access to, and the reasonable opportunity to examine and audit, scale house and Disposition Facilities meters and records relating to matters set forth in this Article 5.

5.7 Receiving and Operating Hours

Unless otherwise approved in writing by the City, the Contractor or its subcontractor shall accept, load, and transport City Sludge from the Wastewater Treatment Plant during the Receiving Time, and loaded vehicles shall not remain on the Wastewater Treatment site.

5.8 Weighing of Deliveries, Etc.

5.8.1 For dewatered Sludge, the Contractor shall maintain or cause to be maintained weighing facilities at each of the Disposition Facilities for the purpose of determining the total tonnage of City Sludge, Bypass Waste, Excess City Sludge, Residue, Final Product, and Unacceptable Sludge entering and leaving the Primary Facility, the Alternate Facility, and entering the Disposal Facility. Each vehicle delivering City Sludge, Bypass Waste, Residue, Final Product, and Unacceptable Sludge to the Disposition Facilities shall be weighed in and weighed out. The City shall have the right to test the accuracy of the weighing facilities at its own expense.

5.8.2 If at any time testing of the weighing facilities at any of the Disposition Facilities indicates that the scales do not meet applicable accuracy requirements, the scale records actually recorded during the preceding thirty (30) days shall be adjusted by mutual agreement of the City and the Contractor. If the Contractor's weighing facilities are incapacitated, the Contractor shall use the City's scale facility at the Shawmut Avenue Solid Waste Transfer Station to the extent that it is operating and available. The City shall permit the Contractor to make such use of the scale facility without charge. If all weighing facilities are incapacitated or are being tested, the Contractor may use other certified scales or shall estimate as accurately as practicable the quantities required to be determined pursuant to this Section 5.8 on the basis of truck volumes and estimated data obtained from historical information. If the City shall disagree with the Contractor's estimate and the parties fail to resolve such disagreement, the Dispute shall be resolved in accordance with Section 14.17, and historical quantities shall be utilized pending the resolution of such Dispute. These estimates shall take the place of actual weighing records during the scale outage. The Contractor shall provide copies of all weighing records to the City.

5.9 Residue, Bypass Waste, and Unacceptable Sludge Disposal

5.9.1 The Contractor has and shall have access to one or more Alternate Facilities and Disposal Facilities or shall maintain in force during the term of this Agreement commitments meeting the applicable standards set forth in this Section 5.9 for the Disposition of Residue, Bypass Waste, Final Product, and Unacceptable Sludge with the term of each such commitment, in all cases, commencing upon the Commencement Date. Without limiting the generality of the foregoing, such Alternate Facility, Disposal Facility, or commitments shall satisfy the applicable requirements of DEP's redundancy policy in regards to primary long-term Sludge contracts.

5.9.2 No such commitment may provide:

5.9.2.1 for Disposition at any Alternate Facility or Disposal Facility that (i) is not fully permitted for the capacities necessary to provide Disposition for at least the term of such commitment or (ii) has not agreed to reserve such capacity for the City's Residue, Bypass Waste, and Unacceptable sludge for such period;

5.9.2.2 for haulage by any carrier that is not fully permitted or licensed under applicable local, state, and federal law;

5.9.2.3 for haulage by any carrier or Disposition at any Alternate Facility or Disposal Facility which has a past record of significant failures to comply with applicable requirements of law or permitting conditions (unless the present operator of such carrier or facility is unaffiliated in any way with the owner or operator during the period in which such failures occurred and has demonstrated in such operations or elsewhere that it is a prudent, responsible operator);

5.9.2.4 for haulage by any carrier or Disposition at any Alternate Facility or Disposal Facility if the operator of such service has not reasonably demonstrated (through its prior operating record or its financial condition) that it is a financially responsible operator which can be expected to have the capacity to perform its obligations under such commitments.

5.9.3 Such commitment must:

5.9.3.1 obligate the service provider to provide services thereunder in accordance in all material respects with all applicable laws and regulations, including without limitation Environmental Laws and regulations, from time to time in effect;

5.9.3.2 provide the City with a reasonable right of inspection of the Alternate Facility or the Disposal Facility, as the case may be;

5.9.3.3 permit the assignment of such commitments by the Contractor as further security for the performance by the Contractor of its obligations under this Agreement, or provide that if the City terminates this Agreement, the City may, at its option, assume the rights and obligations of the Contractor under such commitment;

5.9.3.4 relieve the Contractor from any duty it may otherwise have under such commitments to utilize the services to be provided thereunder if the Contractor or the City shall have a reasonable cause to believe that the utilization thereof presents a significant risk of the imposition of penalties or liabilities upon the Contractor or the City;

5.9.3.5 be binding and enforceable against the service provider; and

5.9.3.6 include security for the performance of the service provider's obligations at levels customary for services of similar cost and scope in the geographic area of the services being provided.

5.9.4 Except for Disposition of Hazardous Waste, the Contactor may not utilize any Alternate Facility or Disposal Facility other than the Alternate Facility and Disposal Facility identified in Schedules 5 and 6, respectively, without the written consent of the City, which consent may not be unreasonably withheld.

5.10 Termination Right with respect to Alternate Disposition Services

In the event that (i) the Contractor provides Alternate Disposition services because of the unavailability of the Primary Facility, and the use of such Alternate Disposition services continues for a period of more than eighteen (18) consecutive months or for an aggregate of more than thirty (30) months during the Initial Term of this Agreement; and (ii) during such period or periods there is only one (1) Alternate Facility; then the City may, at its option terminate this Agreement pursuant to Article 9.

5.11 Unacceptable Sludge

5.11.1 The Contractor shall use best efforts to minimize costs associated with the acceptance or Processing of Unacceptable Sludge. In the event any City Sludge that could have been treated, Processed, or Disposed of without being subject to regulation as a Hazardous Waste under Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 et seq. or analogous Commonwealth or state laws as in effect on the Contract Date becomes subject to such regulation in the form accepted by the Contractor as a result a change in said Subtitle C or analogous Commonwealth or state laws or the interpretation thereof, then such Sludge shall be deemed to be Hazardous Waste, provided that this sentence shall not apply to any Sludge, Bypass Waste, Final Product, or other material that becomes subject to such Subtitle C or analogous Commonwealth or state laws as a result of or in connection with Contractor's treatment storage, Processing or Disposal of such Sludge, Bypass Waste, Final Product, or other material.

5.11.2 In the event that twenty-five percent (25%) or more of the City's Sludge during any twelve (12) month period is Unacceptable Sludge and/or Hazardous Waste, the City shall have the option to seek an alternative arrangement for the Disposition of Unacceptable Sludge and/or Hazardous Waste, provided that, to the extent permitted by law, (i) the City shall provide the Contractor with the proposed price and terms of such alternative arrangement and may, at the City's sole option, utilize the Contractor to provide such alternative services.

5.11.3 The Contractor shall not accept any Sludge the acceptance or Disposition of which as required by this Agreement would cause a violation of any applicable law, rule, regulation, or permit requirement.

5.12 Security

As between the City and the Contractor, the Contractor, at its expense, shall be solely responsible for the security and protection of the Disposition Facilities, its transportation equipment, and all equipment, materials, tools and structures associated therewith.

6. FEES OF THE CONTRACTOR

6.1 In General

As more specifically set forth in this Article 6, in consideration of the Sludge management services provided by and basic obligations of the Contractor under this Agreement, commencing on the Commencement Date, the City shall pay a Service Fee for each Billing Period that shall include a Per Ton Fee Component, a Pass-through Cost Component, and a Transportation Fee and Fuel Surcharge as calculated in accordance with the following formula:

$$\begin{aligned} \text{SF} &= \text{PTFC} + \text{TF} + \text{PCC} +/\text{- FS} \\ \text{Where:} \\ \text{SF} &= \text{Service Fee (in dollars)} \\ \text{PTFC} &= \text{Per Ton Fee Component} \\ \text{TF} &= \text{Transportation Fee (in dollars)} \\ \text{PCC} &= \text{Pass-through Cost Component} \\ \text{FS} &= \text{Fuel surcharge as defined in Appendix D} \end{aligned}$$

6.2(a) PTFC = Per Ton Fee Component

The product of the number of Dry Tons of City Sludge accepted by the Contractor during such Billing Period, and

(A) for City Sludge with a solids content of approximately four and five tenths (4.5%) percent to and including approximately ten (10%) percent, the Per Ton Fee, one hundred (100%) percent of which shall be multiplied by the Escalation Factor (subject to the proviso in the definition of CPIU Base requiring the use of the month of July 2016, as a base), shall be based on the solids content of the City Sludge in accordance with the following table:

<u>Percent Solids</u>	<u>Per Ton Fee (\$/dry ton)</u>
4.5 – 6.0	\$345.00

6.1 – 8.0	\$328.50
8.1 – 10.0	\$330.00

Or (B) for City Sludge with a solids content of approximately fifteen (15%) percent to and including approximately twenty three (23%) percent, the Per Ton Fee and Transportation Fee, one hundred (100%) percent of which shall be multiplied by the Escalation Factor, shall be based on the solids content of the City Sludge in accordance with the following table:

<u>Percent Solids</u>	<u>Per Ton Fee (\$/dry ton)</u>
15.0 – 17.0	\$440.00
17.1 – 21.0	\$390.00
21.1 – 23.0	\$340.00

Throughout the term of this Agreement, payment as described herein shall be made each Billing Period for the services provided by the Contractor during the preceding Billing Period.

6.2.b TF = Transportation Fee

The product of the number of loads transported by the Contractor during such Billing Period, and the Per Load Charge of \$372.50. One Hundred Percent (100%) of the Per Load Charge shall be subject to escalation in accordance with the Escalation Factor.

Throughout the term of this Agreement, payment as described herein shall be made each Billing Period for the services provided by the Contractor during the preceding Billing Period.

6.2.c Escalation Factor

The Escalation factor shall be calculated according to the following formula , and the application of the Escalation Factor may result in an increase or a decrease of the component of the Service Fee to which the Escalation Factor is applicable (PTFC and TF). In each year, the

Escalation Factor shall be calculated using CPIU for the month of November in the year immediately preceding the year in which the Escalation Factor is calculated, and shall be effective as of July 1 of such year through June 30 of the following year.

All Agreement Prices (except the fuel adjustment charges which are calculated separately, see Schedule 8.) shall be adjusted annually beginning on July 1, 2017 based on the Non-Seasonally Adjusted Consumer Price Index- Urban Wage Earners & Clerical Workers, Series ID CWURA103SA0, established by the United States Department of Labor, Bureau of Labor Statistics with the CPI for July 2016 being the base index.

New Price = (Price Adjustment) x First Year Agreement Price

Price Adjustment = $1 + \frac{(\text{Current CPI} - \text{Base CPI})}{\text{Base CPI}}$

July 2016 = Base CPI

CPI = All Items, for Urban Wage Earners and Clerical Workers for the Boston, Massachusetts, Statistical Area, Series ID CWURA103SA0

6.3 Pass-through Cost Component

6.3.1 The Pass-through Cost Component of the Service Fee shall consist of:

6.3.1.1 the incremental cost of loading, transportation, and Disposition of Hazardous Waste and Bypass Waste and/or Residue over the cost of loading, transportation, and Disposition of Acceptable Sludge, plus 18% of such excess cost in the case of Hazardous Waste and 10% of such excess cost in the case of Unacceptable Sludge, Bypass Waste and/or Residue;

6.3.1.2 the amount by which the cost of loading, transportation, and Disposition of Excess City Sludge exceeds the Per ton Fee Component payable to the Contractor with respect to such Excess City Sludge;

6.3.1.3 if Section 6.1 does not set forth a per Dry Ton fee for Disposition of Sludge with a solids content of approximately four and five tenths (4.5%) percent to and including approximately 10 (10%) percent and the City provides such Sludge to the Contractor pursuant to Section 5.10.1, the incremental cost of loading, transportation, and Disposition of such Sludge over the cost of Disposition of Sludge with a solids content of approximately fifteen (15%) percent to and including approximately twenty three (23%) percent;

6.3.1.4 the incremental costs of loading and transportation of Sludge at times other than the Receiving Time carried out by the Contractor at the direction of the City;

6.3.1.5 the Force Majeure Amount calculated in accordance with Section 6.4; and

6.3.1.6 the incremental costs of insurance incurred as a result of the City's adjustment of required insurance policies or amounts in accordance with Section 8.4.

6.3.2 All costs referred to in Section 6.3.1 shall be allocated to each Billing Period in accordance with generally accepted accounting principles. No amounts paid by the Contractor to any Affiliate of the Contractor shall be included in the Pass-through Cost Component pursuant to this Section 6.3 unless such expenditure is the subject of a certificate by the Contractor that the amount paid is (a) no higher than would be paid in an arm's length transaction between unrelated parties under then-current market conditions and (b) previously approved in writing by the City. If the City shall fail to approve such expenditure, the amount, if any, of such expenditure that shall be included in the Pass-through Cost Component pursuant to this Section 6.3 shall be determined in accordance with the Dispute procedures set forth in Section 14.17.

6.4 Force Majeure Costs

6.4.1 If proximately due to the occurrence of a Force Majeure event (i) the Contractor has incurred in a prior Billing Period incremental costs in connection with remedying or preventing the causes or effects of such Force Majeure event in accordance with this Agreement for which the Contractor has made payment or is required during the Billing Period to make payment, (ii) the Contractor has complied with the notice and consent requirements of Section 6.4.2, and (iii) the Contractor has provided Cost Substantiation, then the Contractor may charge the City the Force Majeure Amount each Billing Period, subject to Section 6.5, calculated according to the following formula:

FMA = FMC – OCD

Where:

FMA means the Force Majeure Amount for such Billing Period in Dollars;

FMC means Force Majeure event Costs for such Billing Period, which is that portion of incremental increases in operational and maintenance costs of providing service

OCD under this Agreement (other than costs of transferring, Transporting, or Disposing of Bypass Waste) allocable to the Disposal or Processing of City Sludge and proximately resulting from the Force Majeure event experienced by the Contractor during the Billing Period (net of the greater of all applicable insurance proceeds to which the Contractor expects to be entitled from coverage (i) required to be carried in accordance with this Agreement or (ii) actually carried by the Contractor); and means Operating Cost Decreases for such Billing Period, which is that portion of direct incremental decreases in the costs of providing service under this Agreement allocable to the Disposal or Processing of City Sludge and proximately resulting from a Force Majeure event experienced by the Contractor during the Billing Period.

6.4.2 As a condition precedent to the payment of any Force Majeure Amount:

6.4.2.1 The Contractor shall promptly notify the City by telephone, confirmed as soon as possible in writing, in no event more than five (5) days after the occurrence becomes known to the Contractor, of the occurrence of any Force Majeure event (the "First Notice"). The First Notice shall state that it is delivered pursuant to this Section 6.4.2 and shall describe in reasonable detail (i) the Force Majeure event and the dates on which it occurred or is expected to occur; (ii) the effect of such occurrence on the operation or maintenance of the Disposition Facilities and the Contractor's ability to perform under this Agreement; (iii) the ability to accept and Dispose of City Sludge at the Disposal Facility; (iv) the ability to accept or Process City Sludge at the Primary Facility and Alternate Facility; (v) in the form of a preliminary, non-binding estimate, the amount of the Force Majeure Amount required to remedy such Force Majeure event; and (vi) any other effects on the Contractor's ability to perform its obligations under this Agreement. If this information is not completely available at the time of the First Notice, the Contractor shall provide such additional notice as necessary to provide this information to the City in a timely manner.

6.4.2.2 As soon as possible, but not later than thirty (30) days after the delivery of the First Notice, the Contractor shall (i) determine whether or not the Force Majeure event can be remedied within eighteen (18) months after the occurrence of the Force Majeure event, disregarding delays caused by a subsequent Force Majeure event, (ii) estimate, to the extent reasonably possible, the cost of remedying the Force Majeure event and any increase or decrease in the Force Majeure Amount (such estimate to be prepared in accordance with Section 6.4.2 and to include all data used by the Contractor in preparing the estimate and as are necessary to permit the City to analyze the estimate and calculate the Force Majeure Amount), (iii) determine whether the Service Fee Increase Limitation would be exceeded as a result thereof, and shall notify the City of its determinations and estimate, and (iv) provide to the City

a certification of a licensed professional engineer to the effect that the proposal will remedy the Force Majeure event and is technically feasible (the "Second Notice").

6.4.2.3 Within ninety (90) days after receipt of the Second Notice, the City shall notify the Contractor in writing whether it consents to the implementation of any proposed remedy for such Force Majeure event. The City shall withhold such consent only if (i) the Force Majeure event will not be remedied within eighteen (18) months after the occurrence of the Force Majeure event, (ii) the Service Fee Increase Limitation would be exceeded as a result of the proposed remedy, or (iii) the Contractor has failed to provide the City a certification of a licensed professional engineer to the effect that the proposal will remedy the Force Majeure event and is technically feasible. If the City does not so consent, then this Agreement shall be terminated in accordance with Section 9.6. If the City does so consent, the Contractor shall notify the City as promptly as possible thereafter of the amount of the Force Majeure Amount as a result of the occurrence of such Force Majeure event and, after providing Cost Substantiation to the City, shall promptly carry out the procedures set forth in this Agreement for funding and performing the remedy of the Force Majeure event. The Contractor shall continue to accept all City Sludge for the term of this Agreement.

6.4.2.4 If: (i) the Force Majeure event cannot be remedied, or has not been remedied, (a) within the period specified by the Contractor, or (b) for an amount that would not cause the Service Fee Increase Limitation to be exceeded; (ii) the Contractor does not by written notice to the City elect to adjust the compensation due the Contractor only by an amount that would have been allowable under this Section 6.4.2 as if the total capital cost of remedying the causes and effects of any on Force Majeure event would not cause the Service Fee Increase Limitation to be exceeded; and (iii) the City does not elect by written notice to the Contractor to pay the excess of the Service Fee over the amount that would have been allowable under this Section 6.4.2 as if the total cost of remedying the causes and effects of any one Force Majeure event would not cause the Service Fee Increase Limitation to be exceeded, then this Agreement may be terminated by the City pursuant to Article 9.

6.4.2.5 Within ninety (90) days after a Second Notice is given, the Contractor shall provide the City with a schedule for funding and performing such remedy. Such schedule shall provide a final projection by the Contractor that the Service Fee Increase Limitation will not be exceeded as a result of the Force Majeure event and a calculation of the Force Majeure Adjustment pursuant to Section 6.4.1 required to implement such remedy. The Contractor shall proceed to remedy the Force Majeure event as soon as reasonably practicable.

6.4.3 The Contractor shall use all reasonable efforts to mitigate any damages and limit any detrimental impact of any Force Majeure event on the provision and cost of performing services under this Agreement, including but not limited to reducing the operation and maintenance of the Primary Facility, the Alternate Facility, or the Disposal Facility during periods when the Primary Facility, as the case may be, shall be fully or partially shut down as a result of Force Majeure event.

6.5 Service Fee Increase Limitation

In the event that as a result of amounts chargeable for the Force Majeure Amount pursuant to Section 6.4, the Service Fee Increase Limitation would be exceeded, then the City shall have the right to terminate this Agreement pursuant to Article 9.

6.6 Review of Pass-through Costs

6.6.1 With respect to any costs incurred by the Contractor for which the Contractor seeks compensation as a Pass-through Cost in accordance with Section 6.3, the Contractor shall provide the City with a certificate signed by an officer of the Contractor setting forth, in reasonable detail, the amount of, and basis for, such cost, stating that : (i) such cost was actually incurred by the Contractor; (ii) the Contractor is entitled under this Agreement to compensation for such cost; (iii) the amount of such cost is a competitive and reasonable price for the goods or services provided; and (iv) if such cost represents a payment to an Affiliate, such payment is no higher than would be paid in an arm's length transaction with an unrelated party. Without limiting the generality of the foregoing, if the Contractor shall incur any cost subject to this Section 6.6 pursuant to a contract or arrangement with another Person which provides for compensation of such Person based on costs incurred by such Person, the Contractor shall provide the information required by this Section 6.6 with respect to the costs incurred by such Person.

6.6.2 The City shall have the right to review the reasonableness of any expenditure by the Contractor for which the Contractor is entitled to compensation under this Agreement. If the City concludes that any such expenditure was imprudent or unreasonable under the circumstances in which such expenditure was made, or otherwise not in compliance with the requirements of this Agreement, the Contractor shall only be entitled to reimbursement for that portion of such cost determined to be prudent or reasonable, or otherwise in compliance with the requirements of this Agreement. Any Dispute regarding any such expenditure shall be subject to the Dispute resolution provisions of Section 14.17.

6.7 Alternate Disposition Services

The Service Fee shall be paid by the City whether the Contractor is providing Disposition services at the Primary Facility, the Alternate Facility, or the Disposal Facility.

6.8 Payment

Payment of the Contractor's fee for services rendered shall be made monthly in arrears upon presentation of invoices in form and substance satisfactory to the Commissioner or his authorized representative. Contractor shall provide adequate documentation in support of such presentation of invoices.

6.9 Hazardous Waste

In the event City tenders Hazardous Waste to Contractor, Contractor shall be paid the Per Ton Fee and the Pass-through Cost Component associated with the special Disposition of such waste.

6.10 No Other Compensation

The Service Fee is the only basis upon which the Contractor shall be paid under this Agreement. Except as provided in this Agreement, the Contractor will not be reimbursed for any extra services or additional costs, including but not limited to any repair or replacement over the life of this Agreement, and any lost revenues resulting from the failure to produce City Sludge or the tender of Unacceptable Sludge to the Contractor.

7 SECURITY AND BOND OBLIGATIONS

7.1 Renewable Security

7.1.1 The Contractor has obtained and filed with the City, on or before the Contract Date, a renewable one (1)-year security complying with the requirements of this Section 7.1, effective as of the Contract Date, in an amount equal to one hundred percent (100%) of the estimate of the total Service Fee for the following contract Year beginning with the first full Contract Year after the Commencement Date (the "Estimated Annual Service Fee") so as to guarantee the faithful performance of the services and obligations set forth in this Agreement, with the understanding that the whole or any part thereof may be used by the City in the discretion of the Commissioner to cure any Event of Default of the Contractor as provided for in Section 9.1, or in the event such security is in the form of the performance bond, such bond shall provide that the bond's surety, on notice from the City, will proceed to have this Agreement performed, including but not limited to the loading, transportation, and Disposal or Processing of the City's Sludge, within forty-eight (48) hours of receiving notification so that there is no gap in services to be rendered to the City.

7.1.2 The security must run to the favor of the City and be renewed ninety (90) days prior to the anniversary of the Contract Date of each successive year of this Agreement up to and including any renewal thereof and shall always provide coverage for a full one hundred - (100%) of the Estimated Annual Service Fee. Proof of such renewal must be provided to the City at least ninety (90) days before each anniversary of the Contract Date. The City shall provide to Contractor the Estimated Annual Service Fee to be used in determining the amount of the security no later than one hundred twenty (120) days prior to each anniversary of the Contract Date.

7.1.3 Such security may take the form of an irrevocable letter of credit issued by a bank satisfactory to the City or by a performance bond satisfactory to the City, certificate of deposit, corporate guarantee, or bank or treasurer's check, and Contractor, with City's consent, may substitute one for the other at any time.

7.1.4 If requested by the City, the Contractor shall submit on each anniversary date of the Contract Date financial information reflecting its worth and financial ability to perform the terms and conditions of this Agreement.

7.2 Payment

The Contractor shall provide each year a Labor and Material Bond equal to the Estimated Annual Service Fee as surety for the payment of all persons performing labor or furnishing materials for this Agreement. Proof of renewal of such bond must be provided to the City at least ninety (90) days before the anniversary of the Contract Date.

7.3 Form and Authorization

Each security and bond required herein must be in a form and, in the case of a bond, from a surety company, acceptable to the City. The surety company must be authorized to transact business in the Commonwealth.

8 INSURANCE OBLIGATIONS

8.1 General

The Contractor shall provide proof of insurance in the form hereafter stated, and keep such insurance in full force and effect during the life of this Agreement. Renewals of expiring policies and replacement policies shall be provided to the City for approval not less than thirty (30) days prior to the expiration of the existing policy.

8.1.1 The Contractor shall obtain all insurance required under this Agreement and approval of such insurance from the City on or prior to the Commencement Date.

8.1.2 Insurance coverage shall be evidenced by a Certificate of Insurance submitted in a form acceptable to the City. ACCORD or other certificates are not acceptable and must be accompanied by a policy endorsement from the company specifically providing coverage to the City under this Agreement.

8.1.3 Insurance coverage shall be provided by an insurance company authorized to do business in the Commonwealth, and that has an A.M. Best or S&P Insurance Rating minimum of "A".

8.1.4 Delete

8.1.5 The City, its agents, officers and employees, shall be listed on all policies other than Workers' Compensation and Employer's Liability as an Additional Insured party with respect to Contractor's duties under the provisions of this Agreement.

8.1.6 The City's interest as an Additional Insured shall be included in each of such policies, the evidence of which shall be in the form of a signed endorsement to the policy. Such endorsement shall be submitted to the Contractor along with the applicable certificates of insurance, copies of which shall be provided by the Contractor to the City. Mere recitation of the additional insured interest on the certificate is not acceptable.

8.1.7 The Contractor shall provide the city with sixty (60) days' notice of cancellation, and non-renewal or reduction of such insurance coverage. The insuring company shall not be released of liability or obligation if it fails to notify the City.

8.2 Required Coverage

Coverage shall be obtained, and maintained throughout the term of this Agreement as set forth in this Section 8.2. On or prior to the Commencement Date, the Contractor shall obtain and keep in force during the term of this Agreement the following insurance.

8.2.1 Liability Insurance:

8.2.1.1 Commercial General Liability on an occurrence basis to include all operations and premises coverage's, products and completed operations liability, and broad form contractual liability with limits of not less than \$1,000,000 each occurrence and \$5,000,000 aggregate, with the City added as an "Additional Insured" with respect to Contractor's duties under the scope of this Agreement";

8.2.1.2 Comprehensive Automobile Liability to include all owned, hired and non-owned vehicles for \$2,000,000 each accident, combined – single limit;

8.2.1.3 Workers Compensation for all employees complying with the statutes of the Commonwealth, to include Employers Liability B coverage limit of \$500,000/\$500,000/\$500,000. Contractor also shall ensure that its subcontractors comply with said coverage and limits.

8.2.1.4 Umbrella Liability Policy for limits of \$5,000,000 each occurrence and aggregate, with all limits of the general liability, automobile liability and the Workers Compensation conforming to the underlying requirements of the umbrella.

8.2.1.5 Contract Pollution Legal Liability in the amount of \$10,000,000 per incident/\$20,000,000 policy Aggregate.

8.3 Inquiries of Insurance Carriers

The City reserves the right to make direct inquiries to any of the Contractor's insurance carriers and the Contractor agrees to assist the City, if necessary, in obtaining any such desired information.

8.4 Adjustments

The City may reasonably adjust the policies and amounts of insurance required under this Article 8 to reflect inflation and changes in insurance market conditions, and any increase in insurance costs resulting from such adjustment shall be included in the Pass-through Cost Component. Any adjustment will be made through an addendum to this Agreement.

8.5 Deductibles

Deductible amounts for all insurance policies shall be reasonably satisfactory to the City.

9 DEFAULT AND TERMINATION

9.1 Events of Default by Contractor

Each of the following shall constitute an Event of Default on the part of the Contractor:

9.1.1 The failure or refusal by the Contractor to fulfill any of its obligations in accordance with this Agreement, provided, however, that no such failure or refusal shall constitute an Event of Default giving the City the right to terminate this Agreement for cause under this Section 9.1.1 unless and until:

9.1.1.1 The City shall have given prior written notice to the Contractor stating that an Event of Default or Defaults (to be described in reasonable detail in such notice) has occurred or exists which will, unless corrected, constitute a material breach of this Agreement on the part of the Contractor; and

9.1.1.2 The Contractor shall have failed to commence to correct such default within thirty (30) days from the date of the notice given pursuant to Subsection 9.1.1.1 except that if the default is related to Contractor's failure to load or transport Sludge as required under this Agreement, Contractor shall have five (5) days from the date of the notice given pursuant to Subsection 9.1.1.1 to correct such default;

9.1.2 The failure on the part of the Contractor to pay any amount required to be paid to the City under this Agreement within thirty (30) days after receipt of written demand from the City stating in such notice that the failure to pay shall constitute an Event of Default, giving rise to the right to terminate this Agreement;

9.1.3 The failure on the part of the Contractor to provide, keep in full force and effect, or renew the performance security and/or corporate guarantee or payment bond or to provide the requisite notices in connection therewith as required by Article 7.

9.1.4 The failure on the part of the Contractor to obtain, keep in full force and effect or to renew the insurance policies required by Article 8;

9.1.5 The Contractor is consistently not paying its debts when they become due; has filed, or consented by answer or otherwise to the filing against it of, a petition for relief or reorganization in bankruptcy, for liquidation, or to take advantage of any bankruptcy or insolvency law of any jurisdiction; or makes an assignment for the benefit of its creditors in lieu of taking advantage of any such bankruptcy or insolvency laws; consents to the appointment of the custodian, receiver, trustee or other officer with similar powers with respect to any substantial part of its property; is adjudicated insolvent; or takes corporate action for the purpose of any of the foregoing;

9.1.6 A court or other Government Authority of competent jurisdiction enters an order appointing, without the consent of the Contractor, a custodian, receiver, trustee or other officer with similar powers with respect to the Contractor or any substantial part of the Contractor's property or if an order for relief is entered in any case or proceeding for liquidation or reorganization of the Contractor, or ordering the dissolution, winding up or liquidation of the Contractor, or if any petition, as the case may be, has not been vacated or dismissed, within sixty (60) days;

9.1.7 Any change in the ultimate control or the transfer of an ultimate controlling interest in the beneficial ownership or a sale of substantially all of the assets of the Contractor, unless the City consents in writing to such change or transfer and such consent shall not be unreasonably withheld;

9.1.8 Any material misrepresentation or untruth of any representation or warranty of Contractor when made or effective in this Agreement or in connection with the transactions contemplated hereby; and

9.1.9 the Contractor has not commenced the performance of its obligations under this Agreement within forty-eight (48) hours of the Commencement Date.

9.2 Events of Default by City

Each of the following shall constitute an Event or Default on the part of the City:

9.2.1 The failure or refusal by the City to fulfill any of its obligations in accordance with this Agreement, provided, however, that no such failure or refusal shall constitute an Event of Default giving the Contractor the right to terminate this Agreement for cause under this Section 9.2.1 unless and until:

9.2.2 the Contractor shall have given prior written notice to the City stating that an Event of Default or Defaults (to be described in reasonable detail in such notice) has occurred or exists which will, unless corrected, constitute a material breach of this Agreement on the part of the City; and

9.2.3 The City shall have neither corrected such default nor initiated reasonable steps to correct the same within a reasonable period of time (which shall in no event be more than (30) days from the date of the notice given pursuant to Section 9.2.2, provided that if the City shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as the City is continuing to take reasonable steps to correct such default within the earliest practicable time; and

9.2.4 The failure on the part of the City to pay any amount required to be paid to the Contractor under this Agreement within forty-five (45) days after receipt of written demand from the Contractor stating in such notice that the failure to pay shall constitute an Event or Default giving rise to a right to terminate this Agreement.

9.3 Remedies for Default

9.3.1 Upon the occurrence of an Event of Default by the Contractor, the City shall have the right to seek damages, to seek termination of the Agreement pursuant to Section 9.5, and to use the security provided for in Article 7. The exercise of any right shall not preclude the exercise of any other at a later date.

9.3.2 Upon the occurrence of an Event of Default by the City, the Contractor shall have the right to: (i) seek damages and continue to perform its obligations under this Agreement; or (ii) seek damages and terminate this Agreement. The exercise of any right shall not preclude the exercise of any other at a later date.

9.4 Non-Waiver of Remedies

The failure of either party to exercise any rights available upon the occurrence of an Event of Default shall in no way constitute a waiver of that party's rights to subsequently exercise its remedies for default as defined herein.

9.5 Termination

9.5.1 City's Right to Terminate. The City may terminate this Agreement in the manner set forth below: (i) for cause; (ii) as a result of the provision of Alternate Disposition Services by the Contractor for a period giving rise to a right of the City to terminate this Agreement pursuant to Section 5.11; (iii) as a result of a Force Majeure event or exceedence of the Service Fee Increase Limitation giving rise to a right of the City to terminate pursuant to Section 6.5; (iv) or upon the occurrence of an Event of Default under Section 9.1.

9.5.2 Contractor's Right to Terminate. The Contractor may terminate this Agreement upon the occurrence of an Event of Default by the City in accordance with Section 9.2.

9.5.3 Procedure for Termination. If either party has a right to termination in accordance with this Section 9.5, the same may be exercised by notice of termination given to the other party at least thirty (30) days prior to the date of termination. The proper exercise of such right to termination shall be in addition to and not in substitution of such other rights, including but not limited to damages and the right to use Contractor's security. The exercise of the right of termination shall not relieve the defaulting party of any obligations or liabilities required by or incurred as a result of this Agreement prior to the date of termination, and in the event of termination by the City the City shall not be liable for reimbursement to the Contractor for any expenditure invested by the Contractor for equipment, capacity contracts or reservation fees, improvements, or any other costs incurred by the Contractor which are necessary to carry out the work under this Agreement.

9.5.4 Damages without Termination. The City shall have the right to claim damages or equitable relief for the Contractor's default hereunder, without being required to terminate this Agreement.

9.6 Termination As a Result of a Force Majeure Event

In the event that the City terminates this Agreement as a result of a Force Majeure event or exceedence of the Service Fee Increase Limitation giving rise to a right of the City to terminate pursuant to Section 6.4 or 6.5, neither the City nor the Contractor shall have the right to claim damages against the other party.

9.7 Termination as a Result of Construction of New Digest Facility Servicing City

In the event that a new sludge disposition facility is constructed on City Property or is otherwise made available to the City, and the City decides to dispose of sludge and other materials designated for disposition hereunder, the City reserves the right to terminate, and may terminate, this Agreement upon giving Contractor (1) one year's prior notice thereof. Any such termination shall be considered an event of Force Majeure for which neither the City nor the Contractor shall have the right to claim damages against the other party.

10 LIABILITY AND INDEMNIFICATION

10.1 Contractor Liability

The Contractor shall be responsible, without limitation for any and all liabilities arising from its performance of this Agreement.

10.2 Tax Consequences

The Contractor shall be liable for all income tax consequences affecting the Contractor in connection with this Agreement, including but not limited to any income tax consequences of any Force Majeure events.

10.3 Contractor Indemnification

10.3.1 Notwithstanding any other provisions of this Agreement to the contrary, to the fullest extent permitted by law, and except to the extent caused solely by the negligent or intentional act or omission of the City, its agents, employees or representatives, the Contractor agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers and employees from and against any and all claims (including third-party claims), suits, losses, liabilities, penalties, damages, detriment, costs and expenses, however designated and including reasonable attorney's fees, for injuries (including death) to persons, or damage to property, or violations of Federal, Commonwealth, state, or local laws, including, but not limited to, violations (unless such violations are by the City) of the provisions of the Consent Decree or Environmental Laws relating to or arising from Contractor's performance of this Agreement, including, but not limited to, the loading, transportation, Processing, marketing and Disposal of Acceptable or Unacceptable Sludge, Residue, bypass Waste, Final Product or any other materials.

10.4 Contractor Liability for Permit Violations

The City's ability to comply with its national Pollution Discharge Elimination System ("NPDES") permit requirements is influenced by the Contractor's performance under this Agreement. The Contractor shall be fully liable for any and all fines, penalties, damages, and/or

costs assessed against the City or Contractor for any NPDES permit violations that result from Contractor's non-performance or violation of this Agreement.

10.5 Survival

The indemnities contained in this section of this Agreement shall survive cancellation, expiration or termination of this Agreement until the expiration of any applicable statute of limitations period.

10.6 Limitation of Liability

The limitations of liability set forth in Section 14.24 are applicable to this Article 10.

11 REPRESENTATIONS AND WARRANTIES

11.1 Representations of the Contractor

In addition to other representations of the Contractor in this Agreement, the Contractor makes the following representations and warranties to the City.

11.1.1 Existence and Power. The Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of _____. The Contractor has taken all necessary action required to make this Agreement and the documents and instruments executed in connection therewith and herewith the valid and enforceable obligations they purport to be. When executed and delivered by the Contractor, this Agreement will constitute the valid and binding obligation of the Contractor in accordance with the terms hereof.

11.1.2 Existence, Operation, and Adequacy of Disposition Facilities. The Contractor hereby warrants and represents unconditionally, with respect to Disposition Facilities owned and/or operated by the Contractor, and, to the best of its knowledge, with respect to Disposition Facilities owner and/or operated by others not affiliated with the Contractor, that:

: (i) the Disposition Facilities are in existence as of the Contract Date; (ii) the Disposition Facilities are fully permitted and in compliance with applicable permits, are in operation, and have sufficient capacity contractually committed to the Contractor to enable the Contractor to perform its obligations under this Agreement; (iii) that there are no other commitments with respect to the Disposition Facilities that would prevent the Contractor from fulfilling its obligations under the Agreement; (iv) the Disposition Facilities are capable of meeting all of the requirements of this Agreement; and (v) the Contractor can perform the obligations set forth in this Agreement in compliance with the Consent Decree, while meeting the highest professional standards.

11.1.3 No Pending Litigation. There is no action, suit proceeding or investigation at law or in equity before or by any court or public board or body pending or, to the knowledge of the Contractor, threatened against the Contractor, or to the best knowledge of the Contractor, any basis therefore, wherein an unfavorable decision, ruling or finding would in any material respect adversely affect the transactions contemplated by this Agreement or any agreement or instrument to which the Contractor is a party and used or contemplated for use in the consummation of the transactions contemplated thereby and hereby.

11.1.4 Nondiscrimination. In connection with the performance of this Agreement, the Contractor will not discriminate against any Person on grounds of age, race, color, religion, sex, national origin, or, with respect to otherwise qualified individuals, handicap, in employment practices, in the selection or retention of subcontractors, or in the procurement of materials or rental of equipment. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin or, with respect to otherwise qualified individuals, handicap. Such action shall include, but not be limited to, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates or pay or other form of compensation; and selection for training, including apprenticeship. The Contractor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

11.1.5 Americans with Disabilities Act. The Contractor shall, in all respects, comply with the Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat. 328 (2010).

11.1.6 Advertisements. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to age, race, color, religion, sex, national origin or, with respect to otherwise qualified individuals, handicap.

11.1.7 Capability. The Contractor is capable of performing and is willing and intends to perform its obligations in accordance with this Agreement.

11.1.8 No Material Misstatement or Omission. To its knowledge, the Contractor's representations herein do not contain any misstatement of a material fact or omit to state any material fact necessary to make the representations of the Contractor in this Agreement not misleading.

11.1.9 Financial Condition. The Contractor and the Guarantor are financially solvent and the Contractor can furnish the Disposition Facilities and services required pursuant to this Agreement.

11.1.10 Familiarity with Laws. The Contractor is familiar with all existing federal, Commonwealth, state, and municipal laws, ordinances and regulations, which might materially affect the performance under this Agreement of the Contractor and its employees.

11.1.11 **Not in Arrears.** To the best of its knowledge, the Contractor is not in arrears to the City upon debt or agreement, and is not a defaulter as surety, contractor, or otherwise.

11.1.12 **Approvals.** No approval, authorization, order or consent of, or declarations, registration of, or filing with, any Government Authority is required for the valid execution and delivery by the Contractor of this Agreement except those that have been duly obtained or made.

11.2 Representations of the City

In addition to other representations of the City in this Agreement, the City makes the following representations to the Contractor.

11.2.1 **Legal Existence and Power.** The City is a municipal corporation validly existing under the laws of the Commonwealth with the power under and pursuant to Massachusetts law to enter into and perform this Agreement.

11.2.2 **Authorization.** The City has taken all necessary action and has complied with all provisions of Massachusetts law and all other statutes thereunto enabling it to make this Agreement the valid and enforceable obligation it purports to be; and when executed and delivered by the City this Agreement will constitute the valid and binding obligation of the City in accordance with all the provisions herein.

11.2.3 **Approvals.** No approval, authorization, order or consent of, or declarations, registration of, or filing with, any Government Authority is required for the valid execution and delivery by the City of this Agreement except those that have been duly obtained or made.

11.2.4 **No Conflicts.** Neither the execution or delivery by the City of this Agreement, nor the performance of its obligations in connection with the transactions contemplated hereby nor the fulfillment of the terms or conditions hereof (i) conflicts with, violates or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any form or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

12 CONDITIONS PRECEDENT TO COMMENCEMENT DATE

12.1 Conditions to City's Obligation

The City's obligations under this Agreement and the occurrence of the Commencement Date are subject to the satisfaction or occurrence of the following conditions precedent,

provided that any condition satisfied or that has occurred prior to the Commencement Date shall continue to be so satisfied or to have occurred on the Commencement Date (unless waived in writing by the City):

12.1.1 each of the representations and warranties of the Contractor set forth in Section 11.1 shall be true and correct as if made on such date and the Contractor shall have delivered to the City and Officer's Certificate, dated the Commencement Date, to the same effect dated such date and in form and substance reasonably acceptable to the City, to the same effect;

12.1.2 the Contractor shall have the full right, power, and authority to execute and deliver all documents and agreements with respect to transactions contemplated by this Agreement to which the Contractor is a party and shall have evidenced the same to the City, in form and substance reasonably satisfactory to the City;

12.1.3 all required permits, licenses, zoning modifications and authorizations (including but not limited to any thereof required under the Massachusetts Environmental Policy Act) necessary for the performance of Contractor's obligations under this Agreement and all Governmental Approvals shall have been obtained in form and substance satisfactory to the City in final form (and all appeals relating thereto shall have been exhausted) and shall be in full force and effect, and any terms of such permits, licenses, and authorizations not contemplated by this Agreement shall be acceptable to the City;

12.1.4 the Contractor shall have obtained certificates of insurance sufficient, in the reasonable opinion of the City, to meet the Contractor's obligations under Article 8 and shall have maintained in force its security as required by Article 7;

12.1.5 there shall have been no material change in the ultimate control of the Contractor or material deterioration in the financial condition of the Contractor, and there shall have been no sale of substantially all the assets of the Contractor or any of its Affiliates;

12.1.6 no action, suit, or proceeding shall have been commenced or threatened in any Federal, Commonwealth, state, or local court or administrative agency which, if the outcome is adverse to any party against whom relief is sought, would materially and adversely affect the performance by any party to this Agreement of its obligations pursuant to this Agreement;

12.1.7 the Guarantor shall have executed the Guarantee (if applicable).

12.2 Conditions to Contractor's Obligations

The Contractor's obligations under this Agreement with respect to the occurrence of the Commencement Date are subject to the satisfaction or occurrence of the following conditions precedent, provided that any condition satisfied or that has occurred prior to the Commencement Date shall continue to be so satisfied or to have occurred on the Commencement Date (unless waived in writing by the Contractor):

12.2.1 each of the representations of warranties of the City set forth in Section 11.2 shall be true and correct as if made on such date and the City shall have delivered to the Contractor an Officer's Certificate, dated the Commencement Date, to the same effect and an opinion or opinions of counsel to the City, dated such date and in form and substance reasonably acceptable to the Contractor, to the same effect;

12.2.2 the City shall have the full right, power, and authority to execute and deliver all documents and agreements with respect to transactions contemplated by this Agreement to which the City is a party and shall have evidenced the same to the Contractor, in form and substance reasonably satisfactory to the Contractor (including opinions of counsel);

12.2.3 no action, suit, or proceeding shall have been commenced or threatened in any federal, Commonwealth, state, or local court or administrative agency which, if the outcome is adverse to any party against whom relief is sought, would materially and adversely affect the performance by any party to this Agreement of its obligations pursuant to this Agreement; and

12.3 Failure of Occurrence or Satisfaction of Conditions Precedent

12.3.1 The City shall proceed in good faith and shall use all reasonable efforts to cause the satisfaction of all conditions precedent to the occurrence of the Commencement Date, including those required to be satisfied on the Commencement Date. If the conditions precedent set forth in Section 12.1 are not satisfied, have not occurred, or have not been waived by the City prior to September 1, 2016, then the City may, on at least ten (10) days' written prior notice to the Contractor given at any time after September 1, 2016, terminate this Agreement without liability to the Contractor, unless on or before the termination date specified in such notice, all such conditions precedent shall have been waived by the City, occurred, or been satisfied. Upon such termination, all of the obligations of the City under this Agreement shall cease.

12.3.2 The Contractor shall proceed in good faith and shall use all reasonable efforts to cause the satisfaction of all conditions precedent to the occurrence of the Commencement Date, including those required to be satisfied on the Commencement Date. If the conditions precedent set forth in Section 12.2 are not satisfied, have not occurred, or have not been waived by the Contractor prior to September 1, 2016, then the Contractor may, on at least ten (10) days' written prior notice to the City, given at any time after September 1, 2016, terminate this Agreement without liability to the City, unless on or before the termination date specified in such notice, all such conditions precedent shall have been waived by the Contractor, occurred or been satisfied. Upon such termination, all of the obligations of the Contractor under this Agreement shall cease.

12.3.3 On and after the Commencement Date, neither the Contractor nor the City shall have the right to terminate this Agreement pursuant to this Section 12.3.

12.4 Occurrence of Commencement Date; Satisfaction or Waiver of Conditions

The Commencement Date shall not occur before the date on which all conditions precedent set forth in Sections 12.1 and 12.2 have been and continue to be satisfied or have occurred, or have been waived by the City provided that in the event such conditions are satisfied or have occurred or have been waived prior to October 3, 2016, the Commencement Date may be delayed at the option of the City until not later than October 3, 2016. From time to time, the Contractor shall provide to the City, on request, a confirmation as to those conditions precedent which have occurred or been complied with.

12.5 Certain Failure of Conditions; Termination

Notwithstanding any other provision of this Article 12, if the Contractor shall fail to proceed in good faith and to use all reasonable efforts to satisfy the conditions precedent set forth in Section 12.1 and this Agreement is terminated by the City for failure to satisfy such conditions, then the Contractor shall be liable to the City for the damages suffered by the City, as well as such other relief to which the City is entitled.

13 GUARANTEE OF CONTRACTOR'S PERFORMANCE

The Contractor shall cause Guarantee (if applicable) to remain in full force and effect during the term of this Agreement.

14 GENERAL PROVISIONS

14.1 Relationship of the Parties; No Third Party Beneficiaries

14.1.1 Except as otherwise explicitly provided herein, no party to this Agreement will have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party and nothing in this Agreement will be deemed to constitute any party a partner, agent or legal representative of any other party or to create any fiduciary relationship between or among the parties. At all times throughout the term of this Agreement the Contractor shall be independent contractor to the City, and shall not, in any manner whatsoever, by any actions or deeds, or the omission thereof, commit the City to any obligation irrespective of the nature thereof, and Contractor or his agents or employees shall not at any time, or for any purpose, be deemed to be an employee of the City.

14.1.2 The Contractor and the City agree that this Agreement and the rights and obligations created by this Agreement are solely for the benefit of the parties hereto. The Contractor and City further agree that there shall be no third party beneficiaries of this Agreement.

14.2 Records

The Contractor shall maintain full and complete books and records of account, in accordance with generally accepted accounting principles, as may be appropriate in connection with the performance of its obligations under this Agreement, and such other records as may be prescribed by the City. All such books and records shall be retained throughout the term of this Agreement and for a period of five (5) years after the services of the Contractor are completed with respect hereto; provided that the daily weight records required to be kept pursuant to Section 5.6.3 shall be retained after the generation of such records for the longer of (x) a period of five (5) years, or (y) such period as is required by applicable law. All such books and records shall at all reasonable times, upon reasonable prior notice and for purposes reasonably related to the transactions contemplated by this Agreement, be available for audit, inspection, and photocopying by the City, its duly designated representative, or any other public agency having jurisdiction over work performed hereunder.

14.3 Compliance with Laws

The Contractor agrees that at all times in performing its obligations under this Agreement it will: promptly observe and comply and require its subcontractors and agents to observe and comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements (hereinafter in this Section 14.3 called "Legal Requirements") of all Federal, Commonwealth, state, county, municipal and other Government Authorities having jurisdiction, foreseen or unforeseen ordinary or extraordinary, which now or at any time hereafter may be applicable to the Contractor or the subcontractor or agent in question including but not limited to the laws of the state or states where services are being performed pursuant to this Agreement and all local government laws associated therewith, and to the extent applicable, orders of any court or other Government Authority having jurisdiction over any activities or transactions contemplated by this Agreement. The Contractor shall be solely responsible for, and shall not be entitled to any compensation under this Agreement for, all fines and penalties imposed upon the Contractor by a Federal, Commonwealth, state, local or City agency or decision-making body having jurisdiction in connection with its performance under this Agreement unless such fines or penalties are the fault of the City. This Section 14.3 is intended solely to create a covenant of the Contractor in favor of the City to comply with such laws, rules and regulations as may be required to be complied with by the Contractor by applicable law, and to allocate responsibilities as between the City and the Contractor pursuant to this Agreement, but is not intended to waive any exclusion or exemption from such requirement of compliance to which the Contractor or the City would be entitled in the absence of this Section 14.3.

14.4 Assignment

This Agreement, or any part hereof, shall not be assigned, transferred or sublet without the written consent and approval of the City, which may be granted or withheld in the City's sole discretion. If the City consents to such an assignment, transfer or sublet, the assignee

transferee, or sub lessee, as the case may be, shall be bound by all of the terms of this Agreement.

14.5 Subcontractors

Contractor shall not enter into any agreement with any non-Affiliate subcontractor for purposes of work (excluding hauling services) under this Agreement without the prior written approval of the City, such consent not to be unreasonably withheld or delayed. Prior to engaging any subcontractor under the Contract that is a corporation that is not organized under the laws of Massachusetts, the Contractor shall cause such subcontractor to register as a foreign corporation with the Secretary of State of Massachusetts. All subcontracts shall require the subcontractor to be subject to all applicable obligations and limitations set forth in this Agreement and Contractor shall provide subcontractor with a copy of this Agreement prior to executing any such subcontract. The City shall have no contractual relation with any subcontractor.

14.6 Binding Effect

This Agreement shall bind and inure to the benefit of the parties to this Agreement and any successor or assign acquiring an interest hereunder consistent with Section 14.4.

14.7 Notices

14.7.1 All notices, consents, invoices and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be telexed, cabled or delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized express delivery service, charges prepaid, receipt obtained, and in any case shall be addressed as follows:

To the City:

Euzebio Arruda
Commissioner
Department of Public Infrastructure
1105 Shawmut Avenue
New Bedford, MA 02746
(Fax) 508-961-3054

With a copy to:

Mikaela A. McDermott
City Solicitor
Office of City Solicitor
City Hall
133 William Street
New Bedford, MA 02740

(Fax) 508-979-1515

To the Contractor: Synagro Northeast, LLC
Attn: Director of Contracts Management
435 Williams Court
Suite 100
Baltimore, MD 21220

With a copy to: Synagro Northeast LLC
Attn: Pat Rimkoski
680 Main Street
Suite 303
Watertown, CT 06770

14.7.2 Changes in the respective addresses to which such notices, consents, invoices or other communications may be directed may be made from time to time by either party by notice to the other party. Notices and consents given by mail shall be deemed to have been given five (5) Business Days after the date of dispatch; notices and consents given by any other means shall be deemed to have been given when received.

14.8 Business of Contractor

The Contractor shall engage in no business or enterprise other than the line of business which includes the performance of its obligations under this Agreement and activities in furtherance of such purposes.

14.9 Certification as to Service Fee

Not less than ninety (90) days before each anniversary of the Contract Date, the Contractor shall provide to the City a certificate describing the proposed estimate of any portion of the Service Fee for which actual costs are not yet known, and containing a representation as to whether such Service Fee would exceed the Service Fee Increase Limitation.

14.10 Entire Agreement

This Agreement constitutes the entire and complete agreement between the parties with respect to the subject matter hereof, and supersedes all other understandings, arrangements, commitments or representations.

14.11 Other Documents; Further Assurances

Each party promises and agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably requested by the other party in order to give full effect to this Agreement.

14.12 Applicable Law

The laws of the Commonwealth shall govern the validity, interpretation, construction and performance of this Agreement, as such laws apply to agreements executed and performed in the Commonwealth.

14.13 Headings

Captions and headings in this Agreement are for ease of reference only and do not constitute an enforceable part of this Agreement.

14.14 Amendment; Waiver

The parties to this Agreement may agree from time to time to change, modify, amend or waive this Agreement or any provision hereof. Such change, modification, amendment or waiver may occur only pursuant to a written instrument signed by the party against whom enforcement of such change, modification, amendment or waiver is sought.

14.15 Severability

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein,

and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

14.16 Authorized Representative

For purposes of communication with the Contractor and of representing the Contractor with respect to this Agreement, the authorized representative of the Contractor shall be its _____ TBD _____. The City may conclusively rely on any document of consent, waiver, approval, or other document permitted in this Agreement that has been signed by such authorized representative.

14.17 Dispute Procedures

14.17.1 It is acknowledged by the parties that a quick and efficient resolution of all claims, disputes and other matters in question under this Agreement (“Disputes”) is critical to the implementation of the terms of this Agreement. In order to effectuate such intent, the parties do hereby establish this Dispute procedure for use during the term of this Agreement. All Disputes shall be subject to this Section 14.17, it being the intention of the parties that all such Disputes be subject hereto regardless of any specific reference or absence of reference to this Section 14.17 or arbitrability in this Agreement.

14.17.2 Prior to submission of any Dispute for resolution pursuant to this Section 14.17, the parties will negotiate in good faith to resolve such Dispute. Only if the parties cannot reach agreement within thirty (30) days of written notice by any party to the other parties that a Dispute exists, will the Dispute be resolved pursuant to this Section 14.17. Any party submitting such Dispute must deliver prompt written notice to the other parties of the fact of such submission.

14.17.3 At the commencement of the arbitration proceeding, the parties shall select the Arbitrator within fifteen (15) days after the receipt of notice of submission of the Dispute for resolution pursuant to this Section 14.17. If agreement on the selection of the Arbitrator cannot be reached within thirty (30) days after the submission of the Dispute, then the Arbitrator will be selected by the President of the American Arbitration Association (or his designee) from a list of qualified Persons delivered by the Contractor and the City. The Arbitrator shall be paid mutually agreeable fees, which fees shall be advanced in equal shares by the City and the Contractor, subject to the provisions of Section 14.17.4.

14.17.4 Each party shall submit to the Arbitrator a best and final offer with respect to each issue submitted to the Arbitrator for resolution. Upon such Dispute being submitted to the Arbitrator for resolution, the Arbitrator shall assume exclusive jurisdiction over the Dispute, and shall utilize such consultants or experts as he shall deem appropriate under the circumstances, to assist in the resolution of the Dispute and will be required to make a final, binding determination, not subject to appeal, within thirty (30) days of the date of submission. Each party shall submit in writing to the Arbitrator a statement of its position with supporting

facts and data within ten (10) days after receipt of written notice of the Dispute being brought to the Arbitrator. For each issue decided by the Arbitrator, he shall choose the best and final offer of one party with respect to the issue decided, and the Arbitrator shall not have discretion to modify said best and final offer. For each issue decided by the Arbitrator, he shall award the expenses of the proceeding, including reasonable attorneys' fees, to the prevailing party with respect to such issue.

14.17.5 The City and the Contractor shall continue to perform their respective obligations under this Agreement, including payment, during any Dispute proceeding, unless otherwise agreed in writing by the City and the Contractor. If a Dispute arises with respect to whether any item of additional expense is payable by the Contractor or by the City through inclusion in the Service Fee until such Dispute is resolved, but, upon resolution of the Dispute, shall be fully included in the Service Fee to the extent of the Arbitrator's award. After resolution of any Dispute regarding whether or not an expense was properly included in the Service Fee, the party who paid such expense shall be reimbursed by the party who owed such expense for amounts advanced with interest at the prime rate as currently published in the Wall Street Journal.

14.17.6 In any Dispute to be resolved by the Arbitrator pursuant to this Agreement, the determination of the Arbitrator will be final and binding on the parties, in the absence of manifest error. Such determination will have the force of a final arbitral award and may, where necessary, be enforced in accordance with applicable law pertaining to arbitral awards. The parties hereby waive any rights to appeal or to review of such a final determination in any judicial proceeding and agree that a final determination of the Arbitrator made pursuant to the procedures of this Section 14.17 will be a complete defense to any action or proceeding with respect to the issues subject to resolution by the Arbitrator.

14.17.7 This Section 14.17 shall survive the termination of this Agreement.

14.18 Confidential Information

14.18.1 The City acknowledges that Contractor owns Confidential Information; that such information may be exempted from mandatory disclosure by the City under the Massachusetts Public Records Law, M.G.L. Chapter 4, Section 7, Paragraph 26 (g); and agrees that the following provisions shall apply with respect thereto.

14.18.2 To endeavor to protect such data from disclosure, the Contractor must clearly identify in writing the information that is claimed to be confidential. Confidentiality will be restricted to only proprietary process information and Contractor's financial statements and if permitted by Public Records Law.

14.18.3 In the event that disclosure of properly marked data is requested pursuant to the law, the City will endeavor to notify the Proposer of any such request, although the City

shall have no liability for failure to do so. If so notified, the Proposer may expeditiously submit to the City a detailed statement indicating the reasons it has for believing the information is exempt from disclosure is proper under the law. This statement may be used by the City in making its determination of whether or not disclosure is proper under the law. The City does not guarantee that it will keep confidential all information which a Proposer claims is confidential. The City shall not be liable for such disclosure. If the Contractor desires to contest disclosure in court, then all such court proceedings shall be at the Contractor's sole cost and expense and the Contractor shall reimburse the City for any costs and expenses, including reasonable attorney's fees, incurred by reason of the City's cooperation with the Contractor.

14.18.4 The City shall only use Confidential Information for purposes of its rights under this Agreement. The Contractor recognizes and agrees, however, that disclosure of Confidential Information may be permitted (1) pursuant to the Consulting Engineer's performance of its responsibilities in connection with its duties for the City, but only to the extent that such disclosure is authorized under appropriate disclosure restriction entered into between the Contractor and the Consulting Engineer, and (2) disclosures permitted pursuant to this Section 14.18.

14.18.5 Notwithstanding the foregoing, the City reserves the right to disclose to DEP and EPA all information provided to the City by Proposers in order to discharge the City's obligations under the Consent Decree, provided that such disclosure shall be made subject to the applicable confidentiality procedures of DEP and EPA, respectively.

14.18.6 The rights and obligations of the Parties set forth herein with respect to Confidential Information are subject to applicable provisions of Commonwealth law pertaining to public records.

14.18.7 This Section 14.18 shall survive termination of this Agreement.

14.19 [Reserved]

14.20 Provisions Required by Law Deemed Inserted

Every provision of a law and clause required by law to be inserted in this Agreement is deemed to be inserted in this Agreement and this Agreement shall be read and enforced as though they were included. If any provision or clause is not inserted or is not correctly inserted, this Agreement shall automatically be construed to be amended to comply strictly with the law without prejudice to the rights of the City or the Contractor.

14.21 Notice as to Certain Proceedings

Each party shall give prompt written notice to the other party of the commencement of any proceeding, action or other official action which is likely to result in a Force Majeure event.

14.22 Contractor Default Notices

Contractor shall notify City if Contractor is not in compliance with any provision in this Agreement which relates to the Contractor and shall disclose in such notice the nature of the default and whether the same shall constitute and Event of Default hereunder. Such notice shall include any action proposed to be taken by the Contractor with respect thereto. Contractor shall notify City if any of the Disposition Facilities utilized by the Contractor in the performance of this Agreement (A) are not in compliance with the requirements of the Contract, (B) have been the subject of any enforcement action, or (C) are not in compliance with all applicable regulatory requirements, and shall provide full particulars with respect thereto and shall disclose any action taken, and any action proposed to be taken, by the Contractor with respect thereto.

14.23 Right to Disapprove Certain Agreements and Expenditures

The Contractor shall submit to the City, at least thirty (30) days in advance of taking action thereon, copies of all proposed agreements and descriptions of all proposed arrangements or understandings with respect to (i) the Primary Facility, the Alternate Facility or the Disposal Facility; (ii) the transportation or Disposition of Unacceptable Sludge; (iii) Force Majeure costs subject to reimbursement by the City; and (iv) any other agreements and proposed arrangements or understandings regarding matters for which the Contractor is entitled to additional compensation pursuant to this Agreement. The City shall have the right to disapprove any agreement, arrangement, or understanding. In the event the parties cannot agree, the dispute procedures of Section 17.17 shall be employed.

14.24 Limitation of Liability

14.24.1 In no event whether based upon contract, tort, warranty or otherwise, arising out of the performance or non-performance of its obligations under this Agreement, shall either party be liable or obligated in any manner to pay special, consequential, punitive, incidental or similar damages for any reason in connection with this Agreement and the transactions contemplated hereby. The parties' obligations hereunder shall be limited to those expressly set out and assumed by the respective parties under this Agreement.

14.24.2 It is hereby expressly agreed that the officers and employees of the City, including but not limited to the Mayor and the members of the City Council, are not personally liable in any way under this Agreement or as to any representation pertaining to this Agreement.

14.25 Counterparts

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which when so executed and delivered will together constitute one and the same instrument.

14.26 Time of the Essence

Time is of the essence of this Contract.

14.27 Survival of Obligations

Notwithstanding any other provision of this Agreement, (i) undischarged monetary liabilities of the parties hereunder accruing prior to any termination of this Agreement shall survive such termination, and (ii) the obligations of the parties under the following provisions shall survive the termination of this Agreement for the period set forth in such Section, provided that if no such survival period shall be set forth, such survival shall be indefinite: Section 5.6, Article 9, Article 10, Article 11, Section 12.5, Article 13, Sections 14.17, 14.18, and 14.24 and this Section 14.27.

14.28 Agreement Declared Invalid

In the event this Agreement is declared invalid by any Court, the City shall not be liable to the Contractor for any damages including but not limited to in connection with such ruling or the termination of this Agreement in connection therewith.

14.29 Documents Included; Priority of Documents

Terms and conditions and provisions of the Request for Proposals for Out-of City Sludge Disposition (RFP) are hereby incorporated into this Agreement. If provisions of the RFP and this Agreement conflict, terms of this Agreement shall prevail. Every effort shall be made by the parties hereto to interpret any apparent conflict between the RFP and this Agreement so that the terms of both documents are given their intended effect.

15.00 EXECUTION OF AGREEMENT

This Agreement shall become effective _____, 2016.

CITY OF NEW BEDFORD MASSACHUSETTS

SLUDGE MANAGEMENT FACILITIES

SCHEDULE NO. 1

TEHNICAL SPECIFICATIONS FOR REMOVAL AND TRANSPORTATION OF SLUDGE

A. General Requirements

1. Sludge from the City's secondary wastewater treatment shall be hauled off-site seven days per week. Estimated Sludge quantities are shown in Attachment No. 3.
2. The City shall provide to the Contractor for Disposition (either thickened Sludge at approximately four and five tenths (4.5%) to and including approximately ten (10%) percent solids or dewatered Sludge at approximately fifteen (15%) to and including approximately twenty three (23%) percent solids in accordance with the Agreement.
3. If for any reason the City is unable to deliver Sludge to the Contractor because of equipment failure, the Contractor shall have no recourse for claims or increased costs resulting from the City's inability to supply the Sludge.
4. If the amount of Sludge removed from the City's plant is significantly below the average daily production or below the amount requested to be removed by the plant personnel, then this amount must be made up. As soon as reasonably practicable, this left over amount must be removed in addition to the day's normal amount removed at no additional cost to the City. The Proposer shall demonstrate that its transport and storage or processing capabilities are sufficient to handle the total amount for this day which may exceed the maximum estimated output noted in Attachment No. 3.
5. The City, as the Sludge generator, shall perform testing of the Sludge as required by EPA. Test results shall be made available to the Contractor; however, the City makes no guarantees or representations as to the accuracy of the test or test results. The Contractor shall have no right to rely upon the City's test data.
6. The Contractor shall be required to take samples of the Sludge for analysis to verify the City's Sludge quality in conjunction with Appendix 1 and as required for the removal, transport, Processing and Beneficial Re-use and / or Disposal of the City's Sludge at the City's cost. Copies of all tests results and reports required prepared and filed by the Contractor shall be forwarded to the City.
7. The Contractor shall tabulate all certified Sludge weights and provide the City with monthly summaries delivered to the City's Wastewater Superintendent. Monthly

totals for billings must be delivered to the Commissioner by the tenth day of the next month. Billings will be done on the calendar month schedule.

B. Permitting Requirements

1. The Proposer shall compile and submit a listing of all regulatory agency authorizations applicable to Disposition of the City's Sludge. Listing to identify effective date and expiration date of all permits. Copies of all permits shall also be submitted by the Contractor.
2. The Contractor shall reapply for requisite re-authorization(s) in conformance with law and regulation and shall notify the City of the disposition of its reapplication, and shall implement such secondary contingency plans as necessary in proving uninterrupted long-term Sludge Processing and/or Disposal. Copies of all transactions conducted from reapplication through disposition and reissuance shall be provided to the City.
3. Subject to relief provided per the Agreement, the Contractor shall take all actions necessary at no additional cost to the City to comply with new laws and regulations enacted after the effective date of the Contract and throughout its duration affecting City's long-term Sludge Disposal and/or Beneficial Re-use of the City's Sludge. Contractor shall keep City informed as to impacts of these laws and regulations and actions being implemented to comply, including preparation of filling of new permit applications. Contractor shall provide the City with copies of all transactions undertaken in this regard.

C. Chain-of-Custody Manifesting Requirements

1. A manifesting system shall be used to:
 - a. Ensure traceability and proper transferable of responsibility of all City Sludge removed, transported, Processed and Beneficially Re-used and/or Disposed under the Contract from its removal from the City's site through its acceptance at the Contractor's Processing site or Disposal site.
 - b. Document removal, transport, Processing and Beneficial Re-use and/or Disposal operations in compliance with law, regulation, and permit authorization and consistent with this Contract.
 - c. Support the Contractor's application for payment.
2. A manifesting system shall be used to identify the following:
 - a. Vehicle identification number.
 - b. Container identification number.
 - c. Date/time loading starting and finished.
 - d. Certified empty weight/volume of vehicle/container.
 - e. Certified full weight/volume of vehicle/container.

- f. Certified weight/volume of Sludge transported.
 - g. Name and signature of City's plant operator that certifies when the vehicle/container departed from the Wastewater Treatment Plant.
 - h. Name and signature of the Contractor's representative that certifies that the transfer of responsibility was made to the Contractor.
 - i. The Beneficial Re-use or Disposal facility to which the Sludge was delivered, date and time each load was received and signature of representative accepting each load.
- 3. The Contractor shall be responsible for completing those parts of the manifest form for which he is responsible.
 - 4. A manifest form must be completed for each and every load removed from the Wastewater Treatment Plant.
 - 5. The Contractor shall create a manifest form acceptable to the City.

D. Container Vehicle Requirements

- 1. Each vehicle must bear a permanent identification number for tracking purposes.
- 2. Sufficient number of vehicles shall be provided to transport efficiently and safely the City's Sludge from the Wastewater Treatment Plant to the designated Processing and/or Disposal facilities.
- 3. Each vehicle shall meet all applicable Department of Transportation standards and ICC regulations.

E. Container Requirements

- 1. Each container must bear a permanent identification number for tracking purposes.
- 2. Containers shall be sufficient type, size and number to remove efficiently and safely the City's Sludge and transport it to the designated Processing and/or Disposal facilities.
- 3. Containers shall comply with all requirements of regulatory agencies exercising jurisdiction over the transport of Sludge over public and state roads.
- 4. The Contractor shall be required to furnish covers or to add an odor control chemical or other substance to the container prior to covering the transporting the container.
- 5. All containers for handling thickened Sludge shall be watertight in accordance with industry standards.

F. Loading and Removal Requirements

- 1. The City's equipment in/at the Sludge Processing Building at the Wastewater Treatment Plant shall be used to load the Contractor's container/vehicle.
- 2. Loading by the City shall occur between 7:00 AM and 10:00 PM seven days a week.

3. The Contractor shall provide all necessary hoses and pipe and hose adapters to connect to the existing flanged pump-out connections at the Wastewater Treatment Plant to fill his containers for removal of thickened Sludge.
4. The Contractor shall be responsible for wash down of the loading area after each container is filled or partially filled with Sludge and for keeping the loading area after each container fill filled or partially filled with Sludge and for keeping the loading area clean.

G. Transport Requirements

1. Containers with the City's Sludge shall be expeditiously transported directly from the City's secondary treatment plant to the designated Processing and/or Disposal facilities.
2. Vehicle routing shall follow the approved route as detailed in Attachment No. 1.
3. No tampering with the container will be permitted between its departure from the Wastewater Treatment Plant and its arrival at the Processing and/or Disposal facilities.

H. Emergency Spill Control

1. The Contractor shall submit to the City, within 30 days after award of Contract, an Emergency Spill control Plan identifying how a spill will be contained and cleaned up, including the equipment to be utilized and response.
2. The plan shall identify a minimum of three names and telephone numbers of individuals employed by the Contractor who can be contracted by the vehicle operator in case of a spill for immediate response.
3. The plan shall also call for the notification of the Department of Environmental Protection (DEP) in accordance with DEP requirements.
4. The plan shall identify the method of containing the spill and method the Contractor intends to utilize in the cleanup. The method should clearly state the difference in cleaning spills occurring on pervious or impervious areas. It should also state how a waterway or drainage system is to be protected if the spill occurs next to it, how varying weather conditions will affect the cleanup and the equipment to be used in the cleanup. It should identify the state agencies that must be notified if a spill occurs and the response time by the Contractor in addressing the spill.

SCHEDULE NO. 1
ATTACHMENT NO. 1

Approved Transport route for Vehicular Traffic to and From the Wastewater Treatment Plant.

Exit from Wastewater Treatment Plant.

Go straight and head North on East Rodney French Boulevard.

Go right at the traffic light to continue north on Route 18.

-If heading east or west:

Follow Route 18 North to Route 195 East or West, as applicable...

-If heading north:

Follow Route 18 North to Route 195 West to Route 140 North.

SCHEDULE 2

GUARANTEE

THIS GUARANTEE made as of the ____ day of ____, 20__, by _____ a _____ corporation ("Guarantor"), having its principal place of business in _____, to and for the benefit of the City of New Bedford ("City")>

WITNESSETH:

WHEREAS, _____, a _____ corporation (the "Contractor"), having an office at _____, _____, has entered into the Agreement for Out-of-City Primary Long-Term Sludge Disposition (the "Agreement") with the City dated as of _____, 20__.

WHEREAS, City would not enter into the Agreement unless the Guarantor provided this Guarantee.

NOW, THEREFORE, as an inducement to the City to enter into this Agreement, Guarantor agrees as follows:

1. Guarantor hereby absolutely and unconditionally guarantees the full and prompt performance by the Contractor of all of the Contractor's obligations under the Agreement in accordance with the terms and conditions therein.
2. This Guarantee shall be governed by the laws of the Commonwealth of Massachusetts exclusive of the choice of law rules thereof, the Guarantor hereby agrees to the service of process in the Commonwealth for any claim or controversy arising out of this Guarantee or relating to any breach hereof and to submit to the exclusive jurisdiction of any court of competent jurisdiction of United States courts of courts in the Commonwealth.
3. This Guarantee shall be binding upon and enforceable against the Guarantor, its successors, assigns and legal representatives (including any successor by merger or consolidation or any transferee of all or substantially all of the properties of Guarantor), whether or not such obligations are expressly assumed by such successor, assignee or transferee and is for the benefit of the City, its permitted successors and assigns under the Agreement.
4. This Guarantee may be enforced by City without first resorting to any action against Contractor or exhausting any other remedies that City may have.
5. Each and every Event of Default under the Agreement shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by the City as each cause of action arises. Guarantor waives presentation to, demand of performance from the protest to the City of the obligations of the Contractor under the Agreement.

6. No failure or delay by the City in exercising any right, power or privilege hereunder or under the Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided in the Agreement or by law or equity. No waiver, amendment, release or modification of this Guarantee shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the party against whom such waiver, amendment, release or modification is sought to be enforced.
7. Guarantor may not assign its obligations hereunder, except to a successor by merger or consolidation or to any transferee of all or substantially all of the property of Guarantor. Notice of any such assignment shall be given in writing to the City within thirty (30) days of the effective day of any such merger, consolidation or transfer.
8. The respective obligations of Guarantor to the City set forth in this Guarantee shall be absolute and unconditional, shall not be subject to any requirement that City first enforce any remedies it may have against the Contractor or any other person, or any requirement to seek to recover from Contractor hereunder before proceeding against Guarantor hereunder, provided however, that the City has first given notice to Guarantor of Contractor's failure to perform the Agreement and Guarantor has failed, within ninety (90) days of receipt of such notice, to obtain the performance of the Agreement by the Contractor. The respective obligations of Guarantor to the City set forth in this Guarantee shall not be subject to any claim of Guarantor against any other person including the City, other than a claim that the matter giving rise to the City's claim is the subject of dispute resolution in good faith under the Agreement or in the courts of the United States or the Commonwealth, provided, however, that nothing contained herein shall constitute a waiver by Guarantor to assert on its own behalf, any defense which may be asserted by the Contractor.
9. This Guarantee may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. The invalidity or unenforceability of one or more provisions of this Guarantee shall not affect the validity or enforceability of the remaining portions of this Guarantee. This Guarantee is entered into by Guarantor solely and exclusively for the benefit of the City, and may be enforced against Guarantor by the City.
10. Any term used herein and defined in the Agreement shall have the meaning attributed to it in the Agreement.
11. Notices to be given pursuant to this Guarantee unless otherwise stated shall be in writing and shall be served personally or sent by certified mail, return receipt requested, to:

To the Guarantor:

FAX Number: _____

With a copy to : _____

Fax Number: _____

To the City: Euzebio Arruda
 Commissioner
 Department of Public Infrastructure
 1105 Shawmut Avenue
 New Bedford, Massachusetts 02746
 (FAX) 508-961-3054

With a copy to: Mikaela A. McDermott
 City Solicitor
 Office of the City Solicitor
 City Hall
 133 William Street
 New Bedford, Massachusetts 02740
 (FAX) 508-979-1515

Or to such other address as shall be designated by such party in a written notice to the party hereto. Any notice given pursuant to this Section 11 shall be effective immediately upon receipt and if delivered by hand upon delivery.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

GUARANTOR

By: _____

ATTEST: _____

ACCEPTED BY: _____

SCHEDULE 3

PRIMARY FACILITY

[TO BE PROVIDED BY PROPOSER WITH THE PROPOSAL]

Contractor represents that, as of the date of this agreement, Contractor has not entered into any non-interruptible commitments for the Disposition of Sludge at the Primary Facility from other sources that would interfere with the commitment to provide Disposition of City Sludge at the Primary Facility pursuant to this Agreement. Contractor agrees that it shall not enter into any non-interruptible commitments during the term of this Agreement for the Disposition of Sludge at the Primary Facility from other sources that would interfere with the commitment to provide Disposition of City Sludge pursuant to this Agreement.

SCHEDULE 4

ALTERNATE FACILITY

[TO BE PROVIDED BY PROPOSER WITH THE PROPOSAL]

SCHEDULE 5

DISPOSAL FACILITY

[TO BE PROVIDED BY PROPOSER WITH THE PROPOSAL]

SCHEDULE 6

PERMITS AND PERMIT REQUIREMENTS

[TO BE PROVIDED BY THE CONTRACTOR PRIOR TO THE EXECUTION OF THE AGREEMENT]

SCHEDULE 7

FUEL ADJUSTMENT

This bid is based on a diesel (ultra low sulfur) price of \$ 2.031 per gallon which will hereafter be referred to as the "Base Price of Fuel." (as of 03/28/2016).

The cost of the contract will be adjusted up or down based upon the price of fuel established at the time of the bid. The fuel adjustment is intended to provide a fair and equitable compensation to the Contractor and/or a credit to the City resulting from fluctuating fuel costs.

Beginning on the Contract Start Date, and continuing for the duration of said contract, a cost of fuel adjustment will be implemented based upon the following:

- Fuel price shall be the dollar per gallon price for diesel fuel, published weekly on Monday by the U.S. Department of Energy for New England. WWW.eia.gov/petroleum/gasdiesel
- The price for Monday shall be in effect for the next seven (7) days.
- Base line price of fuel is equal to the "Bid Price" above.
- Transportation distance per load shall be established utilizing "Google Maps" to determine the distance in miles, between the New Bedford Wastewater Treatment Facility (following the Approved Transport route for Vehicular Traffic noted in Schedule No. 1, Attachment No. 1) and the Contractor's Primary Disposal Facility. This number will then be doubled to represent the round trip mileage. Round trip mileage is set at 98.2 miles.
- Truck mileage is set at 5.5 miles per gallon.
- Should it become necessary to dispose of the City's sludge at an alternate facility the round trip mileage will remain as the established round trip mileage between the New Bedford Wastewater Treatment Facility and the Contractor's Primary Disposal Facility.

Fuel Surcharge Example:

- Bid price per gallon \$3.00
- U.S.DOE price per gallon \$3.50
- Round trip mileage 100
- Gallons per round trip $100/5.5 = 18.18$ gallons

$$(\$3.50 - \$3.00) \times 18.18 = \$9.09$$

The fuel surcharge would then be \$9.09 per round trip.

A fuel credit will be issued to the City should the weekly price of diesel fuel be less than the bid price.

Using the above example where:

- Bid price per gallon \$3.00
- U.S.DOE price per gallon \$2.50

$$\$3.00 - \$2.50 = \$0.50 \quad \$0.50 \times 18.18 = \$9.09 \quad \text{Fuel credit would then be \$9.09 per round trip}$$