

SUPPORT AND OPERATING AGREEMENT (SDMFA-2003-~~K~~F1)

dated as of September [], 2003

between

~~[RAPID-CITY]~~ OF ABERDEEN

and

~~SDMFA~~ ABERDEEN STATUTORY TRUST ~~SDMFA-2003-~~F1

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This SUPPORT AND OPERATING AGREEMENT (SDMFA-2003-~~KF~~1), dated as of September [], 2003, (as supplemented, amended or otherwise modified from time to time, this “*Agreement*”), is between (i) [~~Rapid~~—City of Aberdeen] (the “*User*”) and (ii) SDMFA Aberdeen Statutory Trust SDMFA-2003-~~K1~~F1, a Delaware statutory trust (the “*Trust*”).

WITNESSETH:

WHEREAS, the User and certain other parties have entered into a separate Participation Agreement and other Operative Documents with the Trust dated as of the date hereof, pursuant to which the Trust has been granted certain rights of use and possession of the Facility and will, in certain circumstances, be in possession of the Facility; and

WHEREAS, the Trust desires to obtain from the User the right to use certain equipment, facilities, parts, services and supplies, and to gain access to the Facility and the Facility Site and other real property for the purpose of operating, replacing, improving, maintaining, repairing, testing, renewing and inspecting the Facility as provided herein, and the User is willing to make available such facilities, equipment and parts and to provide such services, supplies and access to the Trust on the terms and conditions set forth herein; and

WHEREAS, the Trust, in order to economically operate the Facility pursuant to this Agreement and the other Operative Documents from the Commencement Date until the expiration or earlier termination of the Head Lease (other than pursuant to the Head Lessee’s exercise of the Head Lease Purchase Option) or the Final Shutdown Date (~~the “*Support Period*”~~), whichever is the first to occur, (the “*Support Period*”), requires certain services for its benefit and the benefit of the Operator, and the User is willing to provide such services; and

WHEREAS, the Trust, in order to operate the Facility during the Support Period pursuant to this Agreement, requires that the User deliver Waste Water in sufficient quantities and of a certain quality and/or treat and dispose of Waste Water, as the case may be, and the User is willing to deliver and/or treat and dispose of such Waste Water; and

WHEREAS, the parties hereto desire to enter into this Agreement to establish their respective rights and obligations in respect of matters relating to the operation of the Facility during the Support Period;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; EFFECTIVE DATE OF AGREEMENT

SECTION 1.1. Definitions.

For purposes of this Agreement, initially capitalized terms used herein without definition shall have the meanings assigned to such terms in Appendix A hereto, or if not defined therein, as defined in Appendix A to Participation Agreement (SDMFA-2003-~~KF1~~), dated as of September [], 2003, among South Dakota Municipal Facilities Authority (the “*Authority*”), [State of South Dakota Department of Environment and Natural Resources] (the “*State*”), the User, the Trust, ~~KBC Bank N.V.~~ The Fifth Third Leasing Company (the “*Owner Participant*”), ~~AIG FP Funding (Cayman) Limited, AIG FP Special Finance (Cayman) Limited and [U.S. Bank National Association]~~ Aberdeen Lender Trust SDMFA-2003-F1, The Royal Bank of Scotland plc, New York Branch, AIG Financial Products Corp. and Wilmington Trust Company, not in its individual capacity except as expressly set forth therein, but solely as Trustee (as amended, modified or supplemented from time to time, the “*Participation Agreement*”).

SECTION 1.2. Use of Definitions.

All terms defined in this Agreement (by reference or otherwise) shall have the defined meanings when used in any certificate, report or other document made or delivered pursuant to this Agreement.

SECTION 1.3. Accounting Terms.

All accounting terms not specifically defined herein shall be construed in conformity with generally accepted accounting principles: consistently applied.

SECTION 1.4. Agreements.

Except as otherwise indicated herein, all the agreements or instruments herein defined shall mean such agreements or instruments, as the same may be supplemented or amended from time to time or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms hereof and thereof.

SECTION 1.5. Headings.

The headings of the various sections, paragraphs, clauses, appendices, schedules and exhibits are to sections, paragraphs, clauses, appendices, schedules and exhibits in and to this Agreement unless otherwise specified.

SECTION 1.6. Effective Date of Agreement.

This Agreement shall be effective as of the date hereof but the provisions of Article II, Article III, Article IV, Article V, Article VI and Sections 7.1, 7.11 (with respect to the Operator

only) and 7.16(a) ~~hereof~~ shall not become operative until the Commencement Date. Prior to the Commencement Date, the duties and responsibilities of the User and the Trust in respect of the Facility shall be governed exclusively by the terms of the Operative Documents (other than this Agreement). On and after the Commencement Date, the provisions of Article II, Article III, Article IV, Article V, Article VI and Sections 7.1, 7.11 ~~(with respect to the Operator only)~~ and 7.16(a) ~~hereof~~ shall become operative with respect to the Operator, the User and the Trust, but without in any way affecting the respective rights and obligations of the parties under the terms of any of the other Operative Documents that may then be in effect. Except as otherwise provided herein, this Agreement will terminate upon the expiration or earlier termination of the Head Lease (other than with respect to the Head Lessee's exercise of the Head Lease Purchase Option) or the Final Shutdown Date, whichever is the first to occur. Nothing herein contained shall be construed as requiring the Operator, the User or the Trust to take any action in violation, or breach any obligation, of any Operative Document or as a waiver of any of the Trust's or the Operator's rights under the Operative Documents.

SECTION 1.7. Successors; Assigns.

Reference to any Person shall include such Person, its successors and permitted assigns and transferees.

ARTICLE II

SUPPORT PROVISIONS; COVENANTS
OF THE
USER; COVENANTS OF THE TRUST

SECTION 2.1. Covenants of the User.

(a) Waste Water Flow Services. The User hereby covenants and agrees that it or its designee will install, maintain and operate automatic measuring equipment at each of the Metering Points which records the Waste Water flow and that it will continuously (on a 24-hours-a-day, 7-days-a-week basis) deliver, provide or make available, or cause to be delivered, provided or made available, to and for the benefit of the Trust or its designee, at the Points of Entry, Influent which shall at all times meet the volume, flow rate, and other physical and chemical parameters and requirements of the Required Influent Parameters (the "***Waste Water Flow Services***").

(b) Support Items. To the extent not already transferred to the Trust pursuant to the Head Lease or otherwise, the User hereby grants to the Trust or its designee a non-exclusive right to use and maintain all rights, facilities, equipment, permits, licenses, supplies and accessories, including, without limitation, (i) at the Points of Exit, disposal pipelines, pumps and/or any other equipment (including any permits, licenses or easements necessary for the operation or use thereof) necessary to transport and dispose of Effluent, partially- treated Waste Water or Waste Water to another treatment plant operated by the User to the Network, or into **[the River]**, canals, tributaries, overflow sewers, hydraulic relief sewers or any other appropriate point of discharge in compliance with Applicable Law and Applicable Permits, (ii) reservoir basins or other storage facilities of a sufficient size and capacity to store excess Waste Water of

the User of whatever nature at any time during the term of this Agreement which are necessary or useful in connection with operating, maintaining, repairing, testing, renewing or inspecting the Facility in compliance with Applicable Law and Applicable Permits and on a commercially reasonable basis consistent with Prudent Industry Practice, (iii) incineration, sludge and ash handling facilities capable of processing the Biosolids and other by-products of the Facility and (iv) other downstream collectors constituting part of the Network, together with use of the Related Facility to which such collectors are interconnected (collectively, the “*Support Items*”).

(c) Support Services. The User hereby covenants and agrees that it will provide and make available, or cause to be provided and made available, to the Trust or its designee, (i) incinerator ash removal and disposal, waste and by-product transportation, pumping, disposal and removal services sufficient to dispose of or remove all Biosolids from the Facility in compliance with Applicable Law and Applicable Permits, (ii) environmental, safety or other necessary or desirable planning services, (iii) operation and monitoring services of any kind and all facilities and or controls associated with the collection, flow, transportation and treatment of Waste Water (including, without limitation, facilities and controls associated with the control of flood water), and (iv) such other ancillary rights and services which, in the good faith opinion of the Trust or its designee, are necessary or useful to enable the Facility to be operated at its Maximum Dependable Capacity. The User further agrees to deliver to the Facility on an exclusive basis the Waste Water collected, directly or indirectly, by it or any of its agencies, successors or transferees, up to the Facility’s Maximum Dependable Capacity and in accordance with Section 2.1(a) (the services referred to in this Section 2.1(c) are collectively referred to as the “*Support Services*”).

(d) Access Entrance Rights. To the extent not already transferred to the Trust pursuant to the Head Lease or otherwise, the User (and its successors and assigns) hereby covenants, grants and conveys, and further, agrees that it will provide and make available, or cause to be provided or made available, to and for the benefit and enjoyment of the Trust or its designee, to the extent necessary, ~~adviseable~~advisable or useful in connection with operating, constructing, maintaining, repairing, testing, servicing, overhauling, replacing parts of or inspecting the Facility to enable the Facility to be operated at its Maximum Dependable Capacity, a non-exclusive right of access and entry to the Facility, the Facility Site and any other real property owned or leased by the User or to which the User otherwise has actual or potential access or actual or potential rights of access and entry rights, and each portion thereof together with the benefits associated with any easements relating thereto, including (i) a right of access and entry to process control centers at the Related Facilities, any of the Treatment Facility Sites or any other locations, to monitor the operations of the Facility and to control the pump stations and rainwater retention basins included in the Facility, and to the maintenance shops, storage areas, garages and staging areas at or adjacent to the Facility and the Facility Site or to the headquarters facilities owned or operated by the User and, in either case necessary for the operation and maintenance of the Facility, together with any other buildings, structures, maintenance shops, storage areas, garages or staging areas which are functionally related to operating, constructing, maintaining, repairing, testing, servicing, overhauling, replacing parts of the Facility or inspecting the Facility and the Facility Site, (ii) a right of way to and from the public road nearest to the Facility and the Facility Site or any other public or private way, (iii) the right to underground, vehicular, pedestrian, air, rail and harbor access where appropriate, and (iv) a right of access to any central control center operated by the User for the purposes of

operating and monitoring the Network (the “~~Aeeess~~Entrance Rights”). The User covenants and agrees that if it does not have all of the ~~Aeeess~~Entrance Rights, it shall exercise any and all of its rights under any third-party contracts or pursuant to Applicable Law (including the issuance of any administrative orders with respect to the Facility or the Facility Site) in order to obtain such ~~Aeeess~~Entrance Rights on behalf of itself and the Trust for the purposes described in this Section 2.1(d). If the User is required by Applicable Law to pay any fees or costs arising from the issuance of any such administrative orders, such fees or costs shall be paid by the Trust to the User in accordance with Section 2.3(b).

(e) Operating Inputs. The User covenants and agrees to provide, or cause to be provided, to the Trust or its designee if not available to the Trust or its designee from third parties on commercially reasonable terms, the fuel (including fuel oil and propane), traditional stocked items (including paper, light bulbs and valve packing), process related chemicals (including, without limitation, ferrous chloride, polyelectrolytes, lime, iron, aluminum salts, aluminum sulfate and liquid nitrogen), diesel oil, diesel fuel, sand, lubricating oils and greases and other commodities useful or necessary to operate the Facility at its Maximum Dependable Capacity (the “*Operating Inputs*”). The User further agrees to procure the Operating Inputs on the best terms then available to it, and to pass on to the Trust or its ~~designees~~designee, the benefit of any prices or price reductions obtained with respect thereto.

(f) Special Collector and Special Treatment Facility Sites; Collector Repair. The User covenants and agrees to renew, renegotiate or otherwise provide for the continuance or provision of (and pay the appropriate fees and/or costs associated with the renewal, renegotiation or continuance of) any Special Collector Site Contracts and any Special Treatment Facility Site Contracts. The User covenants and agrees that if it does not have ~~aeess rights~~Entrance Rights with respect to any of the Special Collector Sites or the Special Treatment Facility Sites, it shall exercise any and all of its rights under any Special Collector Site Contracts, any Special Treatment Facility Site Contracts or pursuant to Applicable Law (including the issuance of any administrative orders with respect to the Special Collector Sites or the Special Treatment Facility Sites) in order to gain access on behalf of itself and the Trust to such Special Collector Sites and Special Treatment Facility Sites for the purpose of allowing any Person to repair, refurbish, test, operate, service, overhaul, inspect or maintain those parts of the Facility located in, on or under such Special Collector Sites or the Special Treatment Facility Sites. If the User is required by Applicable Law to pay any fees or costs arising from the issuance of any such administrative orders, such fees or costs shall be paid by the Trust to the User in accordance with Section 2.3(b). If no Person other than the User may enter such Special Collector Sites or Special Treatment Facility Sites to repair, refurbish, test, operate, service, overhaul, inspect or maintain such part or parts of the Facility, then the User, at the Trust’s or its designee’s direction and expense, shall repair, refurbish, test, operate, service, overhaul, inspect or maintain such part or parts of the Facility.

SECTION 2.2. Covenants of the Trust.

(a) Waste Water Treatment Services. The Trust hereby covenants and agrees that it or its designee will continuously (on a 24-hours-a-day, 7-days-a-week basis), for the benefit of the User or its designee, accept all Influent delivered by the User or its designee in accordance with Section 2.1(a) for transportation, processing and treatment at the Facility. To the extent the

Influent meets the Required Influent Parameters, the Trust or its designee shall operate, or cause to be operated, the Facility in a manner necessary to either (x) transport and treat such Influent and produce and deliver to the Points of Exit, the Effluent or (y) transport and deliver to appropriate Points of Exit ~~un-treated~~untreated or partially- treated Waste Water (the “*Waste Water Treatment Services*”).

(b) Non-Conforming Influent. If, after advance notice to the Trust or its designee, the User delivers to the Facility any Influent which fails to meet the Required Influent Parameters, (i) the Trust or its designee shall use commercially reasonable efforts to process such non-conforming Influent and (ii) the User shall indemnify the Trust or its designee against any and all losses, liabilities (including, without limitation, any strict liability or tort liability arising or potentially arising in connection with, or as a result of, the discharge of Waste Water or of Effluent not meeting the Required Effluent Parameters or the discharge of any Regulated Materials), damages or other costs as a result thereof or otherwise in connection therewith (including the consequences under any Applicable Permits). If the User, as User Lessee under the User Lease, the State, as Sublessee under the Sublease, or the Authority, and the User as ~~Lessee~~Lessees under the Lease, shall have failed to return (or cause to be returned) the Facility to the Trust at the expiration or earlier termination of the Lease in full compliance with Applicable Law, the User shall indemnify the Trust or its designee against any and all losses, liabilities (including, without limitation, any strict liability or tort liability arising or potentially arising in connection with, or as a result of, the discharge of Waste Water or of Effluent not meeting the Required Effluent Parameters or the discharge of any Regulated Materials), damages or other costs as a result thereof or otherwise in connection therewith (including the consequences under any Applicable Permits). In the event of a disagreement between the parties hereto whether Influent shall have been delivered in compliance with the Required Influent Parameters, the parties hereto agree to be bound by the decision of a mutually selected chemical-biological expert whose decision shall be final, absent manifest error. The User shall promptly notify the Trust or its designee if (i) it has actual knowledge that any Influent fails to satisfy the Required Influent Parameters or (ii) it has received a notice from a party to an Existing Inflow Agreement to the effect that the Waste Water delivered by such party thereunder fails to satisfy the quality as required by such Existing Inflow Agreement. Neither the Trust nor its ~~designees~~designee shall be required to treat, store or transport any Influent that fails to satisfy the Required Influent Parameters and the User shall, at the written demand of the Trust or its designee, take all necessary action (including the blocking of all Influent at any Point of Entry or the re-routing of Influent) to ensure that such Influent is not delivered to the Facility.

(c) Operation. The Trust covenants and agrees that it or its designee will operate the Facility in a manner consistent with Applicable Law and Prudent Industry Practice so as to maintain the availability of the Facility for the transportation and treatment of Influent hereunder. The Trust covenants and agrees that it or its designee will keep, or cause to be kept, in full force and effect all Applicable Permits which are necessary for the operation and use of the Facility and that it or its designee will operate the Facility in material compliance with all Applicable Permits and Applicable Law (taking into account any waivers, variances, nonconforming permits or similar dispensations relating to the discharge of ~~un-treated~~untreated or partially- treated Waste Water or of Effluent). If, for any reason whatsoever, the Trust or its designee is unable to keep in full force and effect all such Applicable Permits, the User shall use its best efforts to keep, or cause to be kept, in full force and effect all such Applicable Permits.

(d) Maintenance and Repair. The Trust covenants and agrees that it or its designee will keep and maintain, or cause to be kept or maintained, the Facility in good operating condition, ordinary wear and tear excepted, and that it or its designee will make or cause to be made all repairs and equipment overhauls necessary to keep the Facility in such condition and to comply with all Applicable Permits and Applicable Law (taking into account any waivers, variances, nonconforming permits or similar dispensations relating to the discharge of ~~un-~~~~treated~~untreated or partially- treated Waste Water or of Effluent). Subject to Section 2.2(c) and this Section 2.2(d), the Trust or its designee shall make all decisions in its sole discretion about the operation, repair, maintenance and improvements (if any) of the Facility.

(e) [Common Facilities. **The Facility may from time to time include certain assets used by the User to support activities at other sewage treatment facilities or collectors owned by the User or by other trusts for which the User is delivering or will in the future deliver Waste Water for collection and/or treatment similar to that provided by the Facility (such facilities referred to as the “*Related Facilities*”) specifically including (i) certain sludge processing units used for thickening, digesting, dewatering and burning of sewage sludge from such Related Facilities, (ii) one or more fluidized bed incineration units that incinerate such sludge and (iii) incinerator ash storage, disposal and truck-loading facilities (the foregoing common facilities are collectively referred to as the “*Common Facilities*”).** The Trust covenants and agrees that it will provide access to and non-exclusive use of the Common Facilities for the benefit of the Related Facilities if and so long as (1) the User compensates the Trust at Fair Market Value no less than once per calendar quarter for such usage and the cost of operating and maintaining such Common Facilities and (2) the User provides an indemnity acceptable to the Trust for any costs, expenses, fines, penalties or other liabilities, claims or judgments (including in each case attorney’s fees related thereto), arising from the operation or ownership of the Common Facilities or otherwise asserted as a result of any actual or claimed violation of any Environmental Law or Applicable Permits in connection therewith.] [are there Common Facilities?]

SECTION 2.3. Fees.

(a) Waste Water Treatment Service Fee. In consideration for the Waste Water Treatment Services ~~and the Waste Water Flow Services~~ provided by the Trust hereunder, the User shall pay to the Trust, for each Billing Period ~~commencing with the period in which the Commencement Date occurs~~during the Support Period, a service fee equal to the sum of the Resident Fees plus any Inflow Fees (collectively, the “*Service Fee*”); *provided, however*, that if the Trust shall have elected the Service Contract Option, and a Qualified Bidder shall have entered into a Capacity Purchase Agreement, the User shall pay a portion of the Service Fees (such portion as set forth in the applicable Accession Agreement) directly to such Qualified Bidder. Furthermore, upon the Trust’s election to exercise its Service Contract Option, the User and the Trust each hereby agree to enter into one or more Accession Agreements (in the form attached hereto as Exhibit C) pursuant to which one or more Qualified Bidders shall become parties to this Agreement.

(b) User Fees.

(i) The Trust shall pay to the User for each Support Item, Support Service, Operating Input and ~~Access~~Entrance Right delivered or provided by the User in a calendar month an amount (for each Support Item, Support Service, Operating Input and Access Right, its “*Support Service Price*”) equal to the aggregate of

(A) in respect of each Support Item, Support Service, Operating Input and Access Right which is supplied by the User (the “*User Supplies*”) an amount equal to the User’s [fixed and variable operating expenses] (determined in accordance with generally accepted accounting principles) incurred specifically in connection with the provisions of such User Supplies, including the costs of operation, maintenance, replacement, renewal, repair or insuring of, and any Taxes related to the ownership, leasing, or use of, the Facility Site incurred specifically in connection with the provisions of such User Supplies, but excluding (x) general and administrative costs, (y) capital cost recovery and return on capital, plus the actual amount of any value added tax, turnover tax and/or any other tax that may be imposed in the future on amounts invoiced by the User to the Trust hereunder and (z) costs which would have been incurred without regard to the provision of such User Supplies; and

(B) in respect of each Support Item, Support Service, Operating Input and Access Right which is supplied by a third party or the Operator (the “*Third Party Supplies*”) and which is invoiced to the User, an amount equal to the aggregate of:

(1) such invoiced amount; and

(2) the actual amount of any value added tax, turnover tax and/or any other tax that may be imposed in the future on amounts invoiced by the User to the Trust hereunder in respect of such Third Party Supply for which the User may be liable and which are not included in such invoiced amount.

(ii) The User shall submit to the Trust on the 10th day of each calendar month during the Support Period a reasonable, ~~and~~ properly documented invoice for the Support Service Price of all the Support Items, Support Services, Operating Inputs and ~~Access~~Entrance Rights provided to the Trust in the prior calendar month except that, in the case of Third Party Supplies invoiced to the User, the User may forward the same to the Trust for payment at any time. Payment of such invoice shall be due on the 10th day of the month following the month the invoice was submitted to the Trust or, in the case of Third Party Supplies invoiced to the User, at the later of the time required for payment of such third party invoice or 30 days after the User requests payment and provides to the Trust a copy of such third party invoice. Upon request, in respect of the User Supplies, the User shall provide the Trust with reasonable proper documentation supporting the determination of the Support Service Prices and, if requested, evidence that the User’s allocation of expenses to such Support Service Prices has been effected in accordance with the User’s accounting practices applied consistently with such practices in the

12 months before the commencement of the Support Period. In the event of dispute as to any Support Service Price or the manner of calculation of any Support Service Price, the invoice shall nevertheless be paid when due with any adjustment in favor of the Trust ~~to~~shall be made by the User within 10 Business Days of final determination with interest at the Base Rate from the date originally paid by the Trust.

(iii) The User shall install meters and other instruments reasonably necessary to measure the Support Items, Support Services, Operating Inputs and ~~Aeeess~~Entrance Rights if requested by the Trust. The Trust shall reimburse the User for one-half of the reasonable cost of such meters, instrumentation and installation thereof.

(iv) The Trust shall have the right to audit the accuracy of the User's expenses in respect of any Support ~~Items~~Item, Support ~~Services~~Service, Operating ~~Inputs and Access Rights~~Input or Entrance Right provided hereunder in a particular month during the period which ends 26 months after the end of the particular month. Any such audit shall result in a report delivered to each of the parties hereto indicating any overcharges or undercharges hereunder and any amount which any such audit shall demonstrate to be owing by either party shall bear interest at the Base Rate from the date originally paid or on which it would have been due and payable, as the case may be. If the audit reveals that the User has overcharged the Trust in respect of any period of at least six consecutive months by an amount which exceeds 1% of the amounts invoiced by the User in respect of the Support Items, Support Services, Operating Inputs and ~~Aeeess~~Entrance Rights for such period, then the User shall reimburse the Trust the full cost of the audit; in any other case, the Trust shall bear the cost of the audit.

SECTION 2.4. Concurrent Use.

Notwithstanding anything herein to the contrary, the Trust shall have the right in its sole discretion to use the Facility to provide Waste Water collection, transportation or treatment services, as the case may be, to other parties, provided such services can be performed without materially adversely affecting the Trust's performance of its obligations hereunder. The User hereby agrees and covenants to provide any and all Support Items, Support Services, Operating Inputs or ~~Aeeess~~Entrance Rights which, in the opinion of the Trust or its designee, are necessary or useful in the provision of such services to third parties. The Trust or its designee may contract with third parties to transport, treat or process, as the case may be, Waste Water delivered by truck or other means, so long as the Waste Water accepted for processing is within the Facility's processing capabilities and does not (i) affect the Trust's or its designee's ability to comply with Applicable Law or Applicable Permits, or (ii) adversely affect the ability of the Trust or its designee to process Influent delivered by the User in accordance with this Agreement, deliver Effluent meeting the Required Effluent Parameters or perform any of its other obligations in accordance with this Agreement. [The User shall ~~cause~~provide Waste Water ~~to be delivered to the Facility~~Flow Services to enable the Trust to use the Facility as described in this Section 2.4 and the Trust shall pay to the User a fee (as determined by an Independent Appraisal) for such services as described in this Section 2.4.]

SECTION 2.5. Expansion of Capacity.

If the User determines that it has Waste Water collection, transportation or treatment requirements in excess of the Maximum Dependable Capacity, the User shall so advise the Trust in writing and, subject to any requirements of Applicable Law, the Trust may furnish additional capacity to the User and will negotiate in good faith with the User to expand the Facility as necessary to enable the Facility to collect, transport, and process and treat such additional Waste Water. Upon the Trust's election to provide such additional capacity, the Trust and the User shall each negotiate in good faith to agree upon mutually acceptable arrangements for such expansion, on terms and conditions which are consistent with the terms and conditions of this Agreement, taking into account the requirements of all Applicable Permits and Applicable ~~Law~~Laws and any other requirements, adjustments or modifications necessary as a result of such increase in Maximum Dependable Capacity.

ARTICLE III

APPOINTMENT OF OPERATOR;
OPERATING FEE

SECTION 3.1. Appointment of Operator.

(a) Appointment and Removal. (i) If the Service Contract Option is elected by the Trust pursuant to Section 14(d)(i) of the Lease, the Operator shall be procured in accordance with Section 14(d)(~~ii~~) of the Lease and such entity shall be appointed as the Operator hereunder, or (ii) if the Return Option is elected by the Trust with respect to the Facility pursuant to Section 14(d)(~~ix~~ii) of the Lease, the Lessee and the User may (but shall not be required to) assist the Trust in procuring an entity to act as Operator, and, in the sole discretion of the Trust, such entity shall be appointed as the Operator hereunder; *provided, however*, that if there is a termination of the Lease arising from a Lease Event of Default, the Trust may appoint the User as the Operator hereunder until such time as a replacement Operator is appointed by the Trust, and the User agrees that it shall, if so appointed, be the Operator of the Facility. The appointment of an Operator shall not limit or extinguish any rights of the Trust hereunder, in particular, but not limited to, with respect to the rights described in Article II hereof.

The Operator shall not be subject to removal unless (i) there occurs a change in Applicable Law the effect of which is that the Operator is no longer authorized, eligible or qualified to act as the Operator hereunder, (ii) after the Commencement Date there shall have occurred and be continuing a default by the Operator in any material respect in any of its obligations as Operator under this Agreement (the occurrence of each such event being hereinafter referred to as a "**Support and Operating Agreement Default**") or (iii) the User is the Operator and the Trust desires to appoint a replacement Operator at any time following the Commencement Date, such removal to be effective upon not less than thirty (30) days written notice.

The User, the State and the Authority shall cooperate and use reasonable efforts to (i) transfer any permits or authorizations of Governmental Authorities that are required or useful in

the use or operation of the Facility to the Operator and (ii) provide the Operator on behalf of the Trust with the rights and powers set forth in this Agreement.

(b) Resignation. If appointed, the User may not resign as the Operator hereunder until a qualified successor Operator enters into this Agreement or such resignation is approved by the Trust. Without limiting the obligation of the User, the State or the Authority to use commercially reasonable efforts to procure a Qualified Operator in the case of the Trust's election of the Service Contract Option, the Trust shall have the right in its sole discretion to approve or select a qualified successor Operator.

SECTION 3.2. Operating Fee.

In consideration for its services as Operator hereunder, the Operator shall be entitled to receive from the Trust during the Support Term a monthly fee payable on the same date as Operation and Maintenance Expenses are payable hereunder, which fee shall be an amount that provides a reasonable and fair fee to the Operator for performing its services hereunder taking into account the terms and conditions of this Agreement, and shall be determined by mutual agreement of the parties (the "***Operating Fee***"); *provided, however*, that no Operating Fee shall be payable by the Trust in respect of any period prior to the Commencement Date or to the User following a Lease Event of Default. As soon as practicable following the Commencement Date (but in any event not later than 120 days prior to the Commencement Date if the Trust has elected the Return Option or the Service Contract Option) the Operator shall give notice (the "***Operator's Fee Notice***") to the Trust proposing the Operating Fee that would provide a reasonable and fair fee to the Operator for performing its duties hereunder taking into account the terms and conditions of this Agreement. On or before ninety (90) days after the receipt by the Trust of the Operator's Fee Notice, the Trust shall either approve the Operator's Fee proposed by the Operator or propose an alternative fee. If the parties have not agreed upon a fee on or before sixty (60) days prior to the Commencement Date, then the Operator or the Trust may initiate, by notice to the other party, an Independent Appraisal regarding the Operating Fee.

ARTICLE IV

DECISIONS WITH RESPECT TO OPERATION OF THE FACILITY

SECTION 4.1. Matters Requiring Approval of the Trust.

On and after the Commencement Date, the Operator or the Trust may from time to time call for a meeting for the purpose of reviewing the operation of the Facility. At such meetings the parties hereto shall review, discuss and act upon disputes or other material issues between the parties hereto, but shall have no authority to modify any of the terms, covenants or conditions hereof except in accordance with the provisions of Section 7.13. Such meetings shall be held in New York, New York or by teleconference. The following decisions shall be implemented only with the consent of the Trust:

(a) any decision to change the Required Influent Parameters, the Required Effluent Parameters or the Maximum Dependable Capacity of the Facility;

(b) decisions as to whether or not Final Shutdown of the Facility shall occur because (i) damage to the Facility shall have occurred which the Operator estimates will cost more than [\$2,000,000] to repair, (ii) seizure, condemnation or expropriation of the Facility or any Part thereof necessary for the economically efficient operation of the Facility shall have occurred or (iii) a Facility Event shall have occurred (any Final Shutdown decision pursuant to this paragraph (b) shall be subject to Section 4.3);

(c) decisions regarding the settlement of claims, disputes, litigation or arbitration relating to or arising out of the construction of Modifications or other asserted claims of contractors or suppliers in respect of goods or services contracted for by the Operator hereunder, if, in each case, the amount involved is in excess of \$[1,000,000];

(d) voluntary decisions to take the Facility out of service for any continuous period which (i) exceeds fourteen (14) days except for major maintenance overhauls approved as part of an Operating Expense Budget, ~~or~~ (ii) when combined with all periods of voluntary shutdown of the Facility not requiring consent under this paragraph (d) ~~which shall have occurred in~~ occurring in the five years preceding the date of any such decision, would exceed in the aggregate 18 months or (iii) constitutes Final Shutdown (any Final Shutdown decision pursuant to this paragraph (d) shall be subject to Section 4.3);

(e) the adoption of Capital Expenditure Budgets and Operating Expense Budgets, except as provided in Section 5.2(a) and Section 5.2(c), respectively;

(f) decisions by the Operator to contract for any Optional Modification requiring expenditures which (i) exceed by more than \$[500,000] the expenditures authorized for such Optional Modification in the most recent Capital Expenditure Budget adopted pursuant to paragraph (e) above or pursuant to Section 5.2(a), or (ii) when combined with the expenditures on all Optional Modifications which do not require consent under this paragraph (f) and which shall have been contracted for by the Operator since the date of adoption of the most recent Capital Expenditure Budget under paragraph (e) above or Section 5.2(a), would exceed in the aggregate \$[1,000,000];

(g) any decision to consent to any arrangement that would substantially increase or decrease the use of the Capacity of the Facility;

(h) any decision to subject the Facility or the Facility Site to further Liens or other ~~incumbrances~~ encumbrances;

(i) any decisions to voluntarily terminate any easements or appurtenances affecting the operating of the Facility;

(j) any decision to sell the Facility Site;

(k) any decision to consent to the re-zoning or re-appraisal of the Facility or the Facility Site;

(l) any decision to remove or replace any ~~Modifications~~Modification or other fixtures with respect to the Facility or the Facility Site; and

(m) such other decisions that relate to the use, operation and maintenance of the Facility that the Trust shall reasonably determine are of major significance.

Notwithstanding the foregoing, no consent of the Trust shall be required to take the Facility out of commercial service if the Facility must finally and definitively be taken out of service pursuant to Applicable Law, in which case the Facility shall be so taken out of service and Section 4.3 shall apply.

SECTION 4.2. Operational Responsibilities of the Operator.

With the exception of those matters with respect to which the consent of the Trust is required pursuant to Section 4.1, during the Support Term, the Operator shall have sole and exclusive responsibility, on behalf of and as agent for the Trust, for the operation of the Facility in accordance with Prudent Industry Practice and the provisions of this Agreement ~~and the Lease that may be in force or effect~~, including, but not limited to, responsibility for decisions with respect to (i) the maintenance, scheduling and operation of the Facility, (ii) the need, timing, extent and nature of any actions with respect to the acquisition or construction of Modifications, (iii) the scheduling of maintenance shutdowns and the installation of Modifications, (iv) the nature, extent and timing of the implementation of and amendments to Capital Expenditure Budgets and Operating Expense Budgets and (v) the integration of the operation of the Facility with any Related Facilities. Notwithstanding the foregoing, during the Support Term, before scheduling any maintenance shutdowns pursuant to clause (ii) above or installing any Modification pursuant to clause (iii), the Operator shall first consult with the Trust.

Subject to Section 4.1, the Trust hereby authorizes the Operator, on behalf of the Trust, to enter into such agreements and modifications of existing agreements and to take such other action as the Operator deems necessary or appropriate, in its judgment, or as may be required by Applicable Law, with respect to the management, operation and maintenance of the Facility in accordance with the provisions of this Agreement. In particular, if and to the extent that funds for the payment of Operation and Maintenance Expenses shall have been duly provided as set forth in Section 5.2(d), the Operator shall provide, or make available, all materials, Waste Water, electricity, chemicals, fuel, repair and replacement parts, services and supplies necessary or useful in the performance of the Operator's obligations under this Agreement which, in the case of materials, water, electricity, chemicals, fuel, parts and supplies, the Operator owns or has a legal right to obtain, and which are necessary or desirable for the timely and efficient transportation and treatment of Waste Water by the Facility in the normal course and within the design capacity and operating limits of the Facility.

In the event of an Operating Emergency during the Support Term, the Operator, on behalf of and as agent of the Trust, shall take such action as it, in its sole discretion, may in good faith deem prudent or necessary, notwithstanding any lack of action by the Trust, to terminate the Operating Emergency, to preserve and maintain the safety, integrity and operation of the Facility, to maintain to the maximum extent the availability of Capacity of the Facility, and to protect the health and safety of the public and the environment.

~~In the event that the Trust enters into a Service Contract pursuant to Section 14(d)(i) of the Lease, the Operator agrees to perform the obligations of the Service Provider under such Service Contract. The Trust agrees that it shall not enter into a Service contract which contains any term or condition that conflicts with or is inconsistent with this Agreement without the consent of the Operator.~~

SECTION 4.3. Final Shutdown.

Final Shutdown shall occur at any time after the Commencement Date only if the Trust consents in writing to a Final Shutdown and a decision to such effect, specifying the Final Shutdown Date, shall have been made by the Trust pursuant to Section 4.1.

If the conditions for Final Shutdown specified above have been met, the Operator shall, as non-exclusive agent for the Trust, use its best efforts promptly to obtain cash bids for the purchase of the Head Lease Interest and the Trust's interests, if any, in the other Operative Documents; *provided* that the Trust shall retain its indemnification rights pursuant to the Participation Agreement and the Tax Indemnification Agreement, and the Trust shall sell the same to the highest cash bidder within 180 days of the Final Shutdown decision. The User and the Trust shall be notified of the opportunity to bid and may bid for the purchase of the Head Lease Interest. If there shall be no such bid, the Operator shall cause the Facility to be returned to the Trust.

SECTION 4.4. Temporary Shutdown.

Temporary shutdowns of the Facility during the Support Period shall not relieve the Operator of any of its other obligations pursuant to this Agreement.

ARTICLE V

OPERATION AND MAINTENANCE OF
THE FACILITY; ADDITIONS AND
BETTERMENTS

SECTION 5.1. Covenants of the Operator.

(a) Operation and Maintenance. The Operator covenants that, in consideration for the payments to be made by the Trust to the Operator hereunder, it will on behalf of the Trust or its designee (i) inspect, operate, service, repair, maintain and overhaul the Facility so as to keep the Facility (A) in good operating order, repair and condition, ordinary wear and tear excepted, ~~and~~ in accordance with the requirements of Section 6 of the Lease (regardless of whether the Lease is still in effect) but in any event at least in accordance with Prudent Industry Practice, (B) in compliance with the terms and conditions of all insurance requirements set forth in Section 10 of the Lease (regardless of whether the Lease is still in effect), (C) in such condition that the Facility will have the capacity and functional ability to perform, on a continuing basis (ordinary wear and tear excepted), in normal commercial operation, the functions substantially at the ratings for which it was specifically designed subject to paragraph (c) of this Section 5.1, and (D) in compliance with all manufacturers' required maintenance procedures, recommendations and

guidelines with respect to the Facility or any Part thereof, (ii) comply in all material respects with Applicable Law with respect to the Facility, (iii) keep the Facility free and clear of Liens, except Support and Operating Agreement Permitted Liens, (iv) keep and maintain proper books and records relating to all services rendered and all funds expended for operation and maintenance of the Facility or any Part thereof and the acquisition, construction and installation of all Parts or Modifications installed or incorporated in or affixed to the Facility, all in accordance with generally accepted accounting principals consistently applied, Prudent Industry Practice and Prudent Engineering Practice, (v) keep and maintain proper records as to all funds expended for the acquisition of Operating Inputs, (vi) keep operating, maintenance, testing and start-up procedures of the Facility and their components, including piping, basins, meters, instruments and controls in accordance with Prudent Industry Practice and Prudent Engineering Practice and (vii) take or refrain from taking any other actions to avoid any material adverse effects on the Facility's operating capacity or the useful life of the Facility.

(b) Replacement of Parts. If and to the extent required by paragraph (a) above and in compliance with the Operator's covenant and agreement thereunder, unless prohibited by Applicable Law, the Operator, for the account of the Trust, from time to time will promptly replace all necessary and useful Parts of whatever nature, the replacement of which shall be required in accordance with Prudent Industry Practice, which may from time to time be incorporated or installed in or attached to the Facility and which may from time to time fail to function in accordance with their intended use, or become worn out, destroyed, damaged beyond repair, lost, condemned, confiscated, stolen or seized for any reason whatsoever. The Trust hereby authorizes the Operator to order Parts for the Facility in the name of the Trust; *provided, however,* that the cost thereof shall be an Operation and Maintenance Expense hereunder. In addition, effective on the Commencement Date, in the ordinary course of maintenance, service, repair or testing and pursuant to Prudent Industry Practice and Prudent Engineering Practice, the Operator may remove any Part; *provided, however,* that the Operator shall cause such Part to be replaced by a replacement Part as promptly as practicable and shall sell or otherwise dispose of the Part so removed and, subject to the provisions of Section 5.2(d), credit the entire amount of the net proceeds (if any) of such sale to Operation and Maintenance Expenses hereunder. All replacement Parts shall be free and clear of all Liens, except Support and Operating Agreement Permitted Liens, and shall be in at least as good operating condition as the Parts replaced, and shall have a value (measured by such Part's contribution to the Facility's earning power as opposed to the original cost of the Part), utility and useful life at least equal to the Parts replaced, assuming such replaced Parts were in at least the condition and repair required to be maintained under paragraph (a) above. Each Part at any time removed from the Facility, no matter where located, shall remain subject to the Head Lease ~~and the User Head Lease~~ until such time as such Part shall be replaced by a replacement Part which has been incorporated or installed in or attached to the applicable or affected portion of the Facility and which meets the requirements for replacement Parts specified above. Immediately upon any replacement Part becoming incorporated or installed in or attached to the applicable or affected portion of the Facility, such replacement Part shall be deemed part of the Facility for all purposes hereof to the same extent as the Part originally incorporated or installed in the applicable or affected portion of the Facility.

(c) Modifications. On and after the Commencement Date, the Operator shall make all modifications if and to the extent required or necessary for compliance with paragraph (a) of this Section 5.1 ("**Required Modifications**"). All other modifications that are not Required

Modifications but are deemed desirable in the proper conduct of business (“**Optional Modifications**”) shall be made only with the consent of the Trust unless such consent is not required by the provisions of Section 4.1(f). With respect to Modifications made on or after the Commencement Date, the Trust hereby authorizes the Operator to contract for and attach or install all such Modifications in the name of the Trust. Each Modification shall be free and clear of all Liens, except Support and Operating Agreement Permitted Liens, and shall be done in a good and workmanlike manner and in compliance with the standards prescribed in paragraph (a) of this Section 5.1.

(d) Title to Modifications. On and after the Commencement Date, title to each Modification incorporated or installed in, or attached to, the Facility pursuant to this Agreement that are Required Modifications or that may not be removed without material damage to the Facility (“**Nonseverable Modifications**”) shall, without further act on the part of any party hereto, vest in the User, become part of the Facility subject to the terms of the Head Lease and ~~the User Head Lease and~~ become a fixture to which the Trust has access pursuant to this Agreement. Title to any Optional Modification that is not a Nonseverable Modification shall remain in the Trust. Notwithstanding anything contained in paragraph (c) or this paragraph (d) to the contrary, each Modification made during the term of the Lease shall be made in accordance with the provisions thereof.

(e) Deferral of Compliance. If and so long as the User is the Operator and if, to the extent, and for so long as, (i) a test, challenge, appeal or proceeding for review of any applicable requirement of Applicable Law or of a Governmental Authority relating to the operation or maintenance of the Facility, as the case may be, shall be diligently pursued in good faith by the Operator through appropriate proceedings and in accordance with Prudent Industry Practice or (ii) compliance with a requirement of Applicable Law shall have been excused or exempted by a nonconforming use permit, waiver, extension or forbearance believed in good faith by the Operator to excuse or exempt it from such requirement, the Operator shall not be required to comply with such requirement if, but only if, such test, challenge, appeal, proceeding or noncompliance shall not involve any material risk of (w) the imposition of any sanction on the Trust as a result of such test, challenge, appeal, proceeding or noncompliance, (x) civil or criminal liability on the part of the Operator or the Trust or (y) a material adverse effect on the right, title and interest of the Operator or the Trust.

(f) No Liens. The Operator covenants that it will not, directly or indirectly, create, incur or assume any Lien on the Facility or any Part thereof or the Trust’s right, title or interest in and to any of the foregoing or any part thereof, except for Support and Operating Agreement Permitted Liens or Liens created, incurred or assumed in the normal course of the Operator’s operation of the Facility in accordance with the terms hereof (provided that no such Lien involves a substantial danger of the sale or forfeiture of the interest of the Trust in the Facility or interference with the operation or maintenance of the Facility). The Operator will, promptly, at its sole cost and expense, take such action as may be necessary to duly discharge or replace by other security or eliminate any such Lien. The Operator will indemnify and hold harmless the User, the Owner Participant and the Trust from and against any losses, costs or expenses (including legal fees and expenses) incurred as a result of the imposition, enforcement or removal of any such Lien.

(g) Notice of Partial Loss or Damage. If there shall occur any partial loss or damage of a material nature with respect to the Facility, the Operator shall provide written notice thereof to the Trust and the User as promptly as practicable, but in any event within five (5) days of the occurrence of such partial loss or damage.

(h) Environmental Matters. The Operator shall comply with all Environmental Laws applicable to the Facility. The Operator shall ~~provide the User~~ not cause or permit the release, disposal or discharge of any Hazardous Materials at, in, on, under, or from the Facility under circumstances that could result in any liability under any applicable Environmental Law. The Operator shall provide the User, the Owner Participant and the Trust with prompt written notification of any condition or occurrence at, on, or arising from the Facility, or any modification thereto, that results in noncompliance with any Environmental Law or involves the prohibited release, disposal or discharge of Hazardous Materials.

SECTION 5.2. Budgets; Expenses.

(a) Capital Expenditure Budgets. ~~As soon as practical after the Commencement Date (but in any event not~~ Not later than twenty (20) days ~~prior to~~ after the Commencement Date ~~if the Trust has elected the Return Option or the Service Contract Option)~~ and on or before December 1 of each Contract Year thereafter, the Operator shall submit to the Trust a budget (the “***Capital Expenditure Budget***”) setting forth an estimate of amounts expected to be expended for Modifications and capital repairs to be made pursuant to this Agreement, and related Construction Costs during the following Contract Year, together with an estimated cash flow schedule. Each Capital Expenditure Budget shall be sufficiently detailed and supported to allow the Trust effectively to review and consider whether to approve such Capital Expenditure Budget pursuant to Section 4.1, and shall set forth the items of Construction Cost and the amounts expected to be expended therefor in each month during the remainder of the then current Contract Year and each quarter thereafter, in the case of the initial Capital Expenditure Budget, or in each quarter during the Contract Year next following, in the case of subsequent Capital Expenditure Budgets. Every Capital Expenditure Budget shall be subject to approval by the Trust; *provided, however,* that, subject to Section 4.1, each Capital Expenditure Budget approved by the Trust may be changed by the Operator from time to time as necessary or advisable in accordance with Prudent Industry Practice. The decisions of the Operator in making changes to a Capital Expenditure Budget pursuant to the preceding sentence shall be subject to the approval of the Trust; provided, however, that any such changes that do not require additional expenditures in any Contract Year in excess of \$500,000 shall not be subject to approval of the Trust. ~~In order to enable the Trust to exercise its judgment as permitted by paragraph (e) of Section 4.1, the Operator shall give to the Trust notice of any decision by the Operator required to be approved under Section 4.1(e) a reasonable time (but in no event less than thirty (30) days) prior to the presentation thereof to the Trust for its decision.~~

(b) Payment for Modifications. From and after the Commencement Date, but subject to the provisions of this paragraph (b), Modifications will be made at the expense of the Trust, at the request of the Operator, who shall supervise the acquisition or construction thereof and record the Construction Cost thereof. Subject to Section 4.1(f), funds for the payment of (1) Construction Costs of Modifications having a total cost of \$500,000 or less, or (2) Construction Costs of Required Modifications regardless of the cost, will be provided by or

on behalf of the Trust in advance of the date when such funds are required to be paid by the Operator, so that the Operator ~~in such capacity~~ will not have to advance any funds for such Modifications on behalf of the Trust. The Trust will also be required to provide the Construction Cost of each Optional Modification approved by the Trust and that has a total cost of more than \$500,000. Upon the completion of the acquisition or construction of any Modification, the Operator shall provide to the Trust information with respect to the final computation of such Construction Cost, including receipts reflecting such Construction Costs. The foregoing shall not prevent the Trust from recovering for any claim it may have against the User under the Operative Documents.

(c) Operating Expense Budget. As soon as practical after the Commencement Date, and on or before December 1 of each Contract Year thereafter, the Operator shall submit to the Trust a budget (the “*Operating Expense Budget*”) of its estimate of Operation and Maintenance Expenses for, in the case of the initial Operating Expense Budget, each Month for the remainder of the then-current Contract Year and by calendar quarters in the Contract Year next following, ~~in the case of the initial Operating Expense Budget, or for each Month for the Contract Year next following~~ or for, in the case of subsequent Operating Expense Budgets, each Month for the Contract Year next following sufficiently detailed and supported to allow the Trust to review and consider whether to approve such operating expense Budgets in accordance with Section 4.1. Every Operating Expense Budget shall be subject to approval by the Trust in accordance with Section 4.1(e). Extraordinary items of maintenance will be detailed to set forth the cost of labor and other expenses which will be incurred. Subject to Section 4.1, each Operating Expense Budget may be changed by the Operator from time to time as necessary or advisable in accordance with Prudent Industry Practice and, when so changed, shall be binding upon the Trust. Subject to Section 4.1, the decisions of the Operator in making changes to an Operating Expense Budget pursuant to the preceding sentence shall not be subject to approval of the Trust except as provided in Section 4.1. ~~Notwithstanding the failure to approve the Operating Expense Budget, the~~ The Operator, on behalf of the Trust, may make such expenditures in the normal course of business or in an Operating Emergency as are necessary for the proper and safe operation and maintenance of the Facility notwithstanding the fact that such expenditures may not have been approved by the Trust as part of the Operating Expense Budget.

(d) Operation and Maintenance Expenses. Operation and maintenance expenses shall include all reasonable payments made and obligations and liabilities incurred by the Operator for or in connection with engineering, contract preparation, purchasing, repair, supervision, recruitment, training, expediting, inspection, accounting, legal services, testing, protection, operation, use, decommissioning, retirement, and maintenance associated with operating the Facility, including, but not limited to, actions during an Operating Emergency, work-related liabilities, dispatching, insurance procured pursuant to Section 5.7 and the cost of purchasing materials, supplies (other than Operating Inputs) and spare parts, but excluding such costs as may be included in Construction Cost, excluding the cost of Modifications (“*Operation and Maintenance Expenses*”). The Trust shall pay Operation and Maintenance Expenses at the times and in the amounts determined in accordance with Section 6.2(a).

(e) Changes to Budgets. To enable the Trust to exercise its approval rights pursuant to Section 4.1, the Operator shall give prior written notice of any proposed change in any

~~capital~~**Capital** Expenditure Budget or Operating Expense Budget for which approval is required under Section 4.1 a reasonable time prior to the date on which any such change is to be implemented.

~~(f) — Payment for Capital Improvements. Subject to Section 4.1(f), funds for the payment of the Construction Costs incurred during the Support Term will be provided by or on behalf of the Trust in advance of the date when such funds are required by the Operator, so that the Operator will not have to advance any funds on behalf of the Trust. The foregoing shall not prevent the Trust from recovering for any claim it may have against the User under the Operative Documents. (but in no event less than thirty (30) days prior to such date).~~

SECTION 5.3. Operating Inputs.

The Operator (or the User, pursuant to Section 2.1(e)) shall, subject to the occurrence of Uncontrollable Forces, procure Operating Inputs for the Trust sufficient to operate the Facility at its Maximum Dependable Capacity. The Operator shall provide the Trust with annual projections, updated monthly, of the Operating Inputs as well as a monthly statement of all amounts due from the Trust in respect of the Operating Inputs provided by the Operator for the forthcoming month. Such monthly statements shall specify the quantity, price and type of Operating Inputs to be supplied during the coming month.

SECTION 5.4. Operation and Scheduling.

(a) Scheduling of Capacity. On and after the Commencement Date, to the extent permitted by Applicable Law, the Trust shall have the right to schedule for its own account Capacity from the Facility equal to the Maximum Dependable Capacity. Not later than 2:00 p.m., Aberdeen, South Dakota time, on each Business Day, commencing on the first Business Day of the first Contract Year, the Trust or its designee (which could be the User) shall provide or cause to be provided to the Operator, through a dispatcher (which could be the User), its estimated hourly schedule of Waste Water treatment by the Facility for each hour of the following day (or, if such following day shall not be a Business Day, each successive day which shall not be a Business Day, as well as the next Business Day). Such schedule may thereafter be changed by the Trust at any time; *provided, however*, that if such rescheduling shall exceed the Maximum Dependable Capacity, the Operator is under no obligation to transport more than the Maximum Dependable Capacity at such time. The Operator shall promptly notify the Trust of any change in the Maximum Dependable Capacity or the Capacity of the Facility. The Operator shall, subject to unscheduled impairments as a result of Uncontrollable Forces, operate the Facility as scheduled by the Trust as herein provided and shall hold deviations from the schedule to a minimum and shall correct deviations from the schedule as soon as possible.

(b) Scheduling of Surplus Treatment Capacity. In the absence of elections pursuant to subsection (a) of this Section 5.4, which are sufficient to utilize the Maximum Dependable Capacity of the Facility, the Operator shall schedule any remaining amount of Capacity on behalf of the Trust.

SECTION 5.5. Records of Operation.

The Operator shall keep adequate records, books of account and memoranda of the transactions involving the Facility, including, without limitation, the provision of Operating Inputs, Support Items, Support Services, ~~Aceess~~[Entrance](#) Rights, the construction of Modifications and the operations and maintenance of the Facility, including, without limitation, operation and maintenance programs, treatment and disposal of Waste Water and Biosolids, any records required by Section 6(e) of the Lease and other records in accordance with Prudent Industry Practice or as required by Governmental Authorities. All records shall be readily available for inspection and/or audit by the Trust, the Owner Participant and the User and their respective representatives at the Operator's offices, during regular business hours and upon reasonable notice, and copies thereof shall be furnished to the Trust and the User upon request. In addition, the Trust shall have the right to provide such records to any proposed sublessee or transferee of the Trust.

SECTION 5.6. Maintenance and Other Shutdowns.

The Operator shall prepare and deliver to the Trust at least 120 days before the beginning of each Contract Year (other than the first Contract Year, in which case such information shall be provided as promptly as practicable after the Operator learns of the commencement of the Contract Year) a schedule of pre-determined shutdowns, if any, for inspection, ordinary maintenance and repairs for the Facility for that Contract Year. To the extent practicable, the Operator shall adhere to the schedule for routine inspection, maintenance and repairs of the Facility. Scheduling of the shutdowns, if any, will be coordinated with other waste water treatment facilities and collection networks operated by the Operator, if any, in accordance with Prudent Industry Practice and Prudent Engineering Practice. Any shutdowns required for maintenance affecting the safety of the Facility will be scheduled by the Operator as required. In the event of an Operating Emergency or other emergency shutdown, forced shutdowns, or reductions in the Capacity of the Facility for any reason, the Operator shall schedule and perform all required repairs and replacements, and restore the Capacity of the Facility in an expeditious manner in accordance with Prudent Industry [Practice and Prudent Engineering](#) Practice.

SECTION 5.7. Insurance. [subject to review by insurance experts]

(a) Obligation to Insure. During the Support Term, the Operator will carry and maintain or cause to be carried and maintained "all-risk" insurance against damage to or destruction of the Facility including, without limitation, mechanical and electrical breakdown insurance, comprehensive liability insurance with respect to third-party liability, including for bodily injury and property damage and business interruption insurance, in each case and at all times in amounts (after deductibles) and against risks consistent with Prudent Industry Practice and in no event less than any amount required under Section 10 of the Lease, and at least comparable in amounts and against risks customarily insured against by the Operator with respect to other similar property owned or operated by the Operator and in an amount sufficient to prevent the Trust from becoming at any time co-insurers with respect to any loss relating to events or occurrences covered under any policy. The policies with respect to such insurance, shall, to the extent the same shall be available on commercially reasonable terms, (i) be carried and maintained with insurers of internationally recognized responsibility, (ii) be written on terms

and conditions reasonably acceptable to the Trust, (iii) name the Operator, the Owner Participant and the Trust as additional insureds and as loss payees, as their interests may appear, (iv) provide for at least thirty (30) days' prior written notice by the insurance carrier to the Operator, the Owner Participant and the Trust in the event of termination, non-renewal, cancellation, expiration, renewal or material modification of such policy, (v) provide that if such insurance is canceled, terminated or not renewed for any reason whatsoever, or any substantial change is made in the coverage which affects the interest of the Operator, the Owner Participant or the Trust, or if such insurance is allowed to lapse for nonpayment of premiums, such termination, non-renewal, cancellation, change or lapse shall not be effective against the Operator, the Owner Participant, or the Trust for thirty (30) days after receipt by the Operator, the Owner Participant or the Trust, as the case may be, of written notice from any applicable insurers of such termination, non-renewal, cancellation, change or lapse, and (vi) provide that the Trust or the Owner Participant is permitted to make payments to effect the continuation of such insurance coverage upon notice of cancellation due to nonpayment of premiums. Each such policy (A) shall be primary without right of contribution from any other insurance which is carried by the Operator or the Trust with respect to its interest in the Facility and (B) shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. Such policies shall provide that, in respect of the interests of the Trust or the Owner Participant in such policies, the insurance shall not require contributions from other policies held by any of the Trust or the Owner Participant and shall not be invalidated by any action or inaction of the Operator or any other Person and shall insure the Trust and the Owner Participant regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Operator or by any other Person. The Operator shall, annually on or before April 30 of each Calendar Year, furnish to the Trust and the Owner Participant a certificate signed by an independent insurance broker showing the insurance then maintained by the Operator pursuant to this Section 5.7 and stating that in the opinion of such independent broker such insurance complies with the terms hereof. In the event that the Operator shall fail to maintain insurance as herein provided, the Trust or the Owner Participant may, at their option, maintain insurance which is required to be maintained by the Operator hereunder, and, in such event, the Operator shall reimburse the Trust or the Owner Participant, as the case may be, upon demand for the cost thereof or credit such amount against the obligation of the Trust to pay Operation and Maintenance Expenses or Construction Costs hereunder. All property damage insurance proceeds received by the Trust in respect of the Facility shall be paid to the Operator. The Operator shall, unless a decision has been made pursuant to Section 4.1 requiring Final Shutdown of the Facility, apply all proceeds of property damage insurance received by it in respect of the Facility toward costs of repairing or replacing the Facility or any Part thereof which has been damaged (including reimbursement to the Trust if it has previously paid such costs), and any such proceeds not required for such purpose shall be distributed to the Trust. If the costs of repair are estimated to be in excess of \$5,000,000, the Operator shall prepare a work plan, schedule and budget for the repair, which shall be submitted to the Trust for review and approval in the same manner as Capital Expenditure Budgets. Nothing in this Section 5.7 shall prohibit the Trust from placing at its expense insurance on or with respect to the Facility or the operation thereof and from naming the Trust as insured and loss payee unless such insurance would conflict with or otherwise limit the insurance to be provided or maintained by the Operator in accordance with this Section 5.7.

(b) Delivery of Insurance Policies. The Operator shall promptly deliver to the Trust and the Owner Participant certified copies of all insurance policies required to be maintained pursuant to paragraph (a) ~~hereof~~ of this Section 5.7 (or certificates thereof executed by the insurer or its duly authorized agent), together with evidence as to the payment of all premiums then due thereon.

SECTION 5.8. Access to the Facility.

Without limiting the rights of the Trust under any other Operative Document, so long as this Agreement shall be in effect, (i) the Trust and the Owner Participant shall have access to the Facility for purposes of the inspection thereof, irrespective of whether or not the Operator is currently operating the Facility, and (ii) the Operator will fully cooperate with such Person in connection with any such inspection and shall provide such Person with the opportunity to meet with executive officers of the Operator to discuss the Facility. Upon the request of the Trust or the Owner Participant, the Operator will make the Facility and all books, records and reports required to be maintained pursuant to this Agreement available to such Person for inspection at such times during normal business hours as such Person may reasonably request. Such inspection shall be solely at the risk and expense of the Person requesting the same and shall be undertaken in compliance with applicable safety rules and standards. The Trust shall also have the right to obtain information regarding the condition and state of repair of the Facility, compliance by the Lessee with Section 7 of the Lease and the absence of Lease Defaults (including all information necessary duly to determine the Fair Market Sales Value (as defined in the applicable Lease) and the Fair Market Rental Value of the Facility as and when required to be determined under the Lease). The Owner Participant shall not have any duty to make any inspection or inquiry ~~or~~ shall it incur any liability or obligation by reason of not making any such inspection or inquiry nor shall any such inspection or inquiry reduce the User's liability under the Operative Documents.

SECTION 5.9. Other Obligations.

With respect to any Support Item, Support Service, Operating Input, Access Right, Waste Water Flow Service and Waste Water Treatment Service to be provided pursuant to this Agreement, the Operator shall act, on behalf of the Trust, to coordinate the providing of such goods and services (in the case of any Waste Water Treatment Service) and to receive, on behalf of the Trust, all such services and products so provided (in the case of any Support Item, Support Service, Operating Input, Access Right or Waste Water Flow Service).

ARTICLE VI

BILLING AND PAYMENT

SECTION 6.1. Operations Report.

The Operator shall, at least monthly (within fifteen (15) days after the end of the preceding calendar month), deliver to the Trust a report comparing actual operations and the Operation and Maintenance Expenses for such Contract Year with the Operating Expense Budget prepared pursuant to Section 5.2(c) and explaining any material variance therein. In

addition to such monthly reports, the Operator shall provide promptly such other reports regarding the operation of the Facility as the Trust or the Owner Participant shall reasonably request.

SECTION 6.2. Billing; Payment; Monthly Adjustment.

On or before the tenth day of each Month beginning with the tenth day of the first Month following the beginning of the first Contract Year, the Operator shall deliver to the Trust a monthly statement estimating amounts payable in respect of Operation and Maintenance Expenses and Operating Inputs for the next succeeding Month (and in the case of the first such statement also for the period from the Commencement Date to the end of the Month next succeeding the Month in which the Commencement Date occurs). Beginning with the third Month of the first Contract Year, in addition to the estimate for the next succeeding Month, such monthly statement shall show an adjustment for actual Operation and Maintenance Expenses and Operating Inputs for the second preceding Month, except that adjustments with respect to taxes payable annually shall be made annually. Any difference between such actual Operation and Maintenance Expenses and Operating Inputs and the amount paid for such second preceding Month shall be added to or deducted from, as the case may be, the amount of such monthly statement for such next succeeding Month. The Trust shall pay the amounts shown on such statements delivered to it on or before the first day of such next succeeding Month (or, in the case of the month in which the Commencement Date occurs, on or before the thirtieth day after the Commencement Date occurs). Payments shall be made to the Operator in a manner so that the Operator will have funds available on the day such payment shall become due. In the event that any day on which any payment under this Agreement is due shall not be a Business Day, such payment shall be made on the next succeeding day which is a Business Day. Payments shall be made by wire transfer of immediately available funds to such account as may be designated by the Operator or, if no such account has been designated, by check payable to the Operator at the office of the Operator specified in Section 7.2 or to such other place as shall be designated by the Operator.

SECTION 6.3. Disputes.

In the event of any dispute as to any portion of any monthly statement rendered pursuant to Section 6.2 or any statement or annual adjustment rendered pursuant to Section 6.5, the Trust shall nevertheless pay the full amount shown on its statement when due and shall give written notice of the dispute to the Operator within one year of receipt by the Trust of the annual audit performed pursuant to Section 6.4, relating to the period covered by such statement. Such notice shall identify the disputed statement, state the amount in dispute and set forth in reasonable detail the grounds on which such dispute is based. The Operator shall give consideration to such dispute and shall advise the Trust with regard to the Operator's position relative thereto within thirty (30) days following receipt of such written notice. The Operator and the Trust shall negotiate in good faith to resolve such dispute or settle such claim. Upon agreement or final adjudication, as the case may be, of the correct amount, any difference between such correct amount and such full amount, together with interest thereon at the Overdue Rate, shall be subtracted from the statement next submitted to such party after such determination pursuant to Section 6.2 above. If the dispute shall not have been resolved within three (3) months after such

notice, the Trust may at any time within 180 days from the date of such notice initiate an action or proceeding to pursue any remedies available to it at law or in equity.

SECTION 6.4. Annual Audit.

The Operator shall keep accurate records and accounts of Operation and Maintenance Expenses and Operating Inputs in accordance with generally accepted accounting principles consistently applied. Such records and accounts shall be subjected to an audit as of the end of and for each Contract Year by a firm of independent public accountants selected by the Operator, which firm shall be internationally recognized and may be the Operator's regular audit firm, subject to the approval of the Trust. The Trust and any of its representatives shall be permitted to check and review all accounting records relating to the operation of the Facility and to observe the procedures followed by the Operator's accountants. The report of such firm of independent public accountants shall be submitted to the Operator, with a copy to the Trust and the Owner Participant, as soon as practicable, but not more than 120 days after the end of such Contract Year. The cost of such annual audits shall be included in Operation and Maintenance Expenses.

SECTION 6.5. Annual Adjustment.

On or before the thirtieth day after the Operator's receipt of the annual audit report pursuant to Section 6.4, the Operator shall determine, after review of such annual audit report, whether the aggregate amounts paid by the Trust pursuant to Section 6.2 for such preceding Contract Year were the proper amounts. The Operator shall advise the Trust in writing of such determination. The aggregate amount found to have been paid by the Trust in excess of the amount which should have been paid by the Trust shall be deducted from the amount due under the statement or statements next submitted to the Trust pursuant to Section 6.2(a) or, at the option of the Operator, shall be refunded to the Trust. The aggregate amount by which the amount which should have been paid exceeds the amount which was paid by the Trust shall be added to the amount to be paid by the Trust to the Operator under the next statement to be submitted to the Trust pursuant to Section 6.2 for the Month next following the Month in which such determination was made.

ARTICLE VII

MISCELLANEOUS

SECTION 7.1. Regulatory Authorities.

(a) Performance by Parties. The parties hereto, in performance of their obligations hereunder, shall conform to all Applicable Laws and such performance shall be subject to the terms of valid and applicable orders of any Governmental Authority, unless, in all cases, the validity thereof is being contested, or compliance therewith shall have been excused or exempted, by a test, challenge, appeal or proceeding unless such noncompliance creates any danger of (w) foreclosure, sale, forfeiture or loss of, or imposition of any Lien on the Facility or the Facility Site or any material portion thereof, (x) any material impairment of the operation of the Facility or any material portion thereof, or (y) any civil or criminal liability on the part of the Operator or the Trust.

(b) Changes Required by Regulatory Bodies; Jurisdiction. Subject to the right of the Trust to contest and participate in any contest, this Agreement and any amendments hereto, including all tariffs and rates made a part hereof, shall at all times be subject to such changes or modifications as shall be ordered from time to time by any Governmental Authority having jurisdiction to require such changes or modification. Nothing contained herein shall be construed to subject the Trust to the jurisdiction of any Governmental Authority to which it is not already subject by operation of law, or to affect in any way the right of the Trust to unilaterally make application to the Governmental Authority having jurisdiction for a change in rates and charges, classification, service, terms or conditions related to the Trust's rates under such statutes or regulations applicable to the Trust.

SECTION 7.2. Notices.

All notices to any party hereto required or permitted by the terms hereof shall be given and effective in the manner specified in ~~Schedule I~~Section 22(a) of the Participation Agreement.

SECTION 7.3. Uncontrollable Forces.

No party hereto shall be considered to be in default in the performance of any of ~~theits~~ obligations hereunder, other than obligations of ~~the parties~~such party to pay amounts due hereunder, if failure of performance shall be due to Uncontrollable Forces. Any party rendered unable to fulfill any obligation by reason of Uncontrollable Forces shall exercise all commercially reasonable efforts to remove such inability with all reasonable dispatch. The obligations of the Trust hereunder to make payment to the Operator may be suspended to the extent and for so long as the Operator's performance hereunder is suspended due to Uncontrollable Forces. This Section 7.3 shall in no way limit or affect the obligations of the ~~Lessee~~Lessees under the Lease, the Sublessee under the Sublease or the User Lessee under the User Lease.

SECTION 7.4. Late Payments.

In the event that any payment required to be made hereunder is not submitted within the time period herein specified, the party failing to make such payment will pay, in addition to the amount of the required payment, interest at a rate per annum equal to the lesser of the Overdue Rate or the maximum rate of interest legally chargeable (the "**Late Payment Rate**") from the date when such payment was due to the date of payment.

SECTION 7.5. Defaults.

(a) Each party hereto hereby agrees that it shall pay all monies and carry out all other duties and obligations agreed to be paid or performed by it pursuant to all of the terms and conditions set forth and contained herein, and a default by any party in the covenants and obligations to be kept by it and performed pursuant to the terms and conditions set forth and contained herein shall be an act of default under this Agreement.

(b) In the event of an alleged default by the Trust with respect to any of the terms and conditions hereof and the giving of written notice thereof to the Trust by the Operator, the Trust shall take all steps necessary to cure such default as promptly and completely as possible and

shall pay promptly upon demand to the Operator the total amount of money or the reasonable equivalent in money of nonmonetary performance, if any, paid or made by the Operator in order to cure any default by the Trust, together with interest on such money or the costs of nonmonetary performance at the Late Payment Rate from the date of the expenditure of such money or the date of completion of such nonmonetary performance by the Operator to the date of such reimbursement by the Trust or such greater amount as may be otherwise provided herein.

(c) In the event that the Trust shall dispute an asserted default by it, then the Trust shall pay the disputed payment or perform the disputed obligation, but may do so under protest. The protest shall be in writing and shall specify the reasons upon which the protest is based. Payments not made under protest shall be deemed correct. If such dispute is not settled on or before the ninetieth day following the date of the Trust's protest by mutual agreement of the Trust and the Operator, the Trust shall be entitled to initiate an Arbitration Proceeding by notice to the Operator on or before the one hundred eightieth day following such protest. In the event that it is determined by an Arbitration Proceeding or otherwise that the Trust is entitled to a refund of all or any portion of a disputed payment or payments or is entitled to the reasonable equivalent in money of nonmonetary performance of a disputed obligation theretofore made, then, upon such determination, the Operator shall pay such amount to the Trust, together with interest thereon at the Overdue Rate at the time the determination is made from the date of payment or of the performance of a disputed obligation to the date of reimbursement.

(d) Unless otherwise determined by agreement or final adjudication, as the case may be, in the event that a default by the Trust in the payment or performance of any obligation hereunder shall continue for a period of six months or more without having been cured by the Trust or without the Trust having commenced or continued action in good faith to cure such default, or in the event that an act of default continues for a period of six months following agreement or final adjudication, as the case may be, that an act of default exists, and the Trust has failed to cure such default or to commence such action during said six month period, then, at any time thereafter and while said default is continuing, the Operator may, by written notice to the Trust, suspend the right of the Trust to receive all or any part of the Capacity of the Facility, in which event the Trust shall be liable to the Operator for all costs incurred by the Operator, together with interest as provided in Section 7.5(b).

SECTION 7.6. Nature of Obligations.

The duties, obligations and liabilities of each of the parties hereto are intended to be several and not joint, and no party shall be jointly or severally liable for the acts, omissions or obligations of another party, except as otherwise expressly provided herein. Nothing herein contained shall be construed to create an association, joint venture or partnership, or impose a partnership duty, obligation or liability on or with regard to any of the parties hereto. Each of the parties hereto intends that the provision of Capacity from the Facility shall not be treated as a partnership for Federal income tax purposes and agrees to make the appropriate election, where applicable, under section 761 of the Code, to have excluded from the application of the provisions of Subchapter K, Chapter 1, Subtitle A thereof, any unincorporated organization which may be deemed to exist between them as a result of such joint activity. No party hereto shall have the right or authority to bind another party hereto without its express written consent, except as may be expressly provided in this Agreement or other agreements contemplated

hereby. Notwithstanding the foregoing, if the parties hereto are treated as having formed a partnership, it is the intent of the parties hereto that such partnership be treated for United States federal, state and local income tax purposes as a United States partnership organized and existing under the laws of the State of New York.

SECTION 7.7. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto together with their respective successors and permitted assigns.

SECTION 7.8. Transfers and Assignments.

No party to this Agreement shall transfer, lease or assign, for security purposes or otherwise, any interest hereunder except as expressly provided for herein or in connection with a transfer of their interests in the Facility and the other Operative Documents made in accordance with the Operative Documents. The Trust shall not transfer, lease or assign, for security purposes or otherwise, any portion of its interest in the Facility without transferring, leasing or assigning to its transferee, lessee or assignee a proportionate share of its interest hereunder other than as permitted by the Operative Documents to which it is a party. The User shall not transfer, lease or assign, for security purposes or otherwise, any interest in the Facility Site except as expressly provided for herein or in the Operative Documents.

The User acknowledges that the rights of the Trust hereunder shall be extended to the Operator and the User hereby agrees to cooperate with the Operator (with respect to sharing of information, access, the provision of office space and other administrative or operation matters as are necessary or desirable to secure the Operator's performance under this Agreement).

SECTION 7.9. No Liens.

The User covenants that it will not, directly or indirectly, create, incur or assume any Lien on the Facility or any Part thereof or the Trust's right, title or interest in and to any of the foregoing or any part thereof, except for Support and Operating Agreement Permitted Liens or Liens created, incurred or assumed in the normal course of the operation of the Facility in accordance with the terms hereof (provided that no such Lien involves a substantial danger of the sale or forfeiture of the interest of the Trust in the Facility or any portion thereof or interference with the operation or maintenance of the Facility or any portion thereof). The User will, promptly, at its sole cost and expense, take such action as may be necessary to duly discharge or replace by other security or eliminate any such Lien. The User will indemnify and hold harmless the Operator and the Trust from and against any losses, costs or expenses (including legal fees and expenses) incurred as a result of the imposition, enforcement or removal of any such Lien.

SECTION 7.10. Liability.

(a) Except to the extent provided in Section 7.10(b) and without derogation to the provisions contained in Section 2.2(b), no party hereto, or its respective directors, agents, officers, employees or members of governing boards, shall be liable to any other party or parties hereto for loss of earnings, revenues or other indirect, special or consequential or punitive damages or loss of production or profits which may occur or result from the performance or non-

performance of this Agreement, including any negligence arising hereunder, except for its own ~~Gross~~gross negligence or willfull misconduct.

(b) A party hereto whose wholesale or retail customer brings an action or makes a claim against another party hereto, including the Operator, as a result of interruptions or curtailments of service to such customer arising out of or resulting from the performance or non-performance of obligations and duties under this Agreement shall indemnify and hold harmless the other party or parties hereto (including a party in its capacity as Operator), their directors, agents, officers, employees and members of governing boards, from and against any and all actions and claims and resulting liability, judgments and costs, including, but not limited to, court costs and reasonable attorneys' fees, except to the extent such actions or claims were caused by or resulted from that party's ~~Gross~~gross negligence or willfull misconduct.

(c) Any loss, cost, liability, damage or expense to the Trust, ~~Investor~~the Owner Participant or their respective Affiliates, directors, agents, officers or employees, resulting from the operation, service, maintenance or repair of the Facility or the replacement of ~~parts~~Parts and components thereof or the making of Modifications or, if the User, as Lessee under the User Lease, or the Authority, as Lessee under the Lease, shall have failed to return (or cause to be returned) the Facility to the Trust at the expiration or earlier termination of ~~any~~the Lease in full compliance with Applicable Law, the discharge of Effluent or ~~un-~~untreated or partially-treated Waste Water, and based upon injury to Persons (including agents, subcontractors or employees of the parties hereto and others) or damage to property (including the property of the parties hereto and of others) to the extent not covered by insurance, shall be paid by the Operator and shall be chargeable as an Operation and Maintenance Expense of the Facility.

(d) The provisions of this Section 7.10 shall not be construed so as to relieve any insurer of its obligation to pay insurance proceeds in accordance with the terms and conditions of any insurance policy.

SECTION 7.11. Indemnification.

The Operator hereby indemnifies and agrees to defend and hold harmless the Trust against any liability (including those based on strict liability or tort liability), penalty, cost or expense (including reasonable counsel fees and disbursements, but not including lost revenues or profits), except to the extent otherwise expressly provided herein, which may be incurred, imposed on or asserted against the Operator, the Trust or the Owner Participant (and any such Person's Affiliates, officers, directors, employees and agents) arising out of the Operator's negligent operation of the Facility (including, without limitation, any violation of or liability under Environmental Law arising out of the operation of the Facility by the Operator) or operation of the Facility in breach of the Operator's obligations hereunder or the breach by the Operator or an Affiliate of the Operator of any representation, warranty or covenant contained herein or in this Agreement, except to the extent that any such liability, cost or expense arises out of the breach of any obligation contained herein by, or the ~~Gross~~gross negligence or willfull misconduct of, the Trust.

The User hereby indemnifies and agrees to defend and hold harmless the Trust against any liability (including those based on strict liability or tort liability), penalty, cost or

expense (including reasonable counsel fees and disbursements, but not including lost revenues or profits), except to the extent otherwise expressly provided herein, which may be incurred, imposed on or asserted against the Operator, the Trust or the Owner Participant (and any such Person's Affiliates, officers, directors, employees and agents) arising out of the User's negligence in supplying any Waste Water Flow Service Support ~~Items~~Item, Support ~~Services~~Service, Operating ~~Inputs and Access Rights~~Input or Entrance Right (including, without limitation, any violation of or liability under Environmental Law arising out of the supply of any Waste Water Flow Service Support ~~Items~~Item, Support ~~Services~~Service, Operating ~~Inputs and Access Rights~~Input or Entrance Right by the User) or other actions in breach of the User's obligations hereunder or the breach by the User or an Affiliate of the User of any representation, warranty or covenant contained herein or in this Agreement, except to the extent that any such liability, cost or expense arises out of the breach of any obligation contained herein by, or the gross negligence or willful misconduct of, the Trust.

SECTION 7.12. Conflict with Lease.

From and after the date hereof and until the Commencement Date, should any provisions of this Agreement be inconsistent or in conflict with the provisions of the Lease, the provisions of the Lease shall be controlling.

SECTION 7.13. Amendments; Severability.

(a) Amendments. This Agreement may not be terminated, amended, supplemented, waived or modified orally, but only upon the prior written consent of each of the parties hereto, such consent not to be unreasonably withheld.

(b) Severability. In the event that any provision in this Agreement is declared illegal or no longer in force by reason of any judgment or order issued by a Governmental Authority, all remaining provisions of this Agreement not affected by such judgment or order shall continue in full force and effect.

SECTION 7.14. Counterparts.

This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed originals and shall constitute but one and the same instrument.

SECTION 7.15. Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of ~~New York. This Agreement has been delivered in the State of New York.~~South Dakota.

SECTION 7.16. Taxes; Arbitration.

(a) Taxes. The Trust hereby agrees to pay or cause to be paid its proportionate share of any taxes (excluding any sales or uses taxes) or assessments on the Facility. The Trust shall use all reasonable efforts to cause any taxing authority imposing any taxes (excluding any sales or uses taxes) or assessments on the Facility to assess and levy such taxes or assessments directly

against the Facility. All taxes or assessments levied against the Trust shall be the sole responsibility of the party upon whom said taxes and assessments are levied unless such taxes or assessments are levied directly against one of them on behalf of any or all of the them; *provided* that nothing herein shall in any way alter the User's, the State's or the Authority's obligations under the Tax Indemnification Agreement or under Section 15 of the Participation Agreement. If property taxes or other taxes or assessments are levied or assessed in any other manner, the parties hereto shall establish equitable practices and procedures for the apportionment thereof and if the parties hereto are not able to do so, such practices and procedures shall be determined by arbitration in accordance with the procedures set forth in Section 7.16(b) (an "***Arbitration Proceeding***").

(b) **Arbitration**. In the event that the terms of any provision of this Agreement provide for arbitration, the party desiring such arbitration shall give written notice to all other parties and within **ten (10)** days thereafter the parties to such dispute shall consult for the purpose of appointing a mutually acceptable arbitrator. If the parties are unable to agree on an arbitrator within **twenty (20)** days of the giving of such notice, such dispute shall be resolved by a panel of three **(3)** independent arbitrators. One of such arbitrators shall be selected by each of the parties to such dispute; *provided, however*, that if either of such parties shall fail to select an arbitrator within **thirty (30)** days after the giving of such notice, such arbitrator shall be selected by the International Chamber of Commerce (the "***ICC***") or an organization that is a successor thereto. The two arbitrators selected shall select the third arbitrator or, if they shall be unable to agree on a third arbitrator within **ten (10)** days after each of such arbitrators have been selected, such third arbitrator shall be selected by the ICC or an organization that is a successor thereto. Each arbitrator shall be skilled and experienced in the field which gave rise to the dispute and have knowledge of Prudent Industry Practice, and no Person affiliated with any party hereto shall be eligible to be an arbitrator. The arbitration shall be governed by the rules of the ICC or a nationally recognized successor thereto and the decision of a majority of the arbitrators shall be final and binding and shall be subject to judicial enforcement. If an amount, value or period is the subject of the dispute, the determination of the arbitrator that shall differ most from the second highest determination of all three arbitrators shall be excluded, the remaining two determinations shall be averaged and such average shall constitute the determination of the arbitrators. Fees and expenses of the arbitrators shall be shared by the parties to the arbitration equally unless the arbitrators shall specify some other arrangement based on the outcome of the Arbitration Proceeding.

SECTION 7.17. Liability of Trust; Payments from Trust Estate Only.

Any payments to be made by the Trust hereunder shall be made only from the Trust Estate and the Operator and the Trust shall look solely to the Trust Estate for the payment of any amounts payable by the Trust hereunder. The parties hereto hereby agree and confirm that the Owner Participant neither is nor shall be in any way personally liable for any such amounts for any reason whatsoever, including, without limitation, on account of any representation, warranty, covenant or agreement hereunder. The Owner Participant shall not have any liability, obligation, responsibility or duty to any Person whatsoever for or with respect to any of the transactions contemplated by this Agreement, except as expressly provided in the Trust Agreement and the Participation Agreement, whether as a result of the negligence or willful misconduct of the Trust or otherwise.

SECTION 7.18. Miscellaneous.

Except to the extent, if any, expressly prohibited in any other Operative Document then in effect, the Trust shall be entitled to set off against amounts due and payable by it hereunder any amount payable to it by the Operator pursuant to any other Operative Document then in effect. It is the intent of the parties hereto that this Agreement be construed broadly to enable the Trust, upon termination of the Lease, to realize the residual value of its interest in the Facility by means of transfer, assignment or sublease to a third party unrelated to the Lessee Authority, the Sublessee State or the User and assignment of the Trust's rights hereunder to a third party unrelated to the Lessee Authority, the Sublessee State or the User.

SECTION 7.19. Further Assurances.

The User covenants that in case any representation or warranty of the User ~~or the User~~ herein contained is not true and correct, or at any time will cease to be true and correct, or the User ~~or the User~~ fails to comply with any covenant made by ~~either thereof~~ contained herein, the User will hold the Trust and the Owner Participant harmless against any consequences of any of the foregoing, including the taking, at the User's expense, of any action as may be reasonable or necessary to remedy such consequences, including, without limitation, granting any additional easements, providing any necessary or reasonable services or executing, in any relevant jurisdiction, any required agreements, deeds or other documents. The Operator covenants that in case any representation or warranty of the Operator herein contained is not true and correct, or at any time will cease to be true and correct, or the Operator fails to comply with any covenant made by it contained herein, the Operator will hold the Trust and the Owner Participant harmless against any consequences of any of the foregoing, including, without limitation, the taking, at the Operator's expense, of any action as may be reasonable or necessary to remedy such consequences, including granting any additional easements, providing any necessary or reasonable services or executing, in any relevant jurisdiction, any required agreements, deeds or other documents.

SECTION 7.20. Concerning the Trustee.

The Trust Company is entering into this Agreement solely in its capacity as Trustee under the Trust Agreement, and not in its individual capacity and in no case shall the Trust Company (or any entity acting as successor Trustee under the Trust Agreement) be personally liable for or on account of any of the statements, representations, warranties, covenants or obligations of the Trust hereunder, any such liabilities being hereby waived by the parties hereto; *provided, however*, that the Trust Company (or any successor entity acting as Trustee) shall be personally liable to the Operator and the Owner Participant for its own gross negligence or willful misconduct or for its negligence in handling money actually received by it in accordance with the terms of the Operative Documents or for its breach of any representation, warranty or covenant made in its individual capacity under any Operative Document.

SECTION 7.21. Entire Agreement.

This Agreement, together with the other instruments and documents required to be executed and delivered in connection herewith, represent the entire agreement of the parties

hereto and supersedes all prior agreements and understandings of the parties hereto with respect to the subject matter covered hereby.

SECTION 7.22. Non Terminability.

Except as otherwise provided in this Agreement, to the maximum extent permitted by Applicable Law, this Agreement shall not terminate by any cause or for any reason whatsoever, including the following: (a) the occurrence or existence of any Lease Event of Default or any termination of the Operative Documents, (b) any damage to or destruction of all or any part of the Facility or the taking of the Facility or any part thereof by expropriation, condemnation, requisition or otherwise, (c) any prohibition, limitation or restriction of any party's use of all or any part of its property or the interference of such use by any Person, or any eviction by paramount title or otherwise, (d) the termination or loss of any of the Trust's or the [Lessee Lessees](#)'s interest under the Lease, or any instrument delivered thereunder, (e) any inadequacy, incorrectness or failure of the description of the Facility or any part thereof or any rights intended to be created by this Agreement, (f) any default in the performance or the observance by any party of any of their respective covenants and agreements to be performed and observed by it under any of the Operative Documents, (g) the insolvency, bankruptcy, reorganization or similar proceedings by or against any party, or (h) any other reason whatsoever, whether similar or dissimilar to any of the foregoing.

[signature page follows]

IN WITNESS WHEREOF, parties hereto have each caused this Support and Operating Agreement to be duly executed by its authorized officer on the day and year first above written.

CITY OF ABERDEEN

By: _____
Name: _____
Mayor

~~[RAPID CITY]~~
Attest:

By: _____
Name:
Title:

~~SDMFA~~ ABERDEEN STATUTORY TRUST
SDMFA-2003-~~K~~F1

By ~~U.S. Bank National Association~~ Wilmington
Trust Company, not in its individual capacity
except as expressly set forth herein, but solely
as Trustee

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

SOUTH DAKOTA MUNICIPAL
FACILITIES AUTHORITY

By: _____
Name:
Title:

STATE OF SOUTH DAKOTA DEPARTMENT
OF ENVIRONMENTAL AND
NATURAL RESOURCES

By: _____
Name:
Title:

DEFINITIONS

“~~Access~~Entrance *Rights*” has the meaning set forth in Section 2.1(d) hereof.

“*Applicable Permits*” means _____.

“*Arbitration Proceeding*” shall have the meaning set forth in Section 7.16~~(a)~~ hereof.

“*Accession Agreement*” shall mean the Accession Agreement in the form attached hereto as Exhibit C.

“*Billing Period*” means any calendar month period for which Waste Water Treatment Services are rendered pursuant to Section 2.2(a), except that the first Billing Period will be a partial month if the Commencement Date does not coincide with the first day of a calendar month, and the last Billing Period will be a partial month if the last day of the Support ~~and Operating Agreement~~Period does not coincide with the last day of a calendar month.

“*Biosolids*” means screenings, grit, sludge, cake and other process related materials, other than Effluent, which are removed from, or are the by-product of, processed Influent.

“*Capacity*” means aggregate capacity of the Facility to collect, transport and/or treat waste water, as the case may be, which shall be expressed in Population and a flow rate measured in m³/s, for the period or periods contemplated by Section 14(d) of the Lease.

“*Capital Expenditure Budget*” shall have the meaning set forth in Section 5.2(a) hereof.

“*Collector*” means _____.

“*Commencement Date*” means the date of expiration or earlier termination of the Lease unless the ~~Lessee acquires~~Lessees acquire the Head Lease Interest.

“*Common Facilities*” shall have the meaning set forth in Section 2.2 (e) hereof.

“*Construction Cost*” means, with respect to a Modification, the actual cost or purchase price thereof (after deducting the amount realized as the salvage value of any Part which is being replaced by the Modification or the proceeds of insurance with respect to the loss or damage to any Part being replaced by such Modification), as determined by the Operator in accordance with generally accepted accounting principles consistently applied and confirmed by the Trust, including, without limitation, allocable direct and indirect overhead of the Operator incurred in respect of the acquisition and installation of such Modification.

“*Consulting Engineer*” means an independent, qualified firm of professional engineers providing professional services to organizations that operate wastewater treatment and collection plants in the fields which include engineering, design, construction management, operations and maintenance.

“**Contract Year**” means the twelve-month period commencing at 12:01 a.m. on January 1 of each year and ending at 12:01 a.m. on the following January 1, except that the first Contract Year shall begin on the Commencement Date and the last Contract Year shall end on the expiration or earlier termination of the Head Lease or the Final Shutdown Date, whichever is the first to occur.

“**Effluent**” means Influent which has undergone all necessary treatment steps to satisfy the Required Effluent Parameters and which is delivered from the Facility to the Point of Exit.

“**Existing Inflow Agreements**” means any Inflow Agreement described in the Support and Operating Agreement Supplement.

“**Facility Event**” means an event that materially impairs the economic utility or operational efficiency of the Facility to the Trust due to the fact that the Trust is not permitted by Applicable Law to sell all of the Capacity of the Facility, or to transport, process and treat all Waste Water delivered to the Facility.

“**Facility Service Requirements**” means the energy required during any period (including initial start-up and testing) and supplied from any source for operation of all on-site processes and auxiliary equipment and systems used or useful in connection with the operation and maintenance of the Facility.

“**Facility Site**” shall mean _____.

“**Fair Market Rental Value**” of an item or of a Modification means an amount determined on the basis of, and shall be equal in amount to, the rental value for such item or Modification which would be obtained in an arms'-length transaction between an informed and willing lessee and an informed and willing lessor, neither being under any compulsion to lease, which determination shall take into account all Liens on such item or Modification (other than Lessor's Liens) and any material legal impediments to the prompt leasing of such item or Modification.

“**Fair Market Sales Value**” means, with respect to an item or a Modification, an amount determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller, neither being under any compulsion to purchase or sell such item or Modification, which determination shall take into account all Liens on such item or Modification (other than Lessor's Liens).

“**Fair Market Value**” means with respect to the use and rental or the purchase and sale of goods or services, an amount equal to the value which would be obtained in an arms'-length transaction between an informed and willing purchaser or lessee, under no compulsion to lease, use or buy and an informed and willing seller or lessor under no compulsion to rent or sell such goods and services.

“**Final Shutdown**” means, subject to Section 4.3, the permanent removal of the Facility from operation and commercial service.

“Final Shutdown Date” means the date that a Final Shutdown occurs.

“ICC” has the meaning set forth in Section 7.16(b) hereof.

“Independent Appraisal” means the procedure specified in this paragraph for determining an amount or value. With respect to any amount or value, the parties hereto shall consult for the purpose of determining such amount or value by mutual agreement. In the absence of such agreement on or before the tenth day following the commencement of such consultation, either party may give written notice to the other requesting determination of such amount or value by appraisal, and in such event the parties shall consult for the purpose of appointing a mutually acceptable qualified independent appraiser. If the parties are unable to agree on an appraiser on or before the twentieth day after such notice, such amount or value shall be determined by a panel of three independent appraisers, one of whom shall be selected by each party on or before the tenth day following the expiration of such twenty-day period. If one party appoints an appraiser pursuant to the immediately preceding sentence, and if the other party fails to appoint a second appraiser within the applicable time limit, the determination shall be made by the appraiser appointed by the one party. On or before the tenth day after appointment of the second appraiser, a third appraiser shall be selected by agreement of the first two appraisers, or if such two appraisers are unable to agree upon a third appraiser by such date, such appointment shall be made by the American Society of Appraisers (or its successors). The parties shall share equally the fees and expenses of the Independent Appraisal. Each appraiser appointed pursuant to the foregoing procedure shall be skilled and experienced in the field that gave rise to the dispute, shall be independent of the parties and the manufacturers of any material components of the Facility and shall be instructed to determine such amount or value in accordance with the uniform standards for professional appraisal practice or the equivalent on or before the sixtieth day after the appointment of the last of such appraisers to be appointed, and such determination shall be final, binding and conclusive upon the parties. If three appraisers are appointed, the determination shall be the average of the three appraisals rendered by the appraisers. In the event, however, that the lowest or the highest of the three appraisals, or both, varies by more than ten percent from the middle appraisal, the appraisal or appraisals so varying shall be disregarded. Any estimate of an amount or value determined pursuant to the Independent Appraisal shall take into account a reasonable estimate of inflation or deflation.

“Inflow Agreements” means any agreement for the treatment of wastewater by the User with any third parties not participating in the User.

“Inflow Fees” means any and all amounts which the User or any of its agencies, successors or assigns is entitled to receive pursuant to any Existing Inflow Agreement less an amount constituting commercially reasonable compensation for the transportation of Waste Water through the Network to the Facility as determined by an Independent Appraisal.

“Influent” means all Waste Water delivered by the User to the Facility at the Points of Entry.

[“Late Payment Rate” has the meaning set forth in Section 7.4](#)

“**Maximum Dependable Capacity**” means such amount and flow rate of Influent meeting the Required Influent Parameters as the Trust and the Operator shall establish from time to time based upon the operating history of the Facility and the maximum capacity at which the Facility can be reliably maintained in-service on a continuous basis.

“**Metering Points**” means _____.

“**Modifications**” means, collectively, the Optional Modifications and the Required Modifications.

“**Month**” means a calendar month.

“**Network**” means those portions of the Waste Water collection, transportation and storage system of the User, its members or any third parties, which are not part of the Facility.

“**Nonserverable Modifications**” has the meaning set forth in Section 5.2(e) hereof.

“**Operating Emergency**” means an unplanned event or circumstance which reduces or may reduce the availability of the Capacity of the Facility.

“**Operating Expense Budget**” shall have the meaning set forth in Section 5.2(c) hereof.

“**Operating Fee**” shall have the meaning set forth in Section 3.2 hereof.

“**Operating Inputs**” shall have the meaning set forth in Section 2.1(e) hereof.

“**Operating Outputs**” means Effluent, ~~un-treated~~untreated or partially- treated Waste Water and Biosolids.

“**Operation and Maintenance Expenses**” shall have the meaning set forth in Section 5.2(d) hereof.

“**Operator**” means (a) if the Trust shall have elected (or shall have been deemed to have elected) the Service Contract Option and ~~the Trust a~~ Qualified Operator shall have been procured ~~a Person~~ in accordance with Section 14(d)(~~ii~~) of the Lease to operate the Facility in accordance with this Agreement, such ~~Person~~Qualified Operator, or its successors as operator in accordance with Section 3.1, or (b) if the Trust shall have elected the Return Option and the Trust shall have procured a Person to operate the Facility in accordance with this Agreement, such Person, or its successors as operator in accordance with Section 3.1, or (c) the User, in its capacity as operator of the Facility or its successors as operator in accordance with Section 3.1.

“**Operator’s Fee Notice**” shall have the meaning set forth in Section 3.2 hereof.

“**Optional Modifications**” shall have the meaning set forth in Section 5.1(c) hereof.

“**Owner Participant**” shall have the meaning set forth in Section 1.1 hereof.

“**Participation Agreement**” shall have the meaning set forth in Section 1.1 hereof.

“**Person**” means any individual, corporation, partnership, joint venture, foundation, association, joint-stock company, trust, unincorporated organization, government or any political subdivision thereof or any agency or instrumentality of any thereof.

“**Points of Entry**” means the upstream point or points of interconnection between each Collector and the Network.

“**Points of Exit**” means the points of interconnection between the Facility and any canal, pipe or other water transportation apparatus not located on the Facility Site, which can transport Effluent, ~~un-treated~~untreated or partially- treated Waste Water to another treatment plant operated by the User, the Network, or into [**the River**], canals, tributaries, overflow sewers, hydraulic relief sewers or any other appropriate point of discharge.

“**Regulated Materials**” shall mean _____.

“**Related Facilities**” shall have the meaning set forth in Section 2.2(e) hereof.

“**Replacement Part**” means any Part acquired in replacement for any Part which may from time to time fail to function in accordance with its intended use or which is destroyed, damaged beyond repair, lost, condemned, confiscated, stolen or seized for any reason during the term of this Agreement.

“**Required Effluent Parameters**” means the required elements, characteristics and parameters for water quality and flow rate of Effluent, as set forth in Exhibit B attached hereto.

“**Required Influent Parameters**” means the required elements, characteristics and parameters for water quality and flow rate of Influent, as set forth in Exhibit A attached hereto.

“**Required Modifications**” shall have the meaning set forth in Section 5.1(c) hereof.

“**Resident Fees**” means all costs, fees, interest and/or expenses incurred or payable by the Trust or its designee relating to the use, possession and operation of the Facility and transportation, treatment and disposal of Waste Water, including, without limitation (i) any amounts incurred or payable by the Trust pursuant to the Support and Operating Agreement, (ii) payments of principal and interest on any loan made to the Trust for purposes of using, possessing or operating the Facility, and (iii) amounts determined by the Trust to be a sufficient and appropriate return on equity taking into account the relative risk associated with the operation and ownership of the Facility.

“**Service Fee**” has the meaning set forth in Section 2.3(a) hereof.

“**Special Collector Site**” means _____.

“**Special Collector Site Contracts**” means any contract, easement, servitude or other arrangement which grants or otherwise provides to the User access or rights of access to any Special Collector Site.

“Special Treatment Facility Sites Contracts” means any contract, easement, servitude or other arrangement which grants or otherwise provides to the User access or rights of access to any Special Treatment Facility Site.

“Special Treatment Facility Sites” means _____.

“Support and Operating Agreement Default” shall have the meaning set forth in Section 3.1(a) hereof.

“Support and Operating Agreement Permitted Liens” means (i) any Lien created by any Operative Document, (ii) for so long as the Lease is in place, the rights of others under agreements or arrangements to the extent expressly permitted by the terms of Section 11 of the Lease, (iii) Lessor’s Liens, (iv) Liens for Taxes either not yet due or being contested in good faith by appropriate proceedings so long as such proceedings do not involve a material danger of the sale, forfeiture or loss of the Facility, (v) suppliers’, vendors’, mechanics’, workmen’s, repairmen’s, employees’ or other like Liens arising in the ordinary course of business for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve a material danger of the sale, forfeiture or loss of the Facility, and the Operator shall maintain reserves at the Trust’s expense (such reserves to be approved as part of the Operating Expense Budget) for the discharge of such Liens, (vi) prejudgment liens for claims against the Operator, the Lessee, the User or any sublessee permitted under a sublease which are contested in good faith, and (vii) Liens arising out of judgments or awards against the Operator, the Lessee, the User or any permitted sublessee with respect to which an appeal or proceeding for review is being prosecuted in good faith and to which a stay of execution has been obtained pending such appeal or review.

“Support Items” has the meaning set forth in Section 2.1(b) hereof.

“Support Period” has the meaning set forth in the third Whereas clause.

“Support Service Price” has the meaning set forth in Section 2.3(d) hereof.

“Third Party Supplies” has the meaning set forth in Section 2.3(d) hereof.

“Treatment Facility Site” means _____.

“Uncontrollable Forces” means, with respect to the obligations of a Person, any circumstances beyond the reasonable control of the party affected thereby and which, by the exercise of reasonable diligence, such party is unable to prevent or overcome, including, but not limited to, an act of God, fire, flood, earthquake, disease, the public enemy, military authority, insurrection or the elements.

“User Supplies” has the meaning set forth in Section 2.3(d) hereof.

“Waste Water” means domestic, commercial, institutional, industrial, rain and other waste water of any nature whatsoever.

“Waste Water Flow Services” means has the meaning set forth in Section 2.1(a) hereof.

“Waste Water Treatment Services” means has the meaning set forth in Section 2.2(a) hereof.

REQUIRED INFLUENT PARAMETERS

[The Trust, in consultation with the Operator, shall establish and set forth in this Exhibit A on the Commencement Date the Required Influent Parameters based on, among other things, (i) compliance with the requirements of all Applicable Permits and Applicable Laws as of the Commencement Date, (ii) the physical and chemical characteristics of the Influent in the thirty (30) day period before the Commencement Date and (iii) the existing technology of the Facility. The Required Influent Parameters are intended to prevent chemicals or other constituents of a nature and quantity that would disrupt biological or physical processes at the Facility or result in hazard to the Facility's personnel or deterioration of the Facility, or would otherwise result in the inability of the Operator or the Trust to comply with Applicable Permits or Applicable Law.]

The parties hereto will negotiate in good faith to revise this Exhibit A as may become necessary from time to time to fulfill the purposes of this Agreement.

REQUIRED EFFLUENT PARAMETERS

[The Trust, in consultation with the Operator, shall establish and set forth in this Exhibit B on the Commencement Date the Required Effluent Parameters, among other things, (i) in compliance with the requirements of all Applicable Permits and Applicable Laws as of the Commencement Date (taking into account any waivers, variances, nonconforming permits or similar dispensations relating to the discharge of ~~un-treated~~untreated or partially- treated Waste Water or of Effluent), (ii) in conformity with Prudent Industry Practice, and (iii) based on the results of the performance and engineering tests to be conducted prior to the Commencement Date and the existing technology of the Facility. The Required Effluent Parameters are intended to address, among other things, biochemical oxygen demand, total nitrogen, total phosphorus, and oil and grease, including any pollutant limit established on a facility-by-facility basis for toxic metals, toxic organic pollutants and bacteriological parameters established by Applicable Permits or Applicable Law (taking into account any waivers, variances, nonconforming permits or similar dispensations relating to the discharge of ~~un-treated~~untreated or partially- treated Waste Water or of Effluent).]

The Required Effluent Parameters shall at all times at least comply with the requirements of Applicable Permits and Applicable Law, and, insofar as such requirements are not already met or set forth in this Exhibit B, they shall at all times be deemed to be part of this Exhibit B. In addition and subject to the foregoing, the parties hereto will negotiate in good faith to revise this Exhibit B as may become necessary from time to time to fulfill the purposes of this Agreement.

REQUIRED EFFLUENT PARAMETERS

[The Trust, in consultation with the Operator, shall establish and set forth in this Exhibit B on the Commencement Date the Required Effluent Parameters, among other things, (i) in compliance with the requirements of all Applicable Permits and Applicable Laws as of the Commencement Date (taking into account any waivers, variances, nonconforming permits or similar dispensations relating to the discharge of ~~un-treated~~untreated or partially- treated Waste Water or of Effluent), (ii) in conformity with Prudent Industry Practice, and (iii) based on the results of the performance and engineering tests to be conducted prior to the Commencement Date and the existing technology of the Facility. The Required Effluent Parameters are intended to address, among other things, biochemical oxygen demand, total nitrogen, total phosphorus, and oil and grease, including any pollutant limit established on a facility-by-facility basis for toxic metals, toxic organic pollutants and bacteriological parameters established by Applicable Permits or Applicable Law (taking into account any waivers, variances, nonconforming permits or similar dispensations relating to the discharge of ~~un-treated~~untreated or partially- treated Waste Water or of Effluent).]

The Required Effluent Parameters shall at all times at least comply with the requirements of Applicable Permits and Applicable Law, and, insofar as such requirements are not already met or set forth in this Exhibit B, they shall at all times be deemed to be part of this Exhibit B. In addition and subject to the foregoing, the parties hereto will negotiate in good faith to revise this Exhibit B as may become necessary from time to time to fulfill the purposes of this Agreement.

**FORM OF QUALIFIED BIDDER
ACCESSION AGREEMENT**

~~THIS~~ ACCESSION AGREEMENT (as this agreement may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof, this “*Agreement*”) is made as of _____, 20__ among (i) [name of current User] (together with its successors and permitted assigns, the “*User*”), a _____, in its capacity as Support Provider, the “*Support Provider*”, (ii) [name of the current Operator] , (iii) _____ (the “*Trust*”), a business trust formed under the Delaware Business Trust Act of the State of Delaware pursuant to the Trust Agreement dated as of _____, 2003, between KBC Bank, N.V. (the “*Owner Participant*”) and ~~[U.S. Bank National Association]~~ Wilmington Trust Company (“*Trust Company*”), and (vii) [name of the Qualified Bidder], (the “*Capacity Purchaser*”).

W I T N E S S E T H:

WHEREAS, the User, as Operator, and the Trust entered into a Support and Operating Agreement, dated as of _____, 2003 (as such may be amended, supplemented or otherwise modified from time to time, the “*Support and Operating Agreement*”), pursuant to which the Trust, the Operator and the User have undertaken certain obligations relating to the transportation, processing and treatment of Waste Water at the Facility;

WHEREAS, concurrently herewith, the Trust and the Capacity Purchaser have entered into a Capacity Purchase Agreement, dated the date hereof;

WHEREAS, the Trust and the Capacity Purchaser desire that Services Fees payable by the Support Provider to the Trust pursuant to the Support and Operating Agreement be paid to the Capacity Purchaser, and the Support Provider is willing to pay such fees to the Capacity Purchaser; and

WHEREAS, the parties hereto desire that the Capacity Purchaser become a party to the Support and Operating Agreement and assume, along with the Trust, the Support and Operating Agreement Obligations (as defined herein);

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, the parties agree as follows:

Section 1. Definitions. Each capitalized term used but not otherwise defined herein or in the introduction or recitals hereto shall have the meaning given such term in the Support and Operating Agreement.

Section 2. Assumption. Subject to the terms, covenants and conditions of the Support and Operating Agreement, the Existing Inflow Agreements, and this Agreement, the

Capacity Purchaser hereby covenants and agrees that it will make the Capacity purchased pursuant to its Capacity Purchase Agreement available to the Support Provider or its designee for transportation, and, if applicable, processing and treatment of Waste Water at the Facility (the “*Support and Operating Agreement Obligations*”).

Section 3. Service Fees. The Trust hereby agrees and instructs the Support Provider that from the date hereof until [___], [___]% of the Service Fee payable by the Support Provider pursuant to Section 2.3(a) of the Support and Operating Agreement shall be paid to the Capacity Purchaser. The Support Provider hereby agrees to make such payments to the Capacity Purchaser.

Section 4. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 5. Amendments. This Agreement may not be terminated, amended, supplemented, waived or modified orally, but only upon the prior written consent of each of the parties hereto, such consent not to be unreasonably withheld.

Section 6. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[signature page follows]

Exhibit D to
Support and Operating Agreement (SDMFA-2003-~~K~~F1)

This SUPPORT AND OPERATING AGREEMENT SUPPLEMENT, dated as of _____, 200_, (as supplemented, amended or otherwise modified from time to time, this “*Agreement*”), is among (i) [~~Rapid~~—City of Aberdeen] (together with its successors and permitted assigns, the “*User*”), a _____, in its capacity as User, the “*User*”, (ii) _____, in its capacity as Operator, the “*Operator*”, (iii) ~~SDMFA~~Aberdeen Statutory Trust SDMFA-2003-~~K~~F1 (the “*Trust*”), a [Connecticut statutory trust].

WHEREAS, reference is made to the Participation Agreement (SDMFA-2003-~~K~~F1), dated as of September [], ~~2003, 2003 (the “Participation Agreement”)~~, among South Dakota Municipal Facilities Authority, [State of South Dakota Department of Environment and Natural Resources], the User, the Trust, ~~KBC Bank N.V., AIG-FP Funding (Cayman) Limited, AIG-FP Special Finanee (Cayman) Limited and [U.S. Bank National Association]~~The Fifth Third Leasing Company, [Lender], The Royal Bank of Scotland plc, New York Branch, AIG Financial Products Corp. and Wilmington Trust Company, not in its individual capacity except as expressly set forth therein, but solely as Trustee. All capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in Appendix A to the Participation Agreement and the rules of usage set forth therein shall apply hereto-;

WHEREAS, the parties hereto refer to the Support and Operating Agreement (SDMFA-2003-F1), a copy of which is attached hereto as Annex A, which provides for the execution and delivery of a Support and Operating Agreement Supplement for the purpose of effecting the transactions contemplated by the Support and Operating Agreement. All of the terms and provisions of the Support and Operating Agreement are hereby incorporated by reference in this Support and Operating Agreement Supplement to the same extent as if fully set forth herein, except as expressly provided otherwise herein.—~~This Support and Operating Agreement Supplement, with the terms and provisions of the Support and Operating Agreement incorporated herein by reference, is hereinafter sometimes referred to as this “Agreement”;~~

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, the parties hereto agree as follows:

1. The parties hereby enter into this ~~Support and Operating Agreement Supplement~~ in connection with the Participation Agreement, with respect to the Facility ~~described in Exhibit P thereto, and agree to be bound by the terms hereof.~~
2. The Support and Operating Agreement is hereby amended as follows:
_____.
3. Existing Inflow Agreements: _____.
4. In the event of any discrepancies between any of the terms and provisions of this ~~Support and Agreement Supplement~~ and the terms and provisions of the Support and Operating Agreement, the terms and provisions of this ~~Support and Operating Agreement Supplement~~ shall govern.

5. This ~~Support and Operating Agreement Supplement~~ may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

6. THIS ~~SUPPORT AND OPERATING AGREEMENT SUPPLEMENT~~ SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE ~~LAW~~LAWS OF THE STATE OF ~~NEW YORK (INCLUDING SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW BUT EXCLUDING ALL OTHER CHOICE OF LAW AND CONFLICT OF LAW RULES~~SOUTH DAKOTA.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Support and Operating Agreement Supplement as of the day and year first above written.

as User

By: _____

Name:

Title:

By: _____

Name:

Title:

as Operator

By: _____

Name:

Title:

By: _____

Name:

Title:

~~SDMFA~~ABERDEEN STATUTORY TRUST
SDMFA-2003-~~K~~F1

By: ~~[U.S. BANK NATIONAL
ASSOCIATION]~~WILMINGTON TRUST
COMPANY, not in its individual capacity,
but solely as Trustee under the Trust
Agreement

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED:

SOUTH DAKOTA MUNICIPAL
FACILITIES AUTHORITY

By: _____
Name:
Title:

STATE OF SOUTH DAKOTA DEPARTMENT
OF ENVIRONMENTAL AND
NATURAL RESOURCES

By: _____
Name:
Title:

Exhibit D to
Support and Operating Agreement (SDMFA-2003-F1)

ANNEX A

[Support and Operating Agreement]

Exhibit E to
Support and Operating Agreement (SDMFA-2003-F1)

FORM OF QUALIFIED OPERATOR
ACCESSION AGREEMENT