

**RENEWAL OF AGREEMENT FOR
OPERATIONS, MAINTENANCE, AND MANAGEMENT SERVICES FOR
CITY OF BISBEE, ARIZONA**

THIS RENEWAL OF THE AGREEMENT FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT SERVICES FOR THE CITY OF BISBEE (the “Renewal Agreement”), is entered into this 1st day of July, 2024, by and between the City of Bisbee, an Arizona municipal corporation (“Owner”) and Operations Management International, Inc., a California corporation (“Contractor”). Owner and Contractor may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Owner owns and operates a municipal wastewater treatment plant as further described in Appendix C, attached hereto and incorporated herein (the “Facilities”); and,

WHEREAS, Owner and Contractor entered into that certain Agreement for Operations, Maintenance, and Management Services for the City of Bisbee dated November 20, 2018 (“Agreement”) for the operation, maintenance and management of the Facilities; and,

WHEREAS, pursuant to the terms of the Agreement, the Agreement may automatically renew for successive five (5) year terms, unless otherwise cancelled or amended as provided for in the Agreement; and,

WHEREAS, during the course of the Agreement the Parties entered into various amendments to the Agreement and desire now to further amend and renew the Agreement and consolidate all amended terms and renewal conditions into this Renewal Agreement, which replaces all prior agreements and amendments; and,

WHEREAS, this Renewal Agreement provides for the continuation of Contractor’s operation, maintenance, and management services as further described in Appendix A, attached hereto and incorporated herein (the “Services”).

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **INCORPORATION OF RECITALS.** The Recitals set forth in the preamble of this Renewal Agreement are hereby incorporated into this Renewal Agreement as if fully set forth herein.

2. **AGREEMENT.** This Renewal Agreement consists of the terms and conditions set forth and the following appendices, which are incorporated and made part of this Renewal Agreement by this reference and are included in any reference to this Renewal Agreement.

- Appendix A – Scope of Services
- Appendix B – Capacities and Characteristics
- Appendix C – Owner’s Facilities, Location
- Appendix D – Compensation and Payment
- Appendix E – Project Vehicles and Equipment
- Appendix F – Permits
- Appendix G – Special Projects
- Appendix H – Professional Services Supplemental Terms

If the terms and conditions of this Renewal Agreement vary or are inconsistent with any portion of the Appendices, the terms of this Renewal Agreement shall control and be given priority, and the provisions of the Appendices shall be subject to the terms of the Renewal Agreement.

3. DEFINITIONS. Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Section 3. Terms that are defined in other sections shall have the meanings given to them in those Sections.

3.1 “ADEQ” means the Arizona Department of Environmental Quality.

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

3.3 “Applicable Laws” means any statute, ordinance, regulation, rule, code or direction including applicable technical, labor, safety or environmental standards or any license, consent, permit, authorization or other approval as required by the City, State of Arizona or Federal government in connection with the operation of the Facilities and the Services provided herein.

3.4 “Base Fee” means the compensation paid by Owner to Contractor for the labor, direct and indirect costs for the base services defined in Appendix A of this Renewal Agreement for any contract year of the Renewal Agreement. Repair costs as provided for in Section A.1.2 are excluded in the contract year compensation total denoted in Section D.1.1. The Base Fee will be determined in the manner set forth in Appendix D. The Base Fee does not include payments for services requested by Owner that are incidental to or outside the Scope of Services as defined in Appendix A.

3.5 “Biologically Toxic Substances” means any substance or combination of substances contained in the plant influent in sufficiently high concentrations so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of any of Owner’s Permits as listed in Appendix F. Biologically Toxic Substances include but are not limited to heavy metals, phenols, cyanides, pesticides, and herbicides.

3.6 “BOD₅” (Biochemical Oxygen Demand) means the quantity of oxygen utilized in

the biochemical oxidation of organic matter under standard laboratory procedures in a 5-day period at 20 degrees C, expressed in milligrams per liter (mg/l) by weight.

3.7 “Budgeted Operational Costs” mean costs to operate and maintain the plant, excluding the Base Fee, and capital expenditure budgets as noted in Appendix D. Budgeted Operational Costs shall be broken out as follows: 1) Repairs up to Five Thousand Dollars (\$5,000) and 2) Other.

3.8 “Capital Expenditures” means any expenditures for (i) the purchase of new equipment or facility items that cost more than Five Thousand Dollars (\$5,000); (ii) Major Repairs that significantly extend equipment or facility service life and cost more than Five Thousand Dollars (\$5,000); or (iii) expenditures that are planned, non-routine, and budgeted by Owner. Capital Expenditures are not Repairs. Owner is responsible for payment of Capital Expenditures, unless otherwise agreed to by the Parties.

3.9 “Change in Scope” means events or services beyond the Scope of Services set forth in Appendix A.

3.10 “City” means the City of Bisbee, Arizona.

3.11 “Clean Water Act” means the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§1251 et seq., incorporated herein by reference.

3.12 “Commencement Date” means the date services will begin for the Owner under this Renewal Agreement, which is the date first set forth above.

3.13 “Designated Representative” means the Owner’s and Contractor’s designated representative to act on its behalf in overseeing the performance of this Renewal Agreement. Owner and Contractor may change their respective Designated Representatives upon written notice to the other Party given as provided in this Renewal Agreement. Designated Representatives shall be the primary means for communication and all other interactions between Owner and Contractor that are required under this Renewal Agreement.

3.14 “EPA” means the Environmental Protection Agency.

3.15 “GPD” means gallons per day.

3.16 “Permit” means the permits issued to the Owner for the operation of its Project and services. This includes the NPDES Permit Nos. AZ0026077, State Permit Nos. P100983, R100983, Water Supply Permits, or any permits required for the operation of the potable water system at the Project site. Copies of these Permits are included in Appendix F.

3.17 “Preventive Maintenance” means routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or Contractor to maximize the service life of the equipment, sewer, vehicles, and facility.

3.18 “Project” means all equipment, vehicles, grounds, and facilities described in Appendix C and Appendix E and subject to this Renewal Agreement.

3.19 “Industry Standard Wastewater Treatment Practice” means (i) any of the practices, methods, and acts engaged in or approved by a significant portion of the wastewater treatment industry in the country and geographic region where the Project is located during the relevant time period, or (ii) practices, methods and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

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

3.21 “TSS” (Total Suspended Solids) means the total suspended matter that floats on the surface of, or is suspended in water, wastewater or other liquids, and which is measurable by laboratory testing.

3.22 “Unforeseen Circumstances” means any event or condition that has an effect on the rights or obligations of the Parties under this Renewal Agreement or the Project beyond the reasonable control of the Party, which constitutes a justification for a delay in or non-performance of action required by this Renewal Agreement. Unforeseen Circumstances include, but are not limited to:

3.22.1 an act of God, landslide, lightening, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war blockade, sabotage, insurrection, riot or civil disturbance or a pandemic event;

3.22.2 any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, state, provincial, federal or other governmental body;

3.22.3 labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strike or work slowdowns or stoppages by employees of Contractor;

3.22.4 the presence of Biologically Toxic Substances in the influent or the presence of hazardous wastes, materials or liquids in the influent or raw water supply, which detrimentally affect the machinery, infrastructure or processes at the Project; and/or

3.22.5 loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project.

4. TERM.

4.1 The Term of this Renewal Agreement will be for five (5) years commencing on July 1, 2024 (the “Commencement Date”) and continuing through June 30, 2029. Thereafter, this Renewal Agreement will be automatically renewed for successive terms of five (5) years each (“Renewal Term”), unless cancelled by either Party in writing not less than one hundred twenty (120) calendar days prior to expiration.

4.2 Either Party may terminate this Renewal Agreement for a material breach by the other Party if the other Party fails to correct the breach within thirty (30) calendar days after receiving written notice of the breach. In the event of a breach by Owner for non-payment of Contractor’s invoices, Contractor may terminate this Renewal Agreement if Owner fails to make outstanding payments on non-contested amounts within fifteen (15) calendar days after receiving written notice of the non-payment breach.

4.3 Either Party may terminate this Renewal Agreement immediately upon the Bankruptcy of the other Party.

4.4 Termination Without Cause. In addition to the rights set forth in this Section 4, Owner and Contractor have the right to terminate this Renewal Agreement without cause upon nine (9) months written notice to the other Party.

4.5 Upon notice of termination by Owner, Contractor shall assist Owner in assuming operation of the Project. If Contractor incurs additional cost at the request of Owner, Owner shall pay Contractor for the total cost incurred within fifteen (15) calendar days of invoice receipt.

4.6 Upon termination of this Renewal Agreement and all renewals and extensions of it, Contractor shall return the Project to Owner in the same condition as they were upon the Commencement Date of this Renewal Agreement, excluding ordinary wear and tear. All equipment, special tools, improvements, inventory of supplies, spare parts, safety equipment, operating manuals, procedure manuals, operating logs, records and documents and other personal property purchased and billed by Contractor for use in the operation or maintenance practices of the Project will become the property of the Owner upon termination of this Renewal Agreement at no additional cost or expense. However, any equipment or personal property purchased by Contractor and not billed to the Owner or Project will be the property of Contractor and removed from the Project by Contractor at the termination of this Renewal Agreement.

5. SERVICES AND STANDARD OF PERFORMANCE.

5.1 Owner has retained and delegated to Contractor certain responsibilities for operating, maintaining, and managing the Project to ensure that the Project is available to treat the wastewater generated by the Owner’s municipal wastewater system and Contractor meets all requirements under this Renewal Agreement while operating, maintaining and managing the Project.

5.2 Contractor shall perform the services set forth in Appendix A for the Facilities described in Appendix C, within the design capacity and capability of these Facilities as further described in Appendix B.

5.3 Owner has the option to retain Contractor to provide additional professional services as provided for in Appendix H.

5.4 The services performed by Contractor under this Renewal Agreement do not preclude Contractor from proposing on or for providing services to Owner in the future. Information and knowledge gained by Contractor in providing the Services under this Renewal Agreement will not constitute a conflict of interest in proposing on or providing any additional services for Owner.

5.5 Contractor shall perform the Services as an independent contractor and will operate, maintain and manage the Project on behalf of Owner, with the degree of skill and diligence normally employed by operations and maintenance personnel performing the same or similar services and in accordance with Prudent Wastewater Treatment Practice and the requirements of this Renewal Agreement.

5.6 Neither Contractor nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that Contractor is the agent of Owner to the limited extent that this Renewal Agreement expressly grants Contractor a limited authority to act on behalf of Owner when the Parties agree and have clearly defined the Contractor's responsibilities.

5.7 Notwithstanding any provision in this Renewal Agreement to the contrary, unless previously approved by Owner in writing Contractor and any employee, representative, subcontractor or other agent of Contractor are prohibited from taking the specified actions with respect to the matters indicated below:

5.7.1 Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of Owner, including any property or assets purchased by Contractor where the purchase cost is a reimbursable cost;

5.7.2 Make, enter into, execute, amend, modify or supplement any contract or agreement (i) on behalf of, in the name of, or purporting to bind Owner or (ii) that prohibits or otherwise restricts Contractor's right to assign such contract or agreement to Owner at any time;

5.7.3 Create, incur or assume any lien upon the Project or the Facilities;

5.7.4 Take or agree to take any other action that materially varies from the applicable, Budgeted Operational Costs or the requirements of this Renewal Agreement;

5.7.5 Enter into any agreement to do any of the foregoing.

6. OWNER RESPONSIBILITIES.

6.1 Unless specifically stated otherwise in this Renewal Agreement and the Appendices attached hereto, the Owner shall provide to Contractor, as set forth in Appendix D, sufficient funds to pay Budgeted Operational Costs, and pay for all Capital Expenditures which are not included as Budgeted Operational Costs. Contractor will communicate with Owner if either category of the Budgeted Operational Costs are to be exceeded and, subject to the approval requirements set forth in Section A.1.2.14, Owner will be responsible for providing funding for such excess costs. Any loss, damage or injury resulting from Owner's failure to provide Capital Expenditures and/or funds when reasonably requested by Contractor shall be the sole responsibility of Owner.

6.2 Electricity will be paid by the Owner.

6.3 The Owner shall maintain and renew, with respect to all existing portions of the Project, warranties, guarantees, easements, permits, authorizations and licenses granted to the Owner, to the extent the maintenance is not a responsibility of Contractor under this Renewal Agreement. All land, buildings, facilities, easements, licenses, structures, rights-of-way, equipment and vehicles presently or subsequently acquired by Owner will remain the exclusive property of Owner unless specifically agreed upon in writing by the Parties.

6.4 The Owner shall pay all amounts associated with the occupancy or operation of the Project and the performance of the obligations as listed in Appendix A including, but not limited to, all excise, ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project. Taxes imposed upon Contractor's net income and/or payroll taxes for Contractor employees are not included.

6.5 The Owner shall provide Contractor within a reasonable time after request, any piece of Owner's heavy equipment that is available so that Contractor may discharge its obligations under this Renewal Agreement in the most cost-effective manner. In emergency situations, Owner will use its best efforts to provide the requested equipment within one (1) hour of the request.

6.6 When applicable, the Owner shall provide all registrations, licenses and insurance for Owner's vehicles and heavy equipment used in connection with the Project.

6.7 Owner shall provide Contractor use of all vehicles and equipment currently in use at the Project, including the vehicles described in Appendix E. Vehicles and equipment will be in road safe condition. Contractor will be responsible for the cost of operation, maintenance and fuel for vehicles and equipment, unless otherwise agreed to between the Parties. Owner shall retain title and ownership of the vehicles and equipment provided. Use of the vehicles and equipment by Contractor will be limited to duties within the course and scope of this Renewal Agreement, unless otherwise agreed to in writing by the Parties.

The Parties may supplement this Renewal Agreement to provide for an agreed schedule of replacement of the vehicles and equipment and provision of any other insurance coverage deemed necessary or appropriate, subject to an opinion of nationally recognized bond counsel that such change will not adversely impact the tax-exempt status of bonds issued to finance the Project.

6.8 Owner agrees to not offer employment or other compensation to “Project Management” personnel of Contractor directly working on this Project, for a period of one (1) year after the end date of this Renewal Agreement or re-assignment of Project personnel from this Project. For purposes of this Section 6.8, Project Management shall be limited to the Project supervisory staff.

6.9 Owner shall provide to Contractor all data in Owner’s possession relating to the Project, including, but not limited to, operations and maintenance manuals, warranties or any other data necessary to operate, manage and maintain the Project. Contractor may reasonably rely upon the accuracy and completeness of the information provided by the Owner.

6.10 Owner warrants that during the interim period between the initial Project inspection by Contractor during the bidding process and the commencement of Contractor’s services identified in Appendix A, the Project, facilities and equipment have been operated only in the normal course of business, all scheduled and proper maintenance has been performed, and there are no issues known to Owner regarding the condition of the facilities or the Project and/or any equipment used by the Project or facilities. Owner warrants and agrees that it will turn over the Project, facilities and equipment to Contractor in good working order and in compliance with the NPDES permit(s) and all other applicable laws, rules and regulations. In the event Owner fails to comply with the provisions of this clause, Owner will be liable for all costs incurred by Contractor resulting from such failure.

7. COMPENSATION AND PAYMENT.

Appendix D describes and provides for the compensation of Contractor’s Services.

8. INDEMNITY AND LIABILITY.

8.1 To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Owner, its departments, officers, officials, and employees and volunteers without limitation from and against any and all claims (including, but not limited to, workers' compensation or disability claims), damages, losses, liabilities, fees, fines or expenses, including, but not limited to, reasonable attorney fees, and court costs, (collectively “Claims”) relating to, arising from, resulting from any and all claims, damages, losses, liabilities, fee, fines or expenses that are attributable to bodily injury, personal injury, sickness, disease, death or damage to, or destruction of, tangible or intangible property including, without limitation, the loss of use therefrom, to the proportionate extent caused by any negligent act, error, mistake or omission of Contractor, its officers, officials, employees, members, guests, invitees, participants, agents, vendors, subcontractors or

anyone for whose acts Contractor may be liable.

8.2 Owner, to the fullest extent allowable by law, agrees to indemnify and hold Contractor harmless from any claim, liability or damages for property damage or bodily injury, including death, which may arise, except to the proportionate extent caused by the negligence or willful misconduct of Contractor, its employees or its subcontractors.

8.3 In no event will either Party, its subcontractors or their officers or employees be liable for the other Party's incidental, special, indirect or consequential damages, whether such liability arises in breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action.

8.4 Contractor's responsibility is to operate the Project in compliance with current laws and regulations, to the extent of their design and physical capacity. It is not part of Contractor's scope to test for or eliminate water borne bacteria or viruses except as required by current laws and regulations. It is not part of Contractor's scope to comply with new regulations that contain permit limits or Maximum Contaminant Levels that are beyond the capability of the Owner's Facilities.

9. HAZARDOUS SUBSTANCES.

9.1 If Contractor encounters or suspects asbestos or hazardous substances in any form on the Project, Contractor will stop its own work in the affected portions of the facilities to permit testing and evaluation.

9.2 If Contractor suspects asbestos on the facilities, Owner will have, in a timely manner, a qualified contractor perform remediation services. Contractor will have no obligation to resume its performance of the services until it receives adequate proof that the affected area is treated.

9.3 If Contractor suspects hazardous substances other than asbestos on the facilities where Contractor performs services, the Parties may agree for Contractor to conduct tests to determine the extent of the hazardous condition and recommend necessary remedial measures. Contractor will perform these services under a separate agreement negotiated by the Parties and for an additional fee.

9.4 Contractor will not be liable for any delays in performing the services caused by or related to the presence of asbestos or another hazardous substance.

9.5 Contractor assumes no risk and/or liability for any hazardous waste or conditions present at the facilities prior to the commencement of this Renewal Agreement or for any hazardous waste or conditions attributable to any party other than Contractor.

9.6 In the event that Owner requests Contractor, in the performance of the services set forth herein, to execute Hazardous Waste Manifests on its behalf, Owner must execute a Letter of Authorization, the form of which will be agreed upon by both Parties, delegating

such authority to Contractor prior to Contractor undertaking this duty.

9.7 The Parties agree that in the performance of services by Contractor under this Renewal Agreement, Owner is requesting Contractor to undertake inherently unsafe obligations for Owner's benefit involving the presence or potential presence of hazardous substances. Therefore, Owner agrees to hold harmless, indemnify, and defend Contractor from and against any and all claims, losses, damages, liability, and costs including, but not limited to, costs of defense arising out of or in any way connected with the presence, discharge, release, or escape of contaminants of any kind, unless such liability arises out of the negligence or willful misconduct of Contractor, its employees or its subcontractors in the performance of services under this Renewal Agreement.

9.8 Contractor covenants and agrees with Owner that it shall comply with all environmental laws and report, within 24 hours, to Owner any and all environmental noncompliance in connection with the Project, performance of the Services or other provisions of this Renewal Agreement. If at any time during the performance of this Renewal Agreement, a governmental authority having jurisdiction over the Project requires remedial action from Owner or Contractor to correct the rejection of wastewater into the environment (an "Environmental Event"), Contractor shall, if first informed by the governmental authority, deliver prompt notice of the occurrence of such Environmental Event to Owner. Within 24 hours after Contractor has knowledge of the occurrence of an Environmental Event, Contractor shall explain the Environmental Event in reasonable detail and set forth the proposed remedial action, if any. Owner shall, if first informed by the governmental authority of an Environmental Event, inform the Contractor promptly, and Contractor shall explain the Environmental Event in reasonable detail and setting forth the proposed remedial action, if any. Contractor shall promptly provide Owner with copies of all notices from any governmental authority which allege or identify any actual or potential violation or noncompliance received by or prepared by or for Contractor or Owner in connection with noncompliance to any environmental law. Contractor will take all remedial actions necessary and will indemnify Owner pursuant to the provisions set forth in Section 8.

10. FINES AND CIVIL PENALTIES.

10.1 Contractor will be liable for fines or civil penalties, to a maximum aggregate of One Hundred Thousand Dollars (\$100,000) per year, which may be imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance for reasons resulting from Contractor's breach, negligence or willful misconduct during the term of this Renewal Agreement. Owner will assist Contractor to contest any such fines in administrative proceedings and/or in court prior to any payment by Contractor. Contractor shall pay the costs of contesting any such fines.

10.2 Contractor will not be liable for fines or civil penalties that result from violations (i) that occurred prior to the Commencement Date of this Renewal Agreement; (ii) for the

effects of prior violations that have contributed to the assessment of any fine or civil penalty caused by Contractor's negligent operations; (iii) penalties that result from inadequate infrastructure or investment in the technology necessary to comply with permit requirements and/or changes in applicable regulations or (iv) are otherwise directly related to the ownership of the Project.

11. INSURANCE.

11.1 Contractor shall provide the following insurance policies throughout the term of this Renewal Agreement, and shall provide to Owner an ACORD-form Certificate of Insurance ("COI") demonstrating compliance with this provision:

11.1.1 Worker's Compensation providing statutory coverage and Employer's Liability Insurance providing limits of One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) disease-each employee, and One Million Dollars (\$1,000,000) disease-policy limit.

11.1.2 Business Automobile Insurance providing Two Million Dollars (\$2,000,000) combined single limits covering claims for injuries to members of the public and/or damages to property of others arising from the use of Contractor owned or leased motor vehicles, including onsite and offsite operations. Limits may be satisfied using primary and excess/umbrella policies.

11.1.3 Commercial General Liability Insurance providing limits of Five Million Dollars (\$5,000,000) per occurrence and aggregate, covering claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of Contractor or any of its employees or subcontractors for whom Contractor is legally liable. Limits may be satisfied through the use of primary and excess/umbrella policies.

11.1.4 Contractor's Pollution Liability (CPL) Insurance providing limits of Two Million Dollars (\$2,000,000) per claim and aggregate. CPL coverage will provide for liability due to pollution conditions caused by or exacerbated by Contractor and will include coverage related to the remediation of pollutants and for third-party claims alleging bodily injury and/or damage to third-party property due to pollutants. Claims made coverage will include a retroactive date that predates all Work executed per this Renewal Agreement.

11.2 Contractor shall add Owner and Owner's directors, officers, employees, and representatives as additional insured in Contractor's commercial general liability, automobile liability, excess/umbrella, and contractor's pollution liability policies.

11.3 Contractor's commercial general liability, automobile liability, employer's liability, excess/umbrella, and contractor's pollution liability policies will be primary and non-contributory to any other coverage available to Owner.

11.4 Contractor's policy will provide at least thirty (30) days written notice to Owner prior to any cancellation, non-renewal or material change in coverage contemplated in Section 11 (except ten (10) days' notice for non-payment of premium).

11.5 Owner shall maintain the following insurance policies throughout the term of this Renewal Agreement, and shall provide Contractor with a COI to demonstrate compliance with this provision:

11.5.1 "All Risk" Property Insurance covering all property on a replacement cost basis and including Owner-supplied vehicles and equipment for the full fair market value of such property.

11.5.2 Liability Insurance covering all motor vehicles and equipment provided by Owner and operated by Contractor under this Renewal Agreement.

11.6 Owner and Contractor shall provide a waiver of subrogation against the other insurance policies required under Section 11, and each Party shall waive any claim against the other arising in contract or in tort that are covered by their respective insurance policies identified under Section 11.

11.7 Certificates of Insurance ("COI"):

11.7.1 The Parties shall provide a COI evidencing the required insurance policies and endorsements reflecting the coverage requirements herein, limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 11 and its subsections. Certificates of insurance will reference the project name as identified on the first page of this Renewal Agreement.

11.7.2 In the event the COI provided indicates that any required insurance will expire during the period of this Renewal Agreement, the Party shall furnish, on or before the expiration date, a renewed COI as proof that equal and like coverage for the balance of the period of the Renewal Agreement and any extension thereafter has been procured and in effect.

11.7.3 In the event a COI evidencing the renewed coverage is not available prior to the policy renewal date, that Party shall provide to the other Party, within fifteen (15) days of the policy's renewal date. The Party shall furnish the insurance certificates to the other Party immediately upon the first Party's receipt.

12. LABOR DISPUTES.

In the event activities by Owner's employee groups or unions causes disruption in Contractor's ability to perform its obligations under this Renewal Agreement, Owner, with Contractor's assistance, or Contractor at its own option, may seek appropriate injunctive court orders during any such disruption. Contractor shall operate the Project on a best-

efforts basis until any such disruptions cease, but Contractor will not be obligated to assure compliance with all contract conditions.

13. UNFORESEEN CIRCUMSTANCES.

13.1 Neither Party will be liable for damages, delays, or failure to perform its obligations under this Renewal Agreement if such failure is due to any Unforeseen Circumstance beyond its reasonable control. The Party invoking this clause shall notify the other Party immediately by verbal communication and in writing of the nature and extent of the contingency within ten (10) business days after its occurrence and shall take reasonable measures to mitigate any impact of an Unforeseen Circumstance.

13.2 In the case of Unforeseen Circumstances, Owner agrees to pay any costs (including without limitation all overtime charges and additional equipment charges) incurred by Contractor in connection with the Unforeseen Circumstance.

14. ACCESS TO PROJECT AND PROPERTY.

14.1 Owner will make its Project accessible to Contractor as required for Contractor's performance of its services and will secure access to any other Owner property necessary for performance of Contractor's services.

14.2 Contractor will provide 24-hour per day access to Project for Owner's personnel. Owner's employees, designated by Owner's Representative, may visit the Project at any time. Contractor will provide Owner keys for the Project. All visitors to the Project shall comply with Contractor's operating and safety procedures.

15. CHANGES.

15.1 Owner and Contractor, from time to time, may make changes to this Renewal Agreement or to any of the services performed under this Renewal Agreement. The Parties must mutually agree upon all changes. Changes must be in writing in the form of a change order, modification or amendment to the Renewal Agreement executed by both Parties and are subject to receiving an opinion of nationally recognized bond counsel that the change(s) will not affect the tax-exempt status of any bonds financing the Project.

15.2 Owner and Contractor may agree to out-of-scope services performed under the terms of this Renewal Agreement. The Parties must mutually agree upon out-of-scope services. Out-of-scope services must be in writing. Compensation for the out-of-scope services will be invoiced to Owner in an amount equal to the actual increase in Contractor's costs because of the out-of-scope services plus fifteen percent (15%), unless otherwise agreed to by the Parties, and will be due and payable by Owner commencing the month following the out-of-scope services. For any out-of-scope services for which the amount of additional compensation is subject to agreement by the Parties, such change will be subject to an opinion of nationally recognized bond counsel that such change in compensation will not adversely affect the tax-exempt status of bonds issued to finance the

Project.

15.3 In the event scope of services change (“Change in Scope”), Contractor will be entitled to additional compensation in the amount of the actual additional costs Contractor incurs because of the Change in Scope unless specifically stated otherwise in this Section 15. For any change in scope for which the amount of additional compensation is subject to agreement of the Parties, the change will be subject to an opinion of nationally recognized bond counsel that such change in compensation will not adversely affect the tax-exempt status of bonds issued to finance the Project. The occurrence of one or more of the following events will constitute a Change in Scope:

15.3.1 Any change in Project operations, personnel qualifications, required certification, staffing or other cost that is a result of an Unforeseen Circumstance. Contractor’s will invoice Owner the amount equal to actual additional Contractor’s cost-plus fifteen percent (15%). The invoice will be due and payable by Owner commencing the month following when the Change in Scope occurs.

15.3.2 Any change in Project operations, personnel qualifications, required certification, staffing or other cost that is a result of the issuance of a new permit or a permit renewal.

15.3.3 Increases of ten percent (10%) or more in the Wastewater Treatment Plant influent flow or loadings, as set forth in Appendix B, as demonstrated by a twelve (12) month floating average compared to the prior twelve (12) month period. The Parties must mutually agree upon compensation for the Changes in Scope.

15.3.4 Increases in Contractor’s health care costs above the applicable CPI or ECI for the twelve (12) month period for which the annual increase is calculated. In the event health care costs increase, Contractor is entitled to increase its Base Fee in excess of the formula set forth in Appendix D.4, in an amount equal to the actual increase in costs.

15.3.5 Increases or decreases in rates or other related charges (including taxes) imposed upon Contractor by a taxing authority, excluding taxes based on Contractor’s net income. In the event rates or other related charges change, the Parties may increase or decrease the Base Fee by an amount equal to cost differential associated with the change.

15.3.6 Support services provided by Contractor for Owner’s capital projects. Parties must mutually agree upon compensation for the Changes in Scope.

16. NO PARTNERSHIP; THIRD-PARTIES. Contractor warrants that it will take no position inconsistent with it being a service provider to the Owner. It is not intended by this Renewal Agreement to, and nothing contained in this Renewal Agreement shall, create any partnership, joint venture or other agreement between the Owner and the Town. This Renewal Agreement gives no rights or benefits to anyone other than Owner and Contractor and has no third-

party beneficiaries.

17. WARRANTIES.

17.1 To the best of its knowledge, Contractor warrants that all materials and equipment furnished under this Renewal Agreement will be of good quality and free from defective workmanship and materials.

17.2 Contractor shall pass through to Owner the warranty extended by the manufacturer for all products, equipment, systems or materials.

17.3 All other warranties, express or implied, including any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.

18. GOVERNING LAW. This Renewal Agreement and the rights and obligations of the Parties hereunder shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Arizona, without regard to conflicts of laws principals.

19. JURISDICTION AND VENUE. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Renewal Agreement shall be brought in a state court in Cochise County, Arizona or, if applicable, a federal court located in the District of Arizona and each of the Parties to this Renewal Agreement hereby consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law.

20. ATTORNEYS' FEES. In the event of any actual litigation between the Parties in connection with this Renewal Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

21. SEVERABILITY AND SURVIVAL. In the event that any phrase, clause, sentence, paragraph, or other portion of this Renewal Agreement shall be illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Renewal Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law and the Parties will negotiate diligently in good faith for such amendments of this Renewal Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

22. AUTHORITY. Both Parties represent and warrant to the other Party that the execution, delivery and performance of this Renewal Agreement have been duly authorized by the responsible Parties thereof. Both Parties warrant that all required approvals have been obtained and the executing individual has authority to bind the Party.

23. CONFLICT OF INTEREST. This Renewal Agreement is subject to the provisions of

A.R.S. § 38-511.

24. E-VERIFY REQUIREMENTS. To the extent applicable under A.R.S. § 41-4401, Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). Contractor's or its subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of this Renewal Agreement and may result in the termination of this Renewal Agreement by the Owner. The Owner retains the legal right to randomly inspect the papers and records of Contractor and its subcontractors who work on this Renewal Agreement to ensure that Contractor and its subcontractors are complying with the above-mentioned warranty.

25. AGREEMENT SUBJECT TO APPROPRIATION. The Owner is obligated only to pay its obligations set forth in this Renewal Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Owner's then current fiscal year. The Owner's obligations under this Renewal Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Owner concerning budgeted purposes and appropriation of funds. Should the Owner elect not to appropriate and budget funds to pay its Renewal Agreement obligations, this Renewal Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Owner shall be relieved of any subsequent obligation under this Renewal Agreement. The parties agree that the Owner has no obligation or duty of good faith to budget or appropriate the payment of the Owner's obligations set forth in this Renewal Agreement in any budget in any fiscal year other than the fiscal year in which this Renewal Agreement is executed and delivered. The Owner shall be the sole judge and authority in determining the availability of funds for its obligations under this Renewal Agreement. The Owner shall keep Contractor informed as to the availability of funds for this Renewal Agreement. The obligation of the Owner to make any payment pursuant to this Renewal Agreement is not a general obligation or indebtedness of the Owner. Contractor hereby waives any and all rights to bring any claim against the Owner from or relating in any way to the Owner's termination of this Renewal Agreement pursuant to this Section 25. Nothing set forth in this Section 25 shall be construed as a waiver by Contractor of its right to bring claims against Owner for all other matters related to this Agreement.

26. ISRAEL. To the extent A.R.S. § 35-393 through § 35-393.03 are applicable, the Parties hereby certify that they are not currently engaged in, and agree for the duration of this Renewal Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S. § 35-393.

27. FORCED LABOR OF ETHNIC UYGHURS PROHIBITED. By entering into this Renewal Agreement, Contractor certifies and agrees Contractor does not currently use and will not use for the term of this Renewal Agreement: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

28. NOTICES. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been fully delivered upon personal delivery or as of the second business day after mailing by United States Mail, postage prepaid, by Certified Mail, return receipt requested, addressed as follows:

To Owner:

City of Bisbee
Attn: City Manager
76 Erie Street
Bisbee, Arizona 85603

Copy to:

Pierce Coleman
Attn: Joseph D. Estes, City Attorney
2812 N. Norwalk, Suite 107
Mesa, Arizona 85215

To Contractor:

Operations Management International Inc.
ATTN: OMFS Counsel
6312 S. Fiddler's Green Circle, Suite 300N
Greenwood Village CO 80111

Notice of address may be changed by any Party by giving notice to the other Parties in writing of a change of address. Such change shall be deemed to have been effectively noticed five days after mailed by the Party changing address.

29. NO WAIVER. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either Party of any breach of any of the terms, covenants or conditions of this Renewal Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

30. SURVIVAL OF PROVISIONS. Any terms or conditions of this Renewal Agreement that require acts beyond the date of its termination will survive the termination of this Renewal Agreement, will remain in full force and effect unless and until the terms of conditions are completed, and will be fully enforceable by either Party.

31. ASSIGNMENT. Neither Party will have the power to or will assign any of the duties or rights or any claim arising out of or related to this Renewal Agreement, whether arising in tort, contract or otherwise, without the prior written consent of the other Party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Renewal Agreement is binding on and inures to the benefit of the parties and their respective permitted successors and assigns.

32. **ENTIRE AGREEMENT.** This Renewal Agreement contains the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, between the Parties with respect to the subject matter of this Renewal Agreement. Neither Party will be bound by or be deemed to have made any representations, warranties, commitments, or other undertakings with respect to the subject matter of this Renewal Agreement that are not contained in this Renewal Agreement.

33. **CAPTIONS AND HEADINGS.** The captions and headings of Sections contained in this Renewal Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Renewal Agreement or the intent of any provision hereof.

34. **COUNTERPARTS.** This Renewal Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

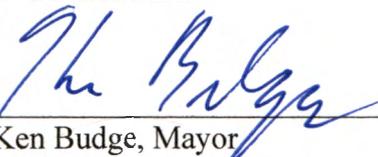
IN WITNESS WHEREOF, the Parties have caused this Renewal Agreement to be executed by the respective authorized representatives as of the date first set forth above.

“CONTRACTOR”
OPERATIONS MANAGEMENT INTERNATIONAL, INC.

By: 

Paul Rheault
Operations Director

“OWNER”
CITY OF BISBEE

By: 

Ken Budge, Mayor

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:



Joseph D. Estes, City Attorney

APPENDIX A - SCOPE OF SERVICE

Contractor shall perform the following services for the benefit of the Owner:

A.1 GENERAL

A.1.1 Staff

- A.1.1.01 Staff the Project with a sufficient number of qualified employees who possess the managerial, administrative, and technical skills to perform the services specified in this Agreement.
- A.1.1.02 A designated Project Manager with appropriate certification required by the State of Arizona will be in responsible charge of the facility from at least Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Working hours for other staff will be determined based on facility needs, in coordination with the City. Contractor shall be responsive to alarms and emergency calls 24 hours per day, 7 days per week, within one (1) hour of its occurrence. Contractor shall designate a minimum of one (1) staff member as standby to respond to alarms and emergency calls.
- A.1.1.03 Place at each permanently staffed Project facility, a copy of Contractor's corporate safety program and provide all employees training specific to this Program, within forty-five (45) days from the Commencement Date of this Agreement. Owner will pay the cost of any capital improvement required at the Project to bring the facilities within OSHA compliance.
- A.1.1.04 Provide and document job related training for personnel in the areas including but not limited to operation, quality, maintenance, safety, supervisory skills, regulatory compliance, laboratory, and energy management. Where the law or regulation requires employees to hold current licenses, certificates or authority to perform the work required of their respective positions, Contractor shall provide the training and agree with the employee to a reasonable time frame for the employee to qualify for such certificate, license or authority.
- A.1.1.05 Comply with all State and Federal requirements regarding affirmative action and provisions for minority hiring.

A.1.2 Alterations, Repairs and Maintenance

- A.1.2.01 Alter, as needed, the process and/or facilities to achieve the objectives of this Agreement. No alteration will be executed without Owner's written approval if alteration will cost in excess of Five Thousand Dollars (\$5,000.00), with the exception of repairs included under Budgeted Operational Costs Repair fund of Seventy-Five Thousand Dollars (\$75,000).
- A.1.2.02 Perform Preventative Maintenance and Repairs for the Project, subject to the Repairs Limit.

- A.1.2.03 Pay all Budgeted Operational Costs for the year set forth in this Agreement, except for electricity, which shall be provided for by the Owner.
- A.1.2.04 Maintain aesthetics of the facilities, including maintaining all facilities in a clean, neat and orderly fashion, which shall include grounds maintenance of the solar panel field, including weed removal, trash and debris collection and removal. Solar-panel maintenance shall also include logging inverter readings on a daily basis and tracking solar-panel assets in the computerized maintenance management system. Contractor shall include in the monthly report a summary of the solar-panel operation, including repair recommendations for Owner approval. Contractor will provide oversight and management of solar-panel repair work approved by the Owner, which will be provided through a third party with repair costs credited against the Repairs Limit.
- A.1.2.05 Keep administrative and other occupied spaces clean, dry, and habitable. Other spaces and floors will be free of sewage, screenings, sludge, and debris.
- A.1.2.06 Equipment, tools, and material will be properly stored.
- A.1.2.07 Keep trees and shrubs trimmed, maintain grass, and keep other grounds free of noxious weeds.
- A.1.2.08 In any emergency affecting the safety of persons or property, or regulatory compliance, Contractor shall act without written amendment or change order, at Contractor's discretion, to prevent threatened damage, injury or loss; In the event emergency expenditures exceed Five Thousand Dollars (\$5,000.00) in aggregate, Contractor shall obtain prior approval from Owner. Contractor will notify Owner of the emergency as soon as reasonably possible, and Owner will compensate Contractor for any emergency work notwithstanding the lack of written amendment or change order. Such compensation will include Contractor's direct costs for the emergency work plus fifteen percent (15%).
- A.1.2.09 Utilize Owner provided security devices during Contractor's hours of operation to protect against any losses resulting from theft, damage, or unauthorized use of the Project. Existing security devices include fencing, lockable structures, and limited intrusion alarm. Upon exiting the Project, Contractor shall lock all Project gates and structures and activate any security alarms.
- A.1.2.10 Contractor will provide Owner within the first ninety (90) days after contract award, recommended capital improvements Contractor believes are required for any of the facilities under the contract. Contractor shall not be relieved of his responsibilities to perform if the recommendations are not implemented by the Owner, however Owner shall be solely responsible for all costs, expenses, damages, losses related to the failure to authorize such improvement.
- A.1.2.11 Contractor shall provide a computerized maintenance management system to document equipment inventory, condition, maintenance and repair activities, and laboratory management systems.

- A.1.2.12 The Owner may from time to time, desire for Contractor to provide for and finance Capital Expenditures on behalf of Owner. In such circumstances, Contractor shall perform and/or finance such improvements in accordance with mutually agreed upon terms and conditions negotiated between the Parties. In the event that Contractor is unable to perform or finance such improvements or the parties are unable to reach agreement on terms for the services to be performed, Owner shall not be relieved of its obligations relating to Capital Expenditures under the terms of this Agreement.
- A.1.2.13 Contractor will assist Owner in preparation of annual operating budgets as needed.
- A.1.2.14 Contractor will operate the Project within the annual operating budget and the capital budget approved by the Owner, unless Contractor obtains Owner approval to exceed such budget. (Owner approval will not be required for amounts expended that exceed the operating budget by \$5,000 and the capital expenditure budget by \$5,000.) Contractor will obtain Owner approval before disposing of a Capital Asset.

A.2 WASTEWATER TREATMENT PLANT

- A.2.1 Within the design capacity and capability of the Wastewater Treatment Plant (the “WW Plant”), manage, operate, and maintain the WW Plant so that effluent discharged from the WW Plant meets of the Clean Water Act and the requirements specified in NPDES Permit No. AZ0002607 and other applicable/related permits issued by EPA, the State or local authorities, unless one or more of the following occurs: (i) WW Plant influent does not contain Adequate Nutrients to support operation of the WW Plant’s biological processes and/or contains Biologically Toxic Substances or other substances that may cause pass-through or interference that cannot be removed by the existing processes and facilities; (ii) discharge into Owner’s sewer system that violate any or all regulations as stated in the applicable Sewer Ordinance and, (iii) the flow, influent biochemical demand (BOD₅,) and/or total suspended solids (TSS) exceeds the WW Plant’s design parameters and other parameters that exceed the plant’s Maximum Allowable Headworks Loadings; in which case Appendix B specifies responsibilities and remedies.
- A.2.2 Within the design capacity and capability of the WW Plant, operate the WW Plant in a manner that minimizes odor and noise.
- A.2.3 Prepare and submit to Owner for transmittal to appropriate agencies, all regulatory reports pertaining to routine operation and maintenance of the facilities specified in this Agreement.
- A.2.4 Comply with all current local, State and Federal notice and reporting requirements, regarding violations, upsets, excursions, or emergencies related to the Plant.
- A.2.5 Assist the Owner with the NPDES permit renewal process by providing Project information within Contractor’s possession and control. Any additional assistance requested by the Owner will constitute a Change in Scope.

- A.2.6 Provide for the disposal of screenings, grit, scum, sludges, and biosolids (collectively, “Residuals”) to existing disposal sites. Any change in the cost of this service due to increased or unusual quantities of material, or increases in landfill rates, hauling costs, or tipping fees will be approved as provided in Section A.1.2.14 and paid by the Owner. Owner and Contractor agree that Owner is the owner and Generator of the Residuals.
- A.2.7 If Contractor uses land application as the method for disposal of biosolids, Contractor shall comply with the State and Federal regulations, including 40 CFR 503 applicable to the land application method. Specifically, Contractor shall assist Owner in securing all permits and land use agreements, perform soils and biosolids testing, and report the volume and quantity of biosolids land applied. Contractor may use the existing Owner secured permits and land application sites.
- A.2.8 Where applicable, monitor and report the volume and nature of septic tank hauler discharges.
- A.2.9 Perform all laboratory testing and sampling currently required by the State and Federal Clean Water Act, NPDES Permit, NPDES referenced documents and all Federal or State issued permits. Contractor will provide additional laboratory testing and sampling requested by the Owner on a fee per test basis to be determined at the time of the request. This additional testing will constitute a Change in Scope.
- A.2.10 Provide and document all Preventive Maintenance for the WW Plant. Owner will have the right to inspect these records during normal business hours.
- A.2.11 Provide and document Repairs for the WW Plant. Contractor will provide Owner with a monthly report on the expenditures of Repairs.
- A.2.12 Contractor shall not be responsible for providing Operational Technology (OT) cybersecurity for the Project under the terms of this Agreement beyond routine maintenance of Owner’s existing infrastructure, nor shall Contractor be responsible for ensuring the Project or any component thereof is free of any cyberthreats, breaches or vulnerabilities.

Contractor may elect, with Owner’s prior consent, to install cyberthreat monitoring technology at the Project, in which case Contractor shall use reasonable efforts to alert Owner to any threats or vulnerability that Contractor becomes aware of. However, despite the installation of any such program or technology, Contractor shall not, under the terms of this Agreement, be responsible for the provision of cyber monitoring or security of the Project (including as necessitated by good industry practice or as required by Applicable Law).

Owner may elect to hire Contractor or Contractor’s Affiliate to provide cybersecurity monitoring under a separate agreement.

APPENDIX B - CAPACITY AND CHARACTERISTICS

B.1 CAPACITY AND CHARACTERISTICS OF WASTEWATER TREATMENT PLANT

B.1.1 Wastewater Treatment Plant Design Capacity is described as follows:

Parameter	Plant
Flow, million gallons/day	0.81
BOD ₅ , pounds per day	2,026
TSS, mg/L	2,026
Daily Peaking Factor	2.1

All parameters will be based on the design average dry weather flow with the Daily Peaking Factor being the multiplier applied to the design average dry weather flow.

B.1.2 Contractor will not be responsible for fines or legal action resulting from discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances, and the subsequent recovery period.

B.1.3 The Base Fee for services under this Agreement is based on actual plant conditions over the previous 12 months, including flows and loads. Any deviation in excess of 10% of the average wastewater flows and loads over the previous 12 months will require both parties to mutually agree on a commensurate adjustment to the Base Fee. Such adjustment will not reflect, in whole or part, the net income or net losses of the Project.

APPENDIX C - LOCATION OF PROJECT

- C.1** Contractor agrees to provide the services necessary for the operation, maintenance, and management of the facilities described in Appendix C.
- C.1.1** All equipment, grounds, and facilities now existing within the current property boundaries of or being used to operate Owner's WW Plant located at:

940 W Purdy Lane, Bisbee AZ 85603

APPENDIX D - COMPENSATION, PAYMENT AND BASE FEE ADJUSTMENT FORMULA

D.1 COMPENSATION

D.1.1 For the first year of this Agreement, Owner shall pay to Contractor \$878,373 representing a Base Fee of \$803,373 and \$75,000 for Budgeted Operational Costs. Subsequent years' base fees shall be determined as specified in Appendix D.4.

D.1.1.01 From the Base Fee, the Contractor will pay its direct and indirect expenditures for Project including management labor, employee benefits, and training of employees of the Contractor. Contractor represents that any compensation, including bonuses, that it pays to its employees will not reflect, in whole or part, the net profits or losses of the Project.

D.1.1.02 The Contractor will pay Budgeted Operational Costs specified in the Agreement and Appendices thereto in the amount stated in D.1.1 for such purpose. The Budgeted Operational Costs shall be allocated as follows:

(a) Repairs Expenditures - \$75,000

(b) Other Expenditures - N/A

D.1.1.03 The services provided under this Agreement assume reasonably expected overtime for normal breakdowns or services required after hours. Any additional expenses including straight or overtime wages caused by Unforeseen Circumstances will be billed to Owner for reimbursement of the actual costs incurred.

D.1.2 Limitations

D.1.2.01 The total amount Contractor will be required to pay for Repairs will not exceed the annual Repairs Limit of \$75,000 for the contract year identified under Appendix D.1.1. Contractor shall provide Owner with a detailed invoice of Repairs over the annual Repairs Limit, and Owner shall pay Contractor for all Repairs in excess of such limit. Contractor shall rebate to Owner the entire amount that the cost of Repairs is less than the annual Repairs Limit.

D.2 CHANGES IN COMPENSATION

D.2.1 Changes in the Base Fee will be negotiated annually, three (3) months prior to anniversary of the Commencement Date hereof. Base Fee adjustments will be negotiated taking into consideration expenditures for Project management labor, employee benefits, chemicals, electricity, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships, training supplies and other direct and indirect costs, as the basis of adjustment of the Base Fee, and will be subject to an opinion from nationally recognized bond counsel that such

changes do not adversely affect the tax-exempt status of bonds issued to finance the Project. Owner and Contractor agree that good faith negotiations resulting in mutual agreement are the preferred methodology to be used to determine changes in the Base Fee and Budgeted Operational Costs. In the event that Owner and Contractor fail to agree, the Base Fee and Budgeted Operational Costs will be adjusted using the Base Fee and Budgeted Operational Costs Adjustment Formula shown in Appendix D.4. Upon each contract year renegotiation, Contractor shall continue to invoice Owner at the previous amount until written agreement between the Parties as to the new contract year Base Fee and Budgeted Operational Costs, upon which Contractor shall issue an invoice retroactively adjusting the previous contract year Base Fee amount.

D.2.2 The Parties will negotiate compensation for Changes in Scope in accordance with Appendix B.

D.3 PAYMENT OF COMPENSATION

D.3.1 One-twelfth (1/12) of the annual Base Fee for the current year will be invoiced on the first of the month preceding the month that services are provided. One-twelfth (1/12) of the annual Budgeted Operational Costs for the current year will be invoiced on the first of the month preceding the month that services are provided. For Repairs, Contractor shall submit to Owner a spreadsheet along with corresponding invoices detailing the actual costs of Repairs with invoices. Any Repair cost that exceeds the annual Repairs Cost budget as denoted in Section D.1.1 shall be preapproved by Owner and invoiced monthly at Contractor cost along with a fifteen percent (15%) markup.

D.3.2 All other compensation to Contractor is due on receipt of Contractor's invoice and payable within fifteen (15) calendar days.

D.3.3 Owner shall pay interest at an annual rate equal to nine percent (9%), subject to limitation provided by law, on payments not paid and received within fifteen (15) calendar days. Interest will be calculated from the due date of the invoice. Unpaid compensation, inclusive of interest, will be paid no later than the earlier of (i) five years after the original due date, and (ii) the termination date of the Agreement.

D.3.4 In the event of a contested billing, Owner may only withhold the contested portion from payment. The Owner will pay Contractor the undisputed portion in accordance with Appendix D.3.2. Interest will accrue on any contested portion of the billing and shall be immediately payable if the contested billing is resolved in favor of Contractor. No interest will be due on any contested portion of the billing if the contested portion is mutually resolved.

D.4 BASE FEE AND BUDGETED OPERATIONAL COST ADJUSTMENT FORMULA

$$ABF = BF \times AF$$

Where:

BF = Base Fee and Budgeted Operational Costs specified in Appendix D.1.1

ABF = Adjusted Base Fee and Budgeted Operations Costs

AF = Adjustment Factor as determined by the formula:

$$AF = [((ECI) .50 + (WSI) .50)] + 1.02$$

ECI = The twelve-month percent change (from the 4th quarter of the calendar year two years to the 4th quarter in the prior calendar year) in the Employment Cost Index for Total Compensation for Civilian Workers, Not Seasonally Adjusted as published by U. S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series ID: CIU1010000000000A.

WSI = The twelve-month percent change (from December of the calendar year two years prior to December of the prior calendar year) in the Water and Sewer and Trash Collection services in US City average for All Urban Consumers, Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUSR0000SEHG.

APPENDIX E - PROJECT VEHICLES AND EQUIPMENT

Owner will permit the use of City-owned vehicles for Contractor, including:

- Backhoe

APPENDIX F - PERMITS

- AZPDES Permit AZ0026077 Fact Sheet is hereby incorporated by reference.

APPENDIX G - SPECIAL PROJECTS

The Parties hereby list certain special projects that may be performed pursuant to Section 15.1 of the Agreement.

Upon receipt of a preliminary notice to proceed from Owner, Contractor shall provide in writing final scope, price, and billing methodology (i.e., lump sum, time and materials, etc.). If the price provided exceeds the funds allocated by Owner, the Parties shall in good faith revise the scope or identify additional funds and issue a final notice to proceed or may cancel the project and not issue a final notice to proceed.

The estimated price for each project is noted below:

Description	Estimated Price
WAS Vault Cleaning and inspection	\$60,000
New Project #2	TBD

APPENDIX H – PROFESSIONAL SERVICES SUPPLEMENTAL TERMS

The below referenced supplemental terms and conditions shall apply to all engineering and consulting services provided by Contractor during the Term of the Agreement. In the event of a conflict between the terms and conditions of the Agreement and the supplemental terms set forth below, the supplemental terms shall prevail, but only with respect to the engineering or consulting services.

1. Warranty.

- A. Contractor warrants that Services provided will be performed in accordance with generally accepted standards in the industry. Following completion of its Services and for a period of twelve (12) months thereafter, if the Services provided hereunder do not conform to the warranty above stated and the same is reported to Contractor by Owner in writing promptly after recognition thereof, Contractor shall, at no cost to Owner, furnish all remedial Services required in connection therewith as soon as reasonably possible after receipt of such report from Owner; and Owner shall have no liability for costs related to the repair, replacement, addition or deletion of materials, equipment or facilities as a result of such failure to conform to the above-referenced warranties, which costs shall be deemed costs of the project, whether incurred during performance of the Services or after completion of the Services.
- B. Contractor's warranties shall not apply to any defect which results from: ordinary wear and tear, misoperation, corrosion or erosion, noise levels, operating conditions more severe than those contemplated in the original design, or a defect in a process or mechanical design or equipment furnished or specified by Owner or others.
- C. All representations, warranties and guarantees made by Contractor in connection with its Services are limited to those set forth above. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED. For any deficiencies in the services, Owner shall be restricted to the remedies expressly set forth in these supplemental terms; such remedies are Owner's sole and exclusive remedies for deficiencies in the Services and Owner hereby waives any and all other remedies, whether at law or in equity, and regardless of whether the claim is asserted under contract, tort (including the concurrent or sole and exclusive negligence of Contractor), strict liability or otherwise.

2. Indemnification.

- A. Contractor will defend, indemnify and hold Owner harmless from all claims, liabilities, demands, costs, expenses (including attorneys' fees) and causes of action arising out of third-party claims for bodily injury (including death) and damage to tangible property to the extent caused by a negligent act or omission of Contractor, its employee or subcontractor. Owner hereby agrees to release, waive all rights of subrogation against, defend, indemnify and hold Contractor harmless from all claims, liabilities, demands, costs, expenses (including attorneys' fees) and causes of action arising out of bodily

injury (including death) to any person or damage or loss to any property (“Harms”), irrespective of Contractor’s fault (including, without limitation, breach of contract, tort including concurrent or sole and exclusive negligence, strict liability or otherwise of Contractor), when the Harms result from (i) the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; (ii) errors or omissions in Contractor’s Services due to Contractor being required, directly or indirectly, by Owner to take certain actions contrary to the recommendations of Contractor; and (iii) the acts, errors, omissions or negligence of Owner, its employee or other contractor.

3. Limitation of Liability.

The total aggregate liability of Contractor arising out of the performance of consulting or engineering services under this Agreement or breach of this Agreement in performance thereof shall not exceed one-hundred percent (100%) of the compensation paid to Contractor for such consulting or engineering services. Notwithstanding any other provision of this Agreement, Contractor shall have no liability to the Owner for contingent, consequential or other indirect damages including, without limitation, damages for loss of use, revenue or profit (direct or indirect); operating costs and facility downtime; or other similar business interruption losses, however the same may be caused. The limitations and exclusions of liability set forth in this Article shall apply regardless of the fault, breach of contract, tort (including negligence), strict liability or otherwise of Contractor, its employees or subcontractors. The Parties agree that the limitations of liability and waiver of damages as set forth herein shall not be interpreted as a form of indemnification.

4. Ownership of Instruments of Service and Data.

- A. Owner agrees to defend, indemnify and hold harmless Contractor and its employees from and against claims resulting from re-use of the design data, drawings, estimates, calculations and specifications prepared by Contractor (“instruments of service”) on extensions of the project or at a location other than that contemplated by this Agreement. Owner is advised that should Owner re-use the instruments of service at another location, the instruments of service should be reviewed and sealed by Owner or a Contractor licensed in the jurisdiction where the instruments of service are sought to be re-used.
- B. All materials and information that are the property of Owner and all copies or duplications thereof shall be delivered to Owner by Contractor, if requested by Owner, upon completion of Services. Contractor may retain one complete set of reproducible copies of all of its instruments of service.
- C. All specifications, drawings, and other engineering documents that are prepared by Contractor shall be certified or sealed by a registered professional Contractor. Such certifications or seals shall be valid for the state in which the specifications, drawings, or other Engineering documents are to be used or applied.

5. Construction Phase Services.

If this Agreement includes the furnishing of any Services during the construction, the following terms will apply:

- A. If Contractor is called upon to observe the work of Owner's construction contractor(s) for the detection of defects or deficiencies in such work, Contractor will not bear any responsibility or liability for such defects or deficiencies or for the failure to so detect. Contractor shall not make inspections or reviews of the safety programs or procedures of the construction contractor(s) and shall not review their work for the purpose of ensuring their compliance with safety standards.
- B. If Contractor is called upon to review submittals from construction contractors, Contractor shall review and approve or take other appropriate action upon construction contractor(s)' submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents. The Contractor's action shall be taken with such reasonable promptness as to cause no delay in the work while allowing sufficient time in the Contractor's professional judgment to permit adequate review. Review of such submittals will not be conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the construction contractor, all of which remain the responsibility of the construction contractor. The Contractor's review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences or procedures. The Contractor's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- C. Contractor shall not assume any responsibility or liability for performance of the construction services, or for the safety of persons and property during construction, or for compliance with federal, state and local statutes, rules, regulations and codes applicable to the conduct of the construction services.
- D. All services performed by others, including construction contractors and their subcontractors, shall be warranted only by such others and not by the Contractor.
- E. All contracts between Owner and its construction contractor(s) shall contain broad form indemnity and insurance clauses in favor of Owner and Contractor, in a form satisfactory to Contractor.