

***Agreement For
Operations, Maintenance and Management Services***

THIS AGREEMENT is entered into this 1st day of November 2014 (the “Effective Date”), by and between

The **City of Crossville, Tennessee**, with its principal mailing address at 392 N. Main Street, Crossville, Tennessee, 38555 (hereinafter “CITY”);

and

Veolia Water North America - South, LLC, with its principal mailing address at 14055 Riveredge Drive, Suite 240, Tampa, FL 33637 (hereinafter “VWNA”).

WHEREAS, CITY owns and provides for the operation of wastewater and related treatment facilities, including the operation of an Industrial User Pretreatment Program (“IUPR”), and provide service for the Collection System Rehabilitation Program (“CSRP”); and,

WHEREAS, CITY, pursuant to that certain Amendment One to the Agreement for Operations and Maintenance Services between The City of Crossville, Tennessee and Professional Services Group, Inc. (now “VWNA”) entered into as of November 1, 2004 (the “Original Agreement”), CITY has employed the services of VWNA in the management, operation and maintenance (“O&M Services”) of these facilities and the administration of the IUPR, and VWNA has been performing such services for the compensation provided for herein;

WHEREAS, the Original Agreement expires on October 31, 2014; and

WHEREAS, the CITY desires to continue to employ, and VWNA desires to continue to perform the O&M Services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, CITY and VWNA agree as follows:

1. General

- 1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by CITY shall remain the exclusive property of CITY unless specifically provided for otherwise in this Agreement.

- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee. The parties agree that any disputes related to this Agreement shall be resolved exclusively in accordance with Article 13.
- 1.4 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld, conditioned or delayed. Any assignment in violation of this provision shall be void *ab initio*.
- 1.5 All notices, consents, approvals or other communications required by this Agreement, shall be in writing and transmitted to the party's address stated above. A copy of any notice given to CITY or to VWNA shall also be provided to the Designated Representative (as defined herein) of the party to receive such notice, with additional copies of notices to VWNA sent to: Veolia North America, 53 State Street, 14th Floor, Boston, MA 02109 Attn: General Counsel. All notices shall be deemed given when delivered, if delivered personally or by courier mail service, i.e., Federal Express or UPS, delivered after such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt requested; or received by the party for which notice is intended if given in any other manner.
- 1.6 This Agreement, including Appendices A through F, is the entire Agreement between the parties, and supersedes all prior agreements between the parties, including without limitation, the Original Agreement, any amendments and all communications prior to the execution of this Agreement. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "VWNA" and "CITY" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood that the relationship of VWNA to the CITY is that of independent contractor. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services shall not be considered engineering services and nothing herein is intended to imply that VWNA is to supply professional engineering services to CITY unless specifically stated in this Agreement to the contrary.

- 1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), power(s) or privilege(s).
- 1.11 Prior to the commencement of work under this Agreement, each party shall designate in writing an employee or other representative (the “Designated Representative”) of the designating party who shall have full authority and responsibility to approve changes in the Scope of Work and compensation therefore, execute written Change Orders reflecting such changes, render decisions promptly, and furnish information expeditiously to the other party when necessary.
- 1.12 This Agreement shall be interpreted in accordance with its plain meaning and not strictly for or against either party hereto.

2. Ownership of the System

- 2.1 All Project land, buildings, facilities, easements, rights of way, licenses, intellectual property and other intangible assets, data, tools, materials, spare parts, communication and computer hardware and software used or installed, equipment, machinery, television inspection equipment, service vehicles, backhoes and other tools reflected on the CITY’s balance sheet or hereafter acquired by the CITY solely for use with the Project shall be referred to herein as “City Assets”. The City Assets shall remain the property of the City, as well as any structures and improvements added to the Project or repairs made thereto, whether made or paid for by the CITY, VWNA or otherwise, unless specifically provided for otherwise.
- 2.2 During the term of this Agreement and any extension term, VWNA shall have the exclusive use of such City Assets for purposes of operating the Project and providing all services hereunder and shall have the flexibility to remove, relocate, modify, reprogram, reconfigure, dispose of, improve, repair, trade in, liquidate and replace any such personal and intellectual property and to otherwise make improvements upon real or leased property as contemplated herein and may use spare parts, inventory and supplies as necessary for the operation of the Project provided that it maintains appropriate inventory levels of such spare parts (excluding capital spares).
- 2.3 Nothing herein shall be deemed to constitute a sale, lease or other disposition of all or any of the assets of the Project to VWNA.

- 2.4 Upon expiration or termination of the Agreement for a reason other than the CITY's default, title to any equipment, vehicles and other personal property purchased by VWNA for use in connection with the Project shall remain the property of VWNA, and where applicable, the CITY will agree to execute appropriate instrument or documents of title for the transfer of such property free of all liens and encumbrances.
- 2.5 Nothing herein shall be deemed to constitute a transfer, license or granting of any rights to the CITY in any software, or other intellectual property acquired, designed, created, used or modified by VWNA for use by VWNA with the Project.

3. VWNA's Services – General

- 3.1 VWNA shall provide a sufficient number of certified and qualified personnel, including management, administrative, operational, technical, laboratory and clerical, who meet relevant State of Tennessee requirements and certifications regarding wastewater treatment and sewer collection operations, maintenance and management and are capable and demonstrate experience necessary to operate the facilities covered by this Agreement.
- 3.2 In connection with the performance of the Services, VWNA shall provide ongoing training and education for appropriate personnel in all necessary areas of modern process control, maintenance, safety, and supervisory skills.
- 3.3 VWNA shall develop and/or supply and utilize computerized programs for maintenance, process control, cost accounting, and laboratory Quality Assurance/Quality Control. Such programs shall be capable of readily providing historical data and trends.
- 3.4 Within fifteen (15) days after VWNA begins service under this Agreement, VWNA will provide a physical inventory of the CITY's vehicles and equipment in use at the Project and a general statement as to the condition of each vehicle or piece of equipment.
- 3.5 VWNA will provide CITY with a physical inventory of chemicals and other consumables on hand when VWNA begins services under this Agreement. VWNA will provide CITY with the same quantity of chemicals or equivalent upon termination of this Agreement.
- 3.6 VWNA shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by CITY and assist CITY in enforcing existing equipment warranties and guarantees.

- 3.7 VWNA shall provide the CITY with full documentation that preventive maintenance is being performed on CITY's owned equipment in accordance with manufacturer's recommendations at intervals and in sufficient detail as may be determined by the CITY. Such a maintenance program must include documentation of corrective and preventive maintenance and a spare parts inventory.
- 3.8 VWNA shall operate, maintain and/or monitor (including remote monitoring) the Project on a 24-hour per day, seven day per week schedule. Electronic monitoring will also be utilized for remote monitoring of the lift stations as well as critical equipment at the Wastewater Treatment Plant.
- 3.9 Visits may be made at a reasonable time by CITY's officers so designated by the CITY's representative. Keys for the Project shall be provided to CITY by VWNA for such visits. All visitors to the Project shall comply with VWNA's operating and safety procedures.
- 3.10 VWNA will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to CITY regarding the need, if any, for CITY to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to VWNA's operations hereunder and federal regulations promulgated pursuant to the Americans with Disability Act ("ADA"). Nothing herein shall be construed to place upon VWNA a duty to find and report violations of either the safety laws or the ADA at the Facility.
- 3.11 VWNA may modify the process and/or facilities to achieve the objectives of this Agreement and charge the Costs to the Maintenance and Repair Limit; provided, however, no modification shall be without CITY's prior written approval if the complete modification Cost shall be in excess of One Thousand Dollars (\$1,000.00).
- 3.12 In any emergency affecting the safety of persons or property, VWNA may act without written amendment or change order, at VWNA's discretion, to prevent threatened damage, injury or loss. VWNA shall be compensated by CITY for any such emergency work after coordination of the work with City staff.. Nothing contained in this Section shall impose upon VWNA a duty to perform any emergency work absent a change order and failure to perform any such emergency work shall not impose upon VWNA any liability.
- 3.13 As required by law, permit or court order, VWNA will prepare plant performance reports and submit them to CITY for signature and transmittal to appropriate authorities.
- 3.14 VWNA will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or

ordinances, permit or license requirements or judicial and regulatory orders and decrees.

- 3.15 VWNA will provide for the collection and hauling of any solid waste, screenings, grit, sludge and scum (“Waste”) to CITY’s existing or approved disposal sites. It shall be the sole right and responsibility of CITY to designate, approve or select disposal sites to be used by VWNA for CITY’s waste materials. All Waste and/or byproduct treated and/or generated during VWNA’s performance of services is and shall remain the sole and exclusive property of CITY. All manifests or other documentation required for disposal of Waste shall be signed by or in the name of the CITY.
- 3.16 Upon request of the City, or as it shall deem necessary, VWNA shall provide CITY with a listing of recommended capital improvements that VWNA believes will be required for any of the facilities covered by the Agreement. VWNA will not be relieved of its responsibility to perform if the recommendations are not implemented. If approved, the CITY will make arrangements for the design and construction of said improvements that the City shall make any recommended capital improvement necessary to: (i) meet effluent requirements; (ii) meet federal, state or local laws, rules or regulations for the safety of persons in or about the Project; or (iii) meet ADA requirements, shall not be optional for the CITY ((i), (ii), and (iii), the “Required Capital Improvements”). Failure to make any Required Capital Improvements shall be a material breach of this Agreement and VWNA shall be able to exercise its termination rights pursuant to Section 11.2 of this Agreement.
- 3.17 VWNA shall use reasonable efforts consistent with best industry practices and the Agreement to control odors from the Facility so that no disruption of adjacent facilities occurs. VWNA, in conjunction with CITY, shall develop a program that identifies procedures for certifying and documenting odor complaints, shall establish procedures to address recurrent failures of the odor control program, and shall, with CITY’s approval, purchase and utilize any technologies VWNA reasonably believes will help address odor control .
- 3.18 VWNA shall comply with the requirements of CITY regarding affirmative action and provisions for minority hiring.
- 3.19 VWNA shall provide CITY with a full accounting of all expenditures at intervals and in sufficient detail as may be determined by CITY, and assist CITY in the preparation of annual operating budgets.

4. VWNA's Scope of Services – Wastewater

- 4.1 This Article shall apply to VWNA's OM&M services for the CITY's wastewater treatment system.
- 4.2 Within the design capacity and capabilities of the wastewater treatment facilities described in more detail in Appendix B, VWNA will manage, operate and maintain the wastewater treatment plant (and 21 sewage pumping stations) designed to treat 3.5 million gallons per day so that finished water produced from the plant meets the requirements specified in Appendix C-1.
- 4.3 VWNA shall maintain and administer the present industrial waste sampling and laboratory analysis program, as described in Appendix D. Results of all industrial sampling and testing shall be reported to CITY in a timely manner.
- 4.4 Subject to the availability of funds within the Maintenance and Repair Limit, VWNA will perform all Maintenance and Repairs to include pumps, motors, control systems, gear reducers and equipment components for the Wastewater portion of the Project, and submit a monthly accounting to CITY, along with a detailed invoice, if Maintenance and Repair expenditures exceed the Maintenance and Repair Limit specified in Section 7.1.
- 4.5 VWNA will pay out of the Annual Fee all Costs incurred in normal wastewater operations necessary to maintain regulatory compliance with the current NPDES permit and any other applicable permits, rules and regulations.

The services to be provided under this Section 4 are herein referred to as the "Wastewater Services".

5. VWNA's Scope of Services – Collection System Rehabilitation Program

- 5.1 Inspect and perform minor repairs all sewer manholes present along the gravity collection system described in Appendix C-2 (hereinafter "Collection System").
- 5.2 Provide for the cleaning and O & M related television inspection of the Collection System to include laterals and service lines, and assist CITY staff in updating mapping of the Collection System as necessary; provided, however, VWNA shall have no liability to the CITY or any third party arising from VWNA's failure to identify or locate any mains or laterals which are not identified on the mapping provided to VWNA by the CITY at Commencement Date.
- 5.3 Subject to the availability of funds within the Maintenance and Repair Limit, VWNA will perform minor repairs to the Collection System which are within the capabilities of VWNA personnel and equipment, and submit a monthly accounting

to CITY, along with a detailed invoice, if Maintenance and Repair expenditures for the Project exceed the Maintenance and Repair Limit specified in Section 7.1.

- 5.4 VWNA shall maintain adequate records of any and all inspections, observations and repairs performed on the Collection System.

The services to be provided under this Section 4 are herein referred to as the “Collection System Services.” The Wastewater Services and Collection System Services are together referred to herein as the Services.

6. CITY’s Duties

- 6.1 The CITY shall timely pay any amounts owed to VWNA by CITY pursuant to this Agreement.
- 6.2 The CITY shall fund all necessary Capital Expenditures. VWNA will prioritize which Capital Expenditures shall be made; provided, however, that priority shall be given to safety and the ADA related expenses described in Section 3.10 and the CITY shall be obligated to make such expenditures in the priority recommended. Any loss, damage, injury, breach, compliance violation, violation of applicable law or the like resulting from CITY’s failure to provide Capital Expenditures and/or funds in excess of the Maintenance and Repair Limit when reasonably requested by VWNA shall be the sole responsibility of CITY.
- 6.3 The CITY shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to CITY and are not transferred to VWNA under this Agreement.
- 6.4 The CITY shall pay all sales, excise, *ad valorem*, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon VWNA’s net income and/or payroll taxes for VWNA employees.
- 6.5 The CITY shall provide VWNA, within a reasonable time after request and on an “as available” basis, with the temporary use of any piece of CITY’s equipment that is available so that VWNA may discharge its obligations under this Agreement in the most cost-effective manner. If after written request, CITY declines to provide VWNA with temporary use of CITY’s heavy equipment within a reasonable time for performance of the Services, then VWNA may include the costs related to the use of such heavy equipment necessary for the performance of its Services in accordance with this Agreement and charge to the Maintenance and Repair Limit.
- 6.6 CITY shall provide all registrations and licenses for CITY’s vehicles used in connection with the Project.

- 6.7 CITY shall provide for VWNA's entry into existing disposal sites for disposal of garbage, screenings, grit, sludge and scum.
- 6.8 CITY shall provide VWNA with all the necessary materials to perform VWNA's scope of services relating to the Collection System Rehabilitation Program set forth in Article 5 herein.
- 6.9 City shall be responsible for all other work and Costs associated with the Collection System beyond VWNA's scope as stated in Article 5.
- 6.10 CITY hereby grants to VVWNA the sole, exclusive and irrevocable right and discretion to perform the Services and to operate the Project.
- 6.11 CITY hereby grants VWNA for the term of this Agreement an exclusive, irrevocable, royalty free, fully paid up license to control, operate, modify, improve, repair and use the Project and the City Assets in order to fulfill its obligations under this Agreement.
- 6.12 CITY shall obtain, maintain and renew all authorizations for which CITY is or may become responsible, including, but not limited to Project, operational and building permits required to own and operate the Project and City Assets and for VEOLIA to provide the Services. VEOLIA shall identify and prepare applications for such Project related authorizations and CITY and VWNA shall assist each other to obtain, maintain or renew all such authorization sfor which CITY or VWNA is or may become responsible. The CITY will assign all authorizations and permits to the extent necessary for VWNA to provide the Services.
- 6.13 CITY will, at its cost and expense, including attorney's fees, cause to be released and discharged (i) any liens or encumbrances of any nature whatsoever asserted by third parties against any portion of the Project or City Assets that may currently or with passage of time materially impair VWNA's ability to perform the Services, and (ii) will promptly cause to be released any such liens against VEOLIA assets arising from any act or omission of the CITY.

7. Compensation

- 7.1 VWNA's compensation for the Wastewater Services and Collection Services under this Agreement shall consist of an Annual Fee. The Annual Fee for the period November 1, 2014 through October 31, 2015 (the "Operating Year") shall be \$1,043,416 in connection with the Waste Water Services and \$214,772 in connection with the Collection System Services. The Maintenance and Repair Limit included in the Annual Fee is \$35,000. VWNA has included \$296,404 in the Annual Fee for electricity, natural gas and potable water to perform the services specified herein for the first Operating Year ("Utility Costs"). To the extent VWNA's Utility Costs exceed \$296,404 during the first Operating Year due to

either: (1) increased rates charged to VWNA by VWNA's utility provider; or (2) a Change in Scope as defined in Article 9; the CITY shall reimburse to VWNA the excess Utility Costs paid by VWNA over \$296,404 in accordance with Article 6.

- 7.2 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement year, VWNA will rebate the entire difference to CITY in accordance with Article 6. If actual Maintenance and Repair expenditures exceed the Maintenance and Repair Limit, CITY will pay the excess to VWNA in accordance with Article 6. VWNA will notify CITY when actual Maintenance and Repair expenditures equal eighty percent (80%) of Maintenance and Repair Limit.
- 7.3 The Services being provided under this Agreement are based on reasonably expected overtime for normal breakdowns or Services required after hours. Any additional expenses, including but not limited to wages, not reasonably anticipated as of the Effective Date, including straight or over-time wages caused by severe weather, breakdowns or inefficiencies due to third party equipment or contractor work, or any other event outside of VWNA's control. A disaster or unplanned event that may be recovered through billing any third party including the State or Federal Government FEMA funds will be billed to the CITY for reimbursement.
- 7.4 The Annual Fee(s) (and Maintenance and Repair Limit included therein), shall be negotiated each year at least four (4) months prior to the anniversary of this Agreement's Effective Date. Should CITY and VWNA fail to agree, the Annual Fee (and Maintenance and Repair Limit included therein) will be determined by the application of the procedures in Appendix E.

8. Payment of Compensation

- 8.1 One-twelfth (1/12) of the Annual Fee for the current year shall be due and payable on the first of the month for each month that services are provided.
- 8.2 All other compensation to VWNA is due upon receipt of VWNA's invoice and payable within thirty (30) days.
- 8.3 Any monies payable pursuant to Section 5.3 will be paid within sixty (60) calendar days after the end of each Agreement year.
- 8.4 CITY shall pay interest at an annual rate equal to the prime rate plus one and one half percent (1.5%) as utilized by Bank of America or the City's current financial services provider, said rate of interest not to exceed any limitation provided by law, on payments not paid and received within fifteen (15) calendar days of receipt by the City, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

9. Scope Changes

- 9.1 A Change in Scope of services shall occur when and as VWNA's costs of providing services under this Agreement change as a result of:
- 9.1.1 A material difference exists between the Project, the City Assets and related conditions from the state or condition on the Effective Date or any material revisions are required subsequent to the Effective Date, including as a result of an Unforeseen Circumstance or a change in law, requiring any change in Project operations, personnel qualifications or staffing or other cost;
 - 9.1.2 any change or modification to the Project resulting in an increase of VWNA's Cost or any addition of Project, including pump stations;
 - 9.1.3 increases or decreases in user base;
 - 9.1.4 increases or decreases of not less than ten percent (10%) in the influent flow or loadings as demonstrated by a twelve month floating average compared to the twelve month period ending on the Effective Date of this Agreement (baseline flow and loading information is located in Appendix C-1);
 - 9.1.5 increases or decreases in rates or other related charges (including taxes) imposed upon VWNA by a taxing authority - excluding taxes based on VWNA's net income; and/or
 - 9.1.6 mutual agreement by the parties for VWNA to provide additional services;
 - 9.1.7 increases or decreases in insurance premium costs for those insurances specified in Appendix F, which are not caused by the fault of either party.
- 9.2 For Changes in Scope described in Sections 9.1.1 through, and including 9.1.4, the Annual Fee shall be increased (or decreased) by an amount equal to VWNA's additional (reduced) Cost associated with the Change in Scope plus fifteen percent (15%). Modifications of the Annual Fee as a result of conditions described in Section 9.1.3 shall be effective on the date the specific characteristic changed by ten percent (10%) or greater.
- 9.3 For Changes in Scope described in Section 9.1.4, the Annual Fee shall be increased (or decreased) by an amount equal to VWNA's additional (reduced) Cost associated with such Change in Scope.
- 9.4 CITY and VWNA shall negotiate an increase in VWNA's Annual Fee for Changes in Scope based on Section 9.1.7.

- 9.5 Either CITY or VWNA may submit or request a Change in Scope as set forth in this article. Each request for a Change in Scope shall be in writing and shall include, without limitation, the following: (i) an explanation of the basis for the request for Change in Scope in detail sufficient to allow the party receiving the notice to evaluate and approve or disapprove the request, (ii) any time restrictions on the implementation of the requested Change in Scope, (iii) the reasons for the Change in Scope, and (iv) a statement of the sections of this Agreement that would be modified or otherwise affected by it. Following receipt of the written request the parties shall meet as soon as is reasonably possible and at such meeting shall discuss the nature of the Change in Scope and the reasons for it being requested. The purposes of the meeting shall be to increase the responsiveness of the parties to the situation or needs resulting in the request and, to the extent possible, to reach agreement on guidelines for how the change will best be effected.
- 9.6 Unless otherwise agreed to in writing, the party receiving notice of a requested Change in Scope shall accept or reject such request in writing within thirty (30) Business Days or such request will be deemed accepted. Rejection of a requested Change in Scope is subject to the dispute resolution procedure as described in Article 13. If a party receives a notice of proposed Change of Scope and fails to respond within such 30-day period, such proposed Change of Scope shall be deemed accepted.
- 9.7 No claims for equitable adjustments in the Annual Fee shall be made or allowed unless embodied in a written request for Change in Scope. If VWNA reasonably concludes that any requirement, direction, instruction, interpretation, determination, or decision of CITY entitles VWNA to an equitable adjustment in the amount of payments or time allowed for performance that has not been included, or fully included, in a Change in Scope as finally approved by the CITY, then VWNA shall submit to CITY a written request for the issuance of, or revision of, a Change in Scope, including the equitable adjustment, or the additional equitable adjustment, in the price, payments or time allowance that VWNA claims has not been included, or fully included, in a Change in Scope. Such request shall be submitted before VWNA proceeds with any additional Services for which VWNA claims an equitable adjustment is due and shall, in all events, be submitted no later than thirty (30) days after receipt of such Change in Scope or receipt of notice of such requirement, direction, instruction, interpretation, determination, or decision. Notwithstanding the submission of any such request, VWNA shall, unless otherwise directed by CITY within ten (10) business days after receipt by CITY of such request, proceed without delay to perform the Services in compliance with the Change in Scope or as required, directed, instructed, interpreted, or decided by CITY and shall, pending a final resolution of the issue, keep a daily record of such Services.

- 10.1 VWNA hereby agrees to indemnify and hold CITY harmless from any liability or damages for bodily injury, including death, property damages and pollution damages which may arise from VWNA's negligence or willful misconduct under this Agreement; provided, VWNA shall be liable only for that percentage of total damages that corresponds to its percentage of total negligence or fault, vis-à-vis fault of CITY and responsible third parties.
- 10.2 To the extent allowed under applicable law, the CITY agrees to indemnify and hold VWNA harmless from any liability or damage or bodily injury, including death, property damages and pollution damages which may arise from all causes of any kind other than VWNA's negligence or willful misconduct, including, but not limited to, breach of a CITY warranty.
- 10.3 Neither VWNA nor the CITY shall be liable to the other in any action or claim for consequential, incidental or special damages, loss of profits, loss of opportunity, loss of product or loss of use. Any protection against liability for losses or damages afforded any individual or entity by these terms shall apply whether the action in which recovery of damages is sought is based on contract, tort (including sole, concurrent or other negligence and strict liability of any protected individual or entity), statute or otherwise. To the extent permitted by law, any statutory remedies, which are inconsistent with these terms, are waived.
- 10.4 VWNA shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring between the Effective Date and the expiration or prior termination of this Agreement, of the wastewater effluent quality provided for Appendix C that are a result of VWNA's negligence. CITY will assist VWNA to contest any such fines in administrative proceedings and/or in court prior to any payment by VWNA. VWNA shall pay the cost of any such contest.
- 10.5 CITY shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on CITY and/or VWNA that are not a result of VWNA's negligence or are otherwise directly related to the CITY's ownership of the Project and, to the extent allowed under applicable law, shall indemnify and hold VWNA harmless from the payment of any such fines and/or penalties.
- 10.6 To the fullest extent permitted by law and notwithstanding any other provision of this Agreement, VWNA's liability for performance or non-performance of any obligation arising under the Agreement (whether arising under breach of contract, tort, strict liability, or any other theory of law or equity) including, but not limited to its indemnity obligations specified in Section 10.1 of the Agreement, shall not exceed \$1,500,000 cumulatively for the duration of the Agreement, provided that the foregoing limitation shall not apply to any losses resulting from the gross negligence or willful misconduct of VWNA or VWNA's subcontractors, employees or agents in breach of VWNA's obligations under this Agreement.

- 10.7 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix F. Each party shall provide the other party with satisfactory proof of insurance.
- 10.8 The provisions of Sections 10.1 through 10.6 above shall survive the termination of the Agreement.
- 10.9 In each instance in which a party is required to indemnify, defend or hold harmless the other party against a third-party claim pursuant to Sections 10.1 or 10.2 above, (i) the party entitled to indemnification and defense (the "Indemnified Party") will give prompt notice to the party required to provide indemnification or defense (the "Indemnifying Party") including a detailed description of the nature and circumstances of the indemnified claim ("Claim") including copies of the applicable adverse party notice of claim, summons, complaint or arbitration demand, provided delay or failure to provide prompt notice shall give rise to rights for the Indemnifying Party if and to the extent of actual prejudice, (ii) the Indemnifying Party shall be entitled to select, instruct and manage lead defense counsel, (iii) the Indemnified Party will be entitled to engage its own counsel, and the Indemnifying Party will reimburse reasonable costs thereof for attorneys' fees and costs as invoiced, (iv) the Indemnifying Party will not enter any settlement agreement that would constitute any admission of guilt as to any criminal act or other act exposing the Indemnified Party to criminal or civil prosecution or liability without prior written agreement of the parties, and (v) the Indemnified Party will not make any admission as to any fact or as to liability, or offer or accept any settlement or compromise without mutual agreement of the Parties.

11. Term, Termination and Default

- 11.1 The initial term of this Agreement shall be five (5) years commencing November 1, 2014 ("Initial Term"). VWNA shall notify the City of VWNA's election and intent to renew at least 6 months prior to the initial contract expiration date or any subsequent renewal term. The City shall reply within sixty (60) days of its receipt of VWNA's election to renew. If the City fails to object to VWNA's election to renew within such sixty (60) day period, the contract shall be automatically renewed for an additional five (5) year term.
- 11.2 A party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, except in case of a breach by CITY for non-payment of VWNA's invoices, in which case termination may be immediate by VWNA, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach.

- 11.3 Upon notice of termination by CITY, VWNA shall assist CITY in assuming operation of the Project. If additional Cost is incurred by VWNA at request of CITY, CITY shall pay VWNA such Cost within 15 days of invoice receipt.
- 11.4 Upon termination of this Agreement and all renewals and extensions of it, VWNA will return the Project to CITY in the same condition as it was upon the Effective Date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by VWNA for use in the performance of its obligations hereunder shall remain the property of VWNA upon termination of this Agreement unless the property was directly paid for by CITY or CITY specifically reimbursed VWNA for the cost incurred to purchase the property or this Agreement provides to the contrary.
- 11.5 In the event that this Agreement is terminated for any reason prior to the expiration of the term or any renewal term, CITY shall pay VEOLIA for the remaining balance of any capital expenditures made by VEOLIA for its own account in connection with the performance of this Agreement in addition to all substantiated demobilization costs incurred by VEOLIA.

12. Disputes and Force Majeure

- 12.1 In the event activities by employee groups or unions cause a disruption in VWNA's ability to perform at the Project, CITY, with VWNA's assistance or VWNA at its own option, may seek appropriate injunctive court orders. During any such disruption, VWNA shall operate the facilities on a reasonable-efforts basis until any such disruptions cease.
- 12.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances beyond its reasonable control or force majeure. However, this Section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.
- 12.3 VWNA and CITY agree to facilitate timely and effective resolution of any controversy or dispute that may arise under this Agreement, pursuant to the terms set forth in Article 13 hereof. If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees which are directly attributed to such litigation in addition to any other relief to which it may be entitled.

13. Dispute Resolution

- 13.1 Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 13.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the parties involved in the dispute. The dispute shall be considered to have arisen when one party sends the other party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the parties. In the event that the parties cannot resolve a dispute by informal negotiations, the parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the parties fail to agree upon a mediator, the parties shall request that the American Arbitration Association for Crossville, Tennessee, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the parties. The decision to continue mediation shall be in the sole discretion of each party involved in the dispute. The parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all parties involved in the dispute. In the event that the parties cannot resolve a dispute by informal negotiations or mediation, sole venue for judicial enforcement shall be the courts of the State of Tennessee. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

13.2 EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.

14. Representations and Warranties

So as to induce each party to enter into this Agreement, and each such party has so entered into this Agreement in reliance upon such inducement, each party in respect of itself only represents and warrants to the other party as of the Effective Date that (i) it has all corporate and statutory powers, has taken all corporate actions at duly-convened meetings or by duly-authorized consents necessary approvals to execute, deliver and perform this Agreement and that the person executing this Agreement has the authority to bind such party, (ii) this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms, subject to limitations imposed by law affecting creditors' rights generally and general principles of equity, (iii) the execution, delivery and performance by such party in accordance with the terms hereof will not violate, or conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would

constitute a default) under, or result in the termination or in a right of termination or cancellation of, or accelerate the performance required by, or result in the imposition of penalties or additional charges under, or result in being declared void, voidable or without further binding effect, any of the terms, conditions or provisions of any license, franchise, permit, lease, contract, agreement or other instrument, commitment or obligation to which such party or any affiliate is a party, or by which such party or any affiliate is bound, (iv) the execution, delivery and performance of this Agreement by such party does not require any consent, approval or authorization of, or declaration, filing or registration with, any governmental body, regulatory authority or any third party, except for such consents, approvals, authorizations, declarations, filings or registrations that have already been obtained or will be obtained in due course when required, and (v) it has, to the best of its knowledge and to the extent required, obtained all government approvals required to own, operate and maintain the Project and all such governmental approvals are valid and in full force and effect and no suspension, cancellation or termination of any such governmental approvals is pending or threatened, nor are there any facts or circumstances which could reasonably be expected to give rise to such suspension, cancellation or termination.

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

CITY OF CROSSVILLE

VEOLIA WATER NORTH AMERICA - SOUTH, LLC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CERTIFICATE OF COUNSEL

The undersigned, as counsel for the City of Crossville, Tennessee (“CITY”) in this transaction, hereby certifies that (s)he has examined the circumstances surrounding the selection of Veolia Water North America – South, LLC (“VWNA”) and the award and letting of the foregoing contract to VWNA by CITY, and has found that said selection and award process comply with the procurement laws of the State of Tennessee and CITY.

Counsel for CITY

Date: _____

APPENDIX A

DEFINITIONS

- A.1 “Adequate Nutrients” means plant influent nitrogen, phosphorus and iron contents proportional to BOD₅ in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half (0.5) part iron for each one hundred (100) parts BOD₅.
- A.2 “Annual Fee” means a predetermined, fixed sum for VWNA’s services. The Annual Fee includes Cost and profit.
- A.3 “Biologically Toxic Substances” means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of CITY’s Certificate of Approval. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.
- A.4 “Capital Expenditures” means any expenditures for (1) the purchase of new equipment or facility items that cost more than Two Thousand Dollars (\$2,000); or (2) major repairs which significantly extend equipment or facility service life and cost more than Two Thousand Dollars (\$2,000) or (3) expenditures that are planned, non-routine and budgeted by CITY.
- A.5 “Commencement Date” shall mean November 1, 2014.
- A.6 “Cost” means all Direct Cost and indirect cost determined on an accrual basis in accordance with generally accepted accounting principles.
- A.7 “Direct Cost” means the actual cost incurred for the direct benefit of the Project including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, 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 and training supplies.
- A.8 “Maintenance” means those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer or by VWNA to maximize the service life of the equipment, sewer, vehicles and facilities.
- A.9 “Maintenance and Repair Limit” means the total Maintenance and Repair expenditures that VWNA has included in the Annual Fee. Such expenditures exclude any labor costs for VWNA’s staff assigned to the Project. VWNA’s specialized maintenance personnel, not assigned at the Project, who provide such specialized services such as, but not limited to,

vibration, thermographic and electrical analyses, instrumentation maintenance and repair will be charged to the Maintenance and Repair Limit.

- A.10 “Project” means all equipment, vehicles, grounds, rights of way, sewers and facilities described in Appendix B and, where appropriate, the management, operations and maintenance of such.
- A.11 “Repairs” means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.
- A.12 “Unforeseen Circumstances” shall mean any event or condition which has an effect on the rights or obligations of the parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon and constitutes a justification for a delay in or non-performance of action required by this Agreement, including but not limited to (i) an act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, terrorist acts, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any local, province, administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, province or governmental body, (iv) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or work stoppages by employees of VWNA; (v) loss of or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project; (vi) the presence of Biologically Toxic Substances or Hazardous Wastes in the influent to the Treatment Facility; and (vi) violations of the City's Industrial Pretreatment Program discharge limits (if applicable) which are of such a quantity and quality so as to cause substantial disruption in the operations or biological activity of the Facility.

APPENDIX B

DESCRIPTION OF PROJECT

VWNA agrees to provide the services necessary for the management, operation and maintenance of the following:

- a. All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate the CITY's Wastewater Treatment Plant located at:

468 Sparta Highway
Crossville, Tennessee 38572

And, the City owned collection system network.

- b. All equipment, grounds and facilities now existing within the present property boundaries of pumping stations described as follows:

1. Little OBED Pump Station.
2. Thunder Hollow One Pump Station.
3. Thunder Hollow Two Pump Station.
4. Holiday Hills Pump Station.
5. Old Landfill Pump Station.
6. Genesis Road Pump Station.
7. I-40 / Genesis Road Pump Station.
8. Industrial Park Pump Station.
9. Manchester Tank Pump Station
10. Housing Authority One Pump Station.
11. Housing Authority Two Pump Station.
12. Hayes Street Pump Station.
13. Gridiron Pump Station.
14. Community Complex Pump Station.
15. Wells Road Pump Station.
16. Mockingbird Lane Pump Station
17. The Gardens Pump Station
18. Pine Ridge One Pump Station
19. Pine Ridge Two Pump Station
20. Miller Avenue/127 South Pump Station
21. 127 South Pump Station

APPENDIX C - 1

NPDES PERMIT AND
WASTEWATER TREATMENT CHARACTERISTICS

- C.1 VWNA will operate so that the wastewater effluent will meet the requirement of NPDES Permit No. TN 00204996 (issued February 1, 2012), a full and complete copy of which is adopted by reference herein as of the Effective Date. VWNA shall be responsible for meeting the effluent quality requirements of the Permit unless one or more of the following occurs: (1) the wastewater influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances which cannot be removed by the existing process and facilities; (2) dischargers into CITY's sewer system violate any or all regulations as stated in CITY's Industrial Water and Sewer Ordinance(s) or as required by law; (3) the flow or influent BOD₅ and/or suspended solids exceeds the Project design parameters which are 3.5 million gallons of flow per day, 8,757 pounds of BOD₅ per day monthly average, 8,757 pounds of suspended solids per day on a monthly average and a daily peaking factor of 3 times flow; (4) if the wastewater treatment facility and/or associated appurtenances is inoperable or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond VWNA's control.
- C.2 In the event any one of the Project influent characteristics, suspended solids, BOD₅ or flow, exceeds the design parameters stated above, VWNA shall return the plant effluent to the characteristics required by NPDES in accordance with the following schedule after Project influent characteristics return to within design parameters.

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

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

- C.3 VWNA shall not be responsible for fines, deemed in breach of this Agreement, or held liable for any legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances or is inoperable, and the subsequent recovery period.

C.4 The Annual Fee for services under this Agreement is based upon the following:

Project influent characteristics:

Flow	2.84 million gallons per day
BOD ₅	3,538 lbs/day monthly average
TSS	5,950 lbs/day monthly average

The above characteristics are the actual twelve months' floating average for the period ended August, 2014. Any change of 10 percent (10%) or more in any of these characteristics, based upon a twelve (12) month moving average, will constitute a Change in Scope (See Article 9).

APPENDIX C – 2
WASTEWATER COLLECTION SYSTEM
Scope of Service

VWNA will provide inspection and maintenance to approximately 77 miles of gravity sewer lines and laterals approximately 2,000 manholes that are part of the existing collection system. Maintenance includes cleaning lines, minor repair to manholes above ground including replacing ring and lids, raising or lowering manholes, identifying problems within the lines locations and coordinating repair with CITY staff.

APPENDIX D

INDUSTRIAL WASTE DISCHARGERS AND MONITORING PROGRAM

Adopted as a part of the Agreement is a current listing of all industries discharging into the collection system and monitored under Ordinance Number 18-205. Said Ordinance and all permits heretofore issued by CITY of Industrial Waste Dischargers are adopted herein by reference, as of the Effective Date.

Flowers Bakery
Stonepeak Ceramics
Crossville Ceramics
Mizkan Americas
Manchester Tank

APPENDIX E

ANNUAL FEE ADJUSTMENT FORMULA

$$AAF = AF \times (0.7 \times \text{CPI} / \text{CPI}_0 + 0.3 \times \text{CPI-S} / \text{CPI-S}_0)$$

where

AAF = Adjusted Annual Fee.

AF = Annual Fee prior to adjustment

CPI = CPI-U U.S. City Average, All Items, not seasonally adjusted (CUUR0000SA0) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the month three (3) months prior to the beginning of the period for which the Adjusted Annual Fee is being calculated.

CPI₀ = CPI-U U.S. City Average, All Items, not seasonally adjusted (CUUR0000SA0) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the month fifteen (15) months prior to the beginning of the period for which the Adjusted Annual Fee is being calculated.

CPI-S = CPI-U U.S. City Average, Water and Sewer and Trash Services, not seasonally adjusted (CUUR0000SEHG) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the month three (3) months prior to the beginning of the period for which the Adjusted Annual Fee is being calculated.

CPI-S₀ = CPI-U U.S. City Average, Water and Sewer and Trash Services, not seasonally adjusted (CUUR0000SEHG) as published by the U.S. Department of Labor, Bureau of Labor Statistics for the month fifteen (15) months prior to the beginning of the period for which the Adjusted Annual Fee is being calculated.

Example application of the Annual Fee Adjustment Formula

Where

$$AF = \$1,000,000$$

$$CPI = 237.0$$

$$CPI_0 = 232.5$$

$$CPI-S = 203.0$$

$$CPI-S_0 = 196.5$$

$$AAF = \$1,000,000 \times (0.7 \times (237.0/232.5) + 0.3 \times (203.0/196.5))$$

$$AAF = \$1,000,000 \times (0.7 \times 1.019 + 0.3 \times 1.033)$$

$$AAF = \$1,000,000 \times (0.713 + 0.310)$$

$$AAF = \$1,000,000 \times 1.023$$

$$AAF = \$1,023,000$$

APPENDIX F

INSURANCE COVERAGE

VWNA SHALL MAINTAIN:

1. Statutory workers compensation for all of VWNA's employees at the Project as required by the State of Tennessee.
2. Comprehensive general liability insurance, insuring VWNA's negligence, in an amount not less than \$3,000,000 combined single limits for bodily injury and/or property damage.

CITY SHALL MAINTAIN:

1. Statutory workers compensation for all of CITY's employees associated with the Project as required by the State of Tennessee.
2. Property damage insurance for all property including vehicles owned by CITY and operated by VWNA under this Agreement. Any property, including vehicles, not properly or fully insured shall be the financial responsibility of the CITY.
3. Automobile liability insurance for collision, comprehensive, and bodily injury.

Each party will cause the other party to be added as additional insured on the above liability insurance policies and will provide the other party at least thirty (30) days notice of the cancellation of such policies. VWNA may self-insure reasonable deductible amounts under the policies it is required to maintain to the extent permitted by law. Each policy shall provide a waiver of subrogation in favor of the other party.