
CITY OF NIAGARA FALLS
AND
NIAGARA FALLS WATER BOARD
AND
NIAGARA FALLS PUBLIC WATER AUTHORITY

OPERATION AGREEMENT

DATED AS OF APRIL 1, 2003

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I	DEFINITIONS.....	2
SECTION 1.1	DEFINITIONS.....	2
SECTION 1.2	INTERPRETATION.....	7
ARTICLE II	GENERAL COVENANTS; INDEMNIFICATION.....	8
SECTION 2.1	REVENUES OF THE BOARD.....	8
SECTION 2.2	SUBSTITUTION OF BOARD FOR CITY.....	8
SECTION 2.3	INDEMNIFICATION.....	8
SECTION 2.4	CONDITIONS.....	9
SECTION 2.5	CONTRACTOR INDEMNIFICATION	9
SECTION 2.6	USE OF CITY PROPERTY.....	10
SECTION 2.7	AGREEMENT OF THE STATE.....	10
ARTICLE III	OPERATION, MAINTENANCE AND IMPROVEMENT OF THE SYSTEM.....	10
SECTION 3.1	THE BOARD TO OPERATE AND MAINTAIN THE SYSTEM.....	10
SECTION 3.2	AGREEMENT AS TO SYSTEM.....	12
SECTION 3.3	COMPLIANCE WITH REGULATIONS	12
SECTION 3.5	FORCE MAJEURE	13
ARTICLE IV	COSTS OF PROJECTS; PROPERTY ACQUISITION.....	13
SECTION 4.1	CAPITAL COSTS INCURRED BY BOARD	13
SECTION 4.2	PROPERTY ACQUISITION	13
SECTION 4.3	COMPLIANCE WITH LAW.....	13

ARTICLE V	PROVISION OF SERVICES	14
SECTION 5.1	BILLING AND COLLECTION	14
SECTION 5.2	LEVY OF WATER CHARGES	15
SECTION 5.3	LATE PAYMENTS	15
SECTION 5.4	DISCONTINUANCE OF BILLING SERVICES	15
SECTION 5.5	OTHER CITY SERVICES	15
SECTION 5.6	DISCONTINUANCE OF OTHER CITY SERVICES	15
ARTICLE VI	PAYMENTS BY THE BOARD	16
SECTION 6.1	PAYMENTS BY THE BOARD	16
SECTION 6.2	METHOD OF PAYMENT	18
ARTICLE VII	PROCEDURES FOR FISCAL YEAR 2003	19
SECTION 7.1	PROCEDURES FOR DETERMINING OPERATION PAYMENTS FOR FISCAL YEAR 2003	19
ARTICLE VIII	OFFICERS AND EMPLOYEES OF THE BOARD	20
SECTION 8.1	OFFICERS AND EMPLOYEES	20
ARTICLE IX	PARTICULAR COVENANTS	20
SECTION 9.1	DISPOSITION OF PROPERTY	20
SECTION 9.2	ENCUMBRANCES	21
SECTION 9.3	COVENANT OF CITY AS TO RATES AND CHARGES	21
ARTICLE X	MISCELLANEOUS	21
SECTION 10.1	FURTHER ASSURANCES	21
SECTION 10.2	RECONVEYANCE	21
SECTION 10.3	NO PERSONAL LIABILITY	21
SECTION 10.4	NO WAIVER	22

SECTION 10.5	AMENDMENTS	22
SECTION 10.6	NOTICES	22
SECTION 10.7	SEVERABILITY	23
SECTION 10.8	HEADINGS	23
SECTION 10.9	AUTHORIZED REPRESENTATIVES	23
SECTION 10.10	GOVERNING LAW	24
SECTION 10.11	COUNTERPARTS	24

OPERATION AGREEMENT

THIS OPERATION AGREEMENT dated as of April 1, 2003 (the "Operation Agreement") by and between the CITY OF NIAGARA FALLS (the "City") a municipal corporation of the State of New York (the "State"), the NIAGARA FALLS WATER BOARD (the "Board"), a body corporate and politic constituting a corporate municipal instrumentality of the State of New York and the NIAGARA FALLS PUBLIC WATER AUTHORITY (the "Authority"), a body corporate and politic constituting a public benefit corporation of the State.

WITNESSETH:

WHEREAS, the Authority was created by Chapter 275 of the Laws of 2002 of the State, constituting the Niagara Falls Public Water Authority Act, codified as Sections 1230-a through 1230-aa of Title 10-B of Article 5 of the Public Authorities Law of the State, as amended (the "Authority Act"), and is vested with the powers and duties described in the Authority Act, including the power to borrow money, issue debt and enter into agreements with the Board and the City for the financing by the Authority of "projects" as such term is defined in the Authority Act (such projects being sometimes hereinafter referred to as "Projects"); and

WHEREAS, the Board was created by Chapter 325 of the Laws of 2002 of the State, codified as Section 1231-a of Title 10-C of the Niagara Falls Water Board Act of Article 5 of the Public Authorities Law of the State (the "Board Act") (the Board Act and the Authority Act are hereinafter collectively referred to as the "Act") and, pursuant to the provisions of the Act, the Board is authorized to enter into agreements with the Authority and the City to provide a means whereby the Authority can finance the cost of constructing Projects and the Board can (A) agree to assume title to the System (as hereinafter defined), and (B) raise revenues from Users through fees, rates, rents or other service charges necessary or appropriate to secure such financing and to pay the cost of the management, operation, maintenance and repair of the System; and

WHEREAS, contemporaneously herewith, pursuant to the provisions of Section 1230-h of the Act, the Mayor of the City (the "Mayor") and the Chairman of the Board have duly executed and delivered a certain acquisition agreement dated as of April 1, 2003 (the "Acquisition Agreement") providing for the transfer of the System by the City to the Board; and

WHEREAS, pursuant to the provisions of Section 1230-i of the Act, the Authority and the Board have entered into a certain financing agreement dated as of April 1, 2003 (the "Financing Agreement") which provides for the financing of certain Projects (as defined in the Act), including the Board's ownership of the System, and for its use in the exercise of the corporate powers and purposes of the Board; and

WHEREAS, the Authority, the Board and the City desire to enter into this Operation Agreement in order to provide for the management, operation, maintenance and repair of the System; and

WHEREAS, pursuant to the provisions of the Act (A) the Council of the City by resolution has duly authorized the Mayor of the City to execute and deliver this Operation Agreement on behalf of the City, (B) the Authority by resolution has duly authorized the Chairman or Vice-Chairman of the Authority to execute and deliver this Operation Agreement

on behalf of the Authority, and (C) the Board by resolution has duly authorized the Chairman or Vice Chairman of the Board to execute and deliver this Operation Agreement on behalf of the Board.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.1. DEFINITIONS. The following words and terms used in this Operation Agreement shall have the respective meanings set forth below unless the context or use clearly indicates another or different meaning or use.

"Account" shall mean any of the special accounts created and established pursuant to the Resolution and/or the Financing Agreement.

"Acquisition Agreement" shall mean the Acquisition Agreement dated as of April 1, 2003, by and between the City and the Board with respect to the acquisition by the Board of the System, as the same may be from time to time hereafter amended or supplemented in accordance with the provisions thereof and of the Resolution.

"Acquisition Date" shall mean the date of the conveyance of the System by the City to the Board pursuant to the Acquisition Agreement.

"Act" shall mean, collectively, the Authority Act and the Board Act.

"Annual Budget" shall mean the annual budget of the Board, as amended or supplemented, adopted or in effect for a particular Fiscal Year, as provided in Section 6.4 of the Financing Agreement.

"Authority" shall mean the Niagara Falls Public Water Authority, a body corporate and politic constituting a public benefit corporation of the State, created and existing under and by virtue of the provisions of the Authority Act.

"Authority Act" shall mean Chapter 275 of the Laws of 2002 of the State, constituting the Niagara Falls Public Water Authority Act, codified as Sections 1230-a through 1230-aa of Title 10-B of Article 5 of the Public Authorities Law of the State, as amended from time to time.

"Authorized Representative" shall mean (a) in the case of both the Authority and the Board, their respective Chairpersons, or such other person or persons so designated by resolution or the by-laws of the Authority or the Board, as the case may be, to perform the act or sign the

document in question and (b) in the case of the City, the Mayor, or, in the absence or incapacity of the Mayor, such other person authorized to act on behalf of the City in the Mayor's absence or incapacity.

"Bank" shall mean the bank, trust company or banking association (which may be the Trustee) designated by the Board to act as depository for the funds of the Board.

"Board" shall mean the Niagara Falls Water Board, a body corporate and politic constituting a corporate municipal instrumentality of the State created and existing under and by virtue of the Board Act.

"Board Act" shall mean Chapter 325 of the Laws of 2002 of the State, constituting the Niagara Falls Water Board Act, codified as Section 1231-a of Title 10-C of Article 5 of the Public Authorities Law of the State, as amended from time to time.

"Board Expense Account" shall mean the Board Expense Account established within the Local Water Fund by, and held in the custody of the Board pursuant to Section 4.2(A) of the Financing Agreement.

"Bond" or "Bonds" shall have the meaning ascribed thereto in the Resolution.

"Capital Improvement Plan" shall mean a written plan for Construction of Projects for the System and the Facilities of the Board, as shall be established by mutual agreement by the Authority and the Board, and as may be amended from time to time and may include the Projects described in Appendix A to the Financing Agreement.

"City" shall mean the City of Niagara Falls, a municipal corporation of the State.

"City Charter" shall mean the Charter of the City of Niagara Falls, as amended from time to time.

"City Council" shall mean the duly elected Council of the City.

"Construction" shall have the meaning assigned to such term in subsection 6 of Section 1230-b of the Act.

"Construction Account" shall mean the Construction Account established within the Local Water Fund by, and held in the custody of the Board pursuant to Section 4.2(A) of the Financing Agreement.

"Consulting Engineer" shall mean such independent engineer or firm of engineers of recognized standing selected by the Authority in consultation with the Board.

"Controller" shall mean the controller of the City.

"Cost" or "Cost of a Project" shall mean all costs of Construction, including, without limitation, the acquisition, erection, building, alteration, improvement, increase, enlargement, extension, reconstruction, renovation or rehabilitation of the System or a Project or any portion

of either, the inspection and supervision thereof, the engineering, architectural, legal, fiscal economic and environmental investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other actions incidental thereto; the cost of the acquisition of all Property; the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all systems, facilities, machinery, apparatus, vehicles and equipment, financing charges, interest prior to, during and after Construction; the cost of engineering and architectural surveys, plans and specifications; the cost of consultants' and legal services; the cost of lease guarantee or bond insurance; other expenses necessary, reasonably related or incidental to the Construction of such Project and the financing of the Construction thereof, including the cost of Credit Facilities, the amounts authorized in the Resolution or any Supplemental Resolution to be paid into any reserve or other special fund from the proceeds of Bonds and the financing of the placing of any Project in operation, including reimbursement to any municipality, state agency, the State, the United States of America, or any other person for expenditures that would be costs of such Project hereunder; and all claims arising from any of the foregoing.

"Credit Facility" shall have the meaning ascribed thereto in the Resolution.

"Executive Director" shall mean the Executive Director or Chief Executive Officer of the Board, or any other person duly appointed or delegated to perform such duties by the governing body of the Board.

"Facilities" shall mean any of the Properties of the Authority or the Board or any other real property, personal or mixed property controlled, leased or operated by the Authority or the Board which is used or intended to be used in the System or in furtherance of their respective corporate purposes.

"Financing Agreement" shall mean the Financing Agreement dated as of April 1, 2003 entered into pursuant to Section 1230-i of the Act by and between the Authority and the Board, as the same may be from time to time hereafter amended or supplemented in accordance with the provisions thereof and of the Resolution.

"Fiscal Year" shall mean the twelve-month period commencing on January 1 of each year; provided, however, that the Authority and the Board may, from time to time, mutually agree on a different twelve-month period as the Fiscal Year, in which case January 1, when used herein with reference to a Fiscal Year, shall be construed to mean the first day of the first calendar month of such different Fiscal Year and provided, further, that the first Fiscal Year of the Board and the Authority shall commence on the date of the issue of the first series of Bonds pursuant to the Resolution, and shall end on December 31, of the calendar year in which such Bonds were issued.

"Force Majeure" means any of the following events: strikes, lockouts, labor disputes, embargoes, naturally occurring flood, earthquake, storm, dust storm, lightning, fire, epidemic, acts of God, war, national emergency, civil disturbance or disobedience, riot, sabotage, terrorism, threats of sabotage or terrorism, restraint by court order or order of public authority, and similar occurrences beyond the reasonable control of the party in question (financial inability excepted);

that make compliance with any of its material obligations under this Operation Agreement in a timely manner impracticable or impossible.

"General Account" shall mean the Board General Account established within the Local Water Fund by, and held in the custody of the Board pursuant to Section 4.2(A) of the Financing Agreement.

"Industry Standards" shall mean generally accepted engineering, operational and maintenance practices and requirements of applicable law, regulation or permit for water, wastewater and stormwater facilities of the size, type and age of the System and comparable facilities in the State.

"Local Water Fund" shall mean the special fund by that name established by subsection 2 of Section 1230-j of the Act in the custody of the Board.

"Mayor" shall mean the Mayor of the City or such other person authorized to act on behalf of the City in the Mayor's absence or incapacity.

"Minimum Monthly Balance" shall have the meaning ascribed thereto in Section 4.3 of the Financing Agreement.

"Operating Expenses" shall mean all reasonable or necessary current expenses of the Board for operating, maintaining, repairing, and managing the System, including all salaries, administrative, general, commercial, architectural, engineering, advertising, public notices, auditing, billing, collection and enforcement and legal expenses, insurance and surety bond premiums, consultants fees and charges, payments to pension, retirement, health and hospitalization funds, any taxes or assessments which may lawfully be imposed on the System or the income or operation thereof, costs of public hearings, ordinary and current rentals of equipment or other property, lease payments for real property or interest therein, usual expenses of maintenance and repair (including replacements), expenses, liabilities and compensation of the Bank or any other depository of Board funds, the amount of any judgment or settlement arising out of a tort claim related to the ownership, Construction, repair, administration, operation or maintenance of the System, payments to independent contractors of the Board related to the operation, maintenance, repair (including replacements), administration and management of the System, and all other expenses necessary, incidental or convenient for the operation of the System, but only to the extent properly attributable to the Board or the System, including but not limited to all amounts payable pursuant to Section 6.1(B) of the Operation Agreement.

"Operation Agreement" means this Operation Agreement dated as of April 1, 2003 by and between the City, the Authority and the Board providing for the management, operation, maintenance and repair of the System by the Board, as the same may be from time to time hereafter amended or supplemented in accordance with the provisions of this Operation Agreement and the Resolution.

"Operation and Maintenance Reserve Account" shall mean the Operation and Maintenance Reserve Account established within the Local Water Fund by, and held in the custody of, the Board pursuant to Section 4.2(A) of the Financing Agreement.

"Permitted Encumbrances", when used with reference to the System, shall mean (a) any and all liens, encumbrances, security interests or other defects in or clouds on title which may exist on the Acquisition Date, (b) utility, access and other easements, rights of way and exceptions which do not materially impair the operation or maintenance of the System or the Revenues therefrom, (c) mechanic's, materialmen's, warehousemen's, carrier's and other similar liens, to the extent permitted by law, and liens for taxes at the time not delinquent or being contested, and (d) any lien or security interest which the Board grants with the written consent of the Authority.

"Person" shall mean any natural person, firm, trustee, executor, personal representative, partnership, association, limited partnership, limited liability company, limited liability partnership, joint venture or corporation, or other legal entity whatsoever, including a public corporation as defined pursuant to Article Two-A of the General Construction Law. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

"Project" shall mean any System-related facility or properties, including the acquisition, planning, development, financing or construction thereof.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.

"Rate Consultant" shall mean such independent accountant or firm of independent accountants, or management consultant or firm of management consultants, or independent engineer or firm of independent engineers (which may be the same firm then serving as the Consulting Engineer), selected by the Board in consultation with the Authority.

"Resolution" shall mean the System General Revenue Bond Resolution to be adopted by the Authority prior to the issuance of its first issue of Bonds, as the same may be amended or supplemented from time to time by one or more Supplemental Resolutions.

"Revenues" shall mean (a) all rates, rents, fees, fines, charges, payments and other income and receipts derived by the Board from Users of the System, (b) all monies derived from investments, including, but not limited to, interest earnings and proceeds of insurance, condemnation, sale or other disposition of the System or any part thereof received by the Board (other than the proceeds of insurance with respect to the damage or destruction of all or any portion of the System), together with all operating aid with respect to the System from any governmental entity, Federal, State or local, to the Board, (c) amounts from the use of water, wastewater or stormwater to generate electricity, (d) any amounts from the granting of easements, licenses, rights-of-way or other interests in property constituting a part of the System; and (e) revenue from any other source, however described; but shall not include (1) amounts required to be refunded because of billing or payment errors, and (2) any amount attributable to any of the foregoing sources described in clause (a) which is expressly excluded by the Financing Agreement.

"Series" or "Series of Bonds" shall mean all of the Bonds authenticated and delivered on original issuance and identified pursuant to the Resolution or Supplemental Resolution.

authorizing such Bonds as a separate Series of Bonds and any Bonds thereafter authenticated and delivered in lieu of or in substitution therefor pursuant to the Resolution regardless of varieties in maturity, interest rate or other provisions.

"State" shall mean the State of New York.

"Supplemental Resolution" shall mean a resolution of the Authority authorizing the issuance of a Series of Bonds or otherwise amending or supplementing the Resolution, adopted at the time of or subsequent to the adoption of the Resolution in accordance with the provisions of the Resolution.

"System" shall mean the entirety of all water, wastewater and stormwater Facilities and Properties of the Board or the Authority.

"Trustee" shall mean the bank or trust company appointed as Trustee pursuant to the Resolution, and its successor or successors and any other person which may at any time be substituted in its place pursuant to the Resolution or Supplemental Resolution.

"User" shall mean any Person or effluent source that directly or indirectly contributes, causes or permits the contribution of waste into or through the System, or any property or Person that directly or indirectly uses or in any way benefits from the System.

"Water Charges" shall mean any charge, fee, rate, rent or other imposition, including interest and penalties thereon, of the Board for the use of the System, including but not limited to water, sewer, wastewater and/or stormwater Facilities.

"Water Project" shall mean any Water Facility as such term is defined in subsection 30 of Section 1230-b of the Act and shall include any Project as defined herein and as such Project may be undertaken pursuant to an agreement by and among the Authority, the Board, any Person and/or the City pursuant to section 1230-i of the Act.

SECTION 1.2. INTERPRETATION. In this Operation Agreement, unless the context requires otherwise:

(A) The terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Operation Agreement, refer to this Operation Agreement, and the term "hereafter" shall mean after the date of this Operation Agreement.

(B) Words of masculine gender shall mean and include correlative words of feminine and neuter genders.

(C) Words importing the singular number shall mean and include the plural number, and vice versa.

(D) Any certificates, letters or opinions required to be given pursuant to this Operation Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Operation Agreement.

(E) Any action required to be taken by the City under this Operation Agreement shall require action by the Mayor and approval by the City Council.

(F) All words and terms shall be liberally construed to enable the parties hereto to perform, carry out and achieve the purposes and powers of the parties hereto granted and established in the Act and in this Operation Agreement. In the event any term or word in this Operation Agreement is not defined herein, the parties shall use the definition thereof contained in the Act, to the extent applicable.

ARTICLE II

GENERAL COVENANTS; INDEMNIFICATION

SECTION 2.1. REVENUES OF THE BOARD. All Revenues received by the Board shall belong to the Board, and shall be applied as provided in the Financing Agreement and the Resolution.

SECTION 2.2. SUBSTITUTION OF BOARD FOR CITY. As provided in Section 1230-h (7) of the Act, where necessary or desirable and to the extent permitted by any State or Federal law, the City and the Board shall use their best efforts to substitute the Board for the City as the party in interest concerning any applications heretofore or hereafter filed or proceedings heretofore or hereafter commenced in relation to the System with the State Department of Environmental Conservation, the State Department of Health or any other agency of the State or with the United States Environmental Protection Agency or any other Federal agency or instrumentality. To the extent permitted by law, the City and the Board agree any such application or proceeding shall inure to and be for the benefit of the Board and shall be binding upon the Board to the same extent and in the same manner as if the Board had been a party to such application or proceeding from its inception, and the Board shall be deemed a party thereto. To the extent permitted by the approving or licensing party, all licenses, approvals, permits or decisions heretofore or hereafter issued or granted pursuant to or as a result of any such application or proceeding, shall inure to the benefit of and be binding upon the Board, and the same shall be assigned and transferred by the City to the Board to the extent such assignment and transfer is not prohibited by State or Federal law.

SECTION 2.3. INDEMNIFICATION.

(A) Subject to Section 2.4 hereof, the City shall keep, save and hold harmless the Authority and the Board and their respective members, officers, employees and agents from any and all liability, loss or damage from or in connection with any act done or omitted which was or is taken, or omitted, by the City at any time prior to and after the Acquisition Date with respect to or in connection with the System.

(B) Subject to Section 2.4 hereof, the Board shall keep, save and hold harmless the City and its elected officials, officers, employees and agents from any and all liability, loss or

damage from or in connection with any act done or omitted in the exercise of the powers of the Board which is taken, or omitted, in good faith and in pursuance of the purposes of the Board in accordance with the Act.

SECTION 2.4. CONDITIONS. The right to indemnification pursuant to Section 2.3(A) and 2.3(B) hereof is expressly subject to satisfaction of the following respective conditions, as the case may be:

(A) The Authority and/or Board, as the case may be, shall promptly forward to the City's Corporation Counsel all summonses or notices pertaining to claims received or served upon the Authority and/or the Board and their members, officers, employees or agents, together with a written request for indemnification pursuant to Section 2.3(A).

(B) The Authority and/or the Board and their respective members, officers, agents and employees shall cooperate in aiding the City to investigate, adjust, settle or defend each such claim, action or proceeding.

(C) The defense of all such claims, actions and proceedings shall be conducted by, or under the supervision of, the City. Unless the City shall determine otherwise, the Corporation Counsel of the City shall be the attorney of record on behalf of the Authority and/or the Board, as the case maybe, in all actions and proceedings for which indemnification is requested from the City by the Authority and/or the Board, as the case may be.

(D) The City shall promptly forward to the Board's Executive Director all summonses or notices pertaining to claims received or served upon the City and its elected officials, officers, employees or agents, together with a written request for indemnification pursuant to Section 2.3(B).

(E) The City and its elected officials, officers, employees and agents shall cooperate in aiding the Board to investigate, adjust, settle or defend each such claim, action or proceeding.

(F) The defense of all such claims, actions or proceedings shall be conducted by, or under the supervision of the Board. Unless the Board determines otherwise, the Board's legal counsel shall be the attorney of record on behalf of the Board in all actions and proceedings for which indemnification is requested by the City.

SECTION 2.5 CONTRACTOR INDEMNIFICATION. The Board shall cause all Persons, (public or private), however described, with whom it contracts to perform any of the duties herein assigned to or assumed by the Board for the operation, maintenance, repair and management of the System, to keep, save, defend and hold harmless the Board, the Authority and the City and its respective elected officials, members, officers, employees and agents from any and all liability, loss or damage (including attorneys' fees, court costs and expenses) arising from or in connection with any act done or omitted by such Persons and their employees, officers or agents in connection with the operation, maintenance, repair and management of the System under such contract(s), upon such terms and conditions as the Board may determine from time to time. The indemnification required hereby may be accomplished through a policy of insurance, in such amounts, terms and conditions satisfactory to the Board. The Board shall require that

any insurance or performance bonds provided by any such contractor shall also name the Board, the Authority and the City as additional insured parties.

SECTION 2.6. USE OF CITY PROPERTY. The City hereby grants the Board the right, privilege and easement to maintain, operate, use, construct, reconstruct, repair, remove and/or replace any or all of the Board's Facilities that are now or may become part of the Board's System, and that are now or may in the future be located in, on, under or above any City property, including but not limited to, City streets, roads, rights-of-way, easement areas. The Board and the City shall cooperate with each other, and shall cause their respective contractors to cooperate with each other, in the planning and implementation of all public works and Projects, to the maximum extent possible so as to minimize or avoid disruption or interference with City and/or Board services to the public and to protect and preserve the property and or facilities of the City and the Board. By way of example and not as a limitation, the parties shall provide advance notice to each other, or cause their respective contractors to provide advance notice of any Construction that will result in the cutting, excavation or opening of any street, and the Person performing such Construction shall use best construction practices, as are generally acceptable to construction contractors, to maintain public safety, preserve and/or protect property from damage. Such Board's facilities include, but are not limited to, pipes, conduits, pumps, water and sewer lines, receivers, and catch basins. The City shall not charge or impose any fees on the Board or its contractors for the use of City property, including but not limited to curb-cuts, street closings or openings. If the exercise of the foregoing easement shall result in damage to the physical property of the City, the Board, upon the City's demand, shall cause such damaged property to be repaired and the City's property to be restored to substantially the condition existing immediately before such damage shall have been sustained. In the event the City repairs, restores, replaces or otherwise improves any City property where Board Facilities are located, the Board will not be responsible or liable for the cost of any such repairs, restoration, replacement or improvement, unless the Board elects to repair, restore, replace or otherwise improve such Board Facilities and such work affects City property. In such event, the Board's costs with respect to such City property shall be limited to the cost of restoration thereof to substantially the condition of such City property prior to commencement of such work.

SECTION 2.7. AGREEMENT OF THE STATE. Pursuant to Section 1230-r of the Act, the Board and the City do certify that the Acquisition Agreement, the Financing Agreement and this Operation Agreement are all intended for the benefit of the Bondholders.

ARTICLE III

OPERATION, MAINTENANCE AND IMPROVEMENT OF THE SYSTEM

SECTION 3.1. THE BOARD TO OPERATE AND MAINTAIN THE SYSTEM.

(A) By virtue of this Operation Agreement and pursuant to the terms of the Financing Agreement, the Board shall manage, operate, maintain and repair the System.

(B) Pursuant to this Operation Agreement and the Act, the City agrees that the Board shall be entitled to advise and consult with the City and appropriate officers and employees thereof, in all substantially material decisions affecting the operation and management of the System. Such decisions shall include, but are not necessarily limited to, capital planning for the City and the Board, and the preparation, development and formulation of an annual budget of the City with respect to services to be provided by the City to the Board pursuant to this Operation Agreement. The Board and the City shall provide to each other copies of reports, budgets, studies that relate to the System as they become available, are requested by the other party and are not classified as confidential.

(C) Except as provided in Section 3.1 (E) hereof, and subject to the limitations contained in Section 9.2 hereof, the Board shall, within the limits of funding provided by the Board and the Authority, manage, administer, operate and maintain the System in good and safe order and condition and make all repairs that are appropriate or necessary in connection therewith in accordance with Industry Standards. As used in this section, "maintain" and "repair" shall include all necessary repairs, replacements, renewals, alterations and additions, whether structural, non-structural, ordinary or extraordinary and "administer" shall include, without limitation, the enforcement of regulations of the Board relating to the use of the System, and "operate" shall include, without limitation, the engagement of employees, including City employees, and engagement of independent contractors for the fulfillment of the Board's duties and obligations with respect to the System. Except as specifically provided in or pursuant to this Operation Agreement, nothing contained in this Section 3.1 shall be construed to impose any obligation or liability upon the City for the administration, operation, maintenance and repair of the System.

(D) In the event the City determines any deficiency in the Board's management, operation, maintenance or repair of the System, or in the performance of this Agreement, the City, the Authority and the Board shall proceed as follows:

- (1) The City shall first deliver a written notice to the Board and to the Authority, stating with specificity, the basis for such deficiency, including written reports, correspondence and/or resolutions of the City Council.
- (2) If the Board concurs that such a deficiency exists, it shall advise the City and the Authority in writing, not more than ten (10) days after receipt of such notice, as to how and when it will correct or remedy such deficiency and undertake such corrective or remedial action as soon as practicable.
- (3) If the Board does not concur with the City that such a deficiency exists, it shall so advise the City and the Authority in writing, not more than ten (10) days after receipt of such notice, and provide a reasoned elaboration in support of its position. After receipt of the Board's written response, if the City does not accept the Board's position or if the Board fails to perform any corrective and/or remedial action with respect to such notice of deficiency, the City may petition the Authority for a determination as to whether an "event of default" has occurred under Article 8 of the Financing Agreement. The Authority's determination as to whether an

event of default has occurred shall be final and binding upon the City and the Board.

(E) The Board shall, within the limits of funding provided by the Authority, the City or from any governmental grants or other sources, and in accordance with the provisions of Section 4.1 of this Operation Agreement, undertake and complete such improvements to the System, including but not limited to capital improvements, replacements, renewals, alterations, increases, enlargements, extensions and additions, whether structural, non-structural, ordinary or extraordinary, and such planning, studies, designs and surveys as are necessary or appropriate to effect such improvements and Projects recommended by the Consulting Engineer to be necessary and appropriate to preserve and keep the System in good working and safe order and condition. Any such improvements so undertaken by the Board pursuant to funding: (i) if provided by the Authority, shall be owned by the Board, and (ii) if provided by the City or any other Person, may be conveyed to the Board, and in either case by lease or other conveyance upon such terms as the Board, the City, the Authority or such Person may agree.

(F) Subject to the requirements of Section 6.4 of the Financing Agreement, nothing contained in this Operation Agreement or in the Financing Agreement shall be construed as preventing the Board from undertaking, to the extent permitted by law, improvements to the System (including the acquisition of equipment therefor) on its own initiative from Revenues available to the Board pursuant to Section 1230-j, or from funds other than the proceeds of obligations issued by the City or the Authority to finance same. In addition, the Board may, with the concurrence of the City, undertake other improvements that are financed either out of proceeds of obligations issued by the City to finance same, or from other funds of the City available therefor. Notwithstanding any other provision herein, the City will not issue any bonds or other indebtedness attributable to the System, or incur any debt to be repaid by the Board or the Authority, without the express written consent of the Board and the Authority, by resolution adopted by the Board and the Authority.

(G) The City shall not make any improvements or otherwise modify, change, expand, upgrade, repair or alter the System or any part thereof, without the prior written approval of the Board. Such approval shall be at the sole discretion of the Board, and upon terms and conditions acceptable to the Board.

SECTION 3.2. AGREEMENT AS TO SYSTEM. The Board shall not commit nor suffer, and the Board shall use all reasonable care, within the funding provided by or to the Board, to prevent, waste, damage or injury to the System.

SECTION 3.3. COMPLIANCE WITH REGULATIONS. The System shall be used, managed, operated and maintained in accordance with all applicable laws, including the applicable rules and regulations of the Board. The Board shall exercise its powers pursuant to the laws of the United States, the State, local law, and its rules and regulations, to administer, operate, maintain and regulate the use of the System. Notwithstanding any other provision herein or in the Financing Agreement, no permit, license or similar approval from the City, nor any fee, bond or insurance otherwise required by the City shall be required of the Board to manage, operate, maintain, repair or improve the System or any part thereof in furtherance of the public purpose of the Board and the Authority or the Board's performance of this Agreement.

The City shall not impose or require any fee, charge or other imposition of any independent contractor of the Authority or the Board in the award or performance of any contract, or otherwise.

SECTION 3.4. The Board shall establish and promulgate rules and regulations for the administration, management, use and operation of the System and shall be entitled to enforce such rules and regulations, in accordance with the Act, with respect to all Users of the System. The City shall not establish or enforce any ordinance, local law or regulation in contravention of the Board's rules and regulations as provided herein or in the Act.

SECTION 3.5. FORCE MAJEURE. Each party's performance under this Agreement will be excused if the party is unable to perform because of Force Majeure. In the event of any such Force Majeure, the party unable to perform its obligations hereunder shall notify the other party within twenty-four (24) hours of the existence of such Force Majeure and shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned Force Majeure. During any such Force Majeure, the affected party shall continue to fulfill its obligations under this Agreement on a best-efforts basis.

ARTICLE IV

COSTS OF PROJECTS; PROPERTY ACQUISITION

SECTION 4.1. CAPITAL COSTS INCURRED BY BOARD. The Board may incur Costs for the Construction, effectuation and financing of Projects in accordance with a written five-year Capital Improvement Plan mutually agreed to by the Authority and the Board. The initial Capital Improvement Plan shall be established within one hundred twenty (120) days after the Acquisition Date and shall be revised annually, or as necessary or appropriate, thereafter in conjunction with the Annual Budget. The Board shall provide a copy of such Capital Improvement Plan to the City and the Authority.

SECTION 4.2. PROPERTY ACQUISITION. Nothing contained in this Operation Agreement shall limit the City's right and power of eminent domain and condemnation, except that the City will not condemn any Property owned or leased by the Board, or in which the Board holds legal or equitable interest, or otherwise take any action that may be materially adverse to the Board or the Bondholders. The Board shall acquire all Property or any interest therein necessary or useful for the Construction or effectuation of a Project, and if the Board so acquires any such Property by eminent domain or condemnation, it shall take title to such property (or interest therein, as the case may be) in its own name.

SECTION 4.3. COMPLIANCE WITH LAW. In the award of contracts relating to the Construction and effectuation of Projects, the Board will, to the extent that such section applies to such contracts, comply with the requirements set forth in 1230-u of the Authority Act.

ARTICLE V
PROVISION OF SERVICES

SECTION 5.1. BILLING AND COLLECTION.

(A) Subject to Section 5.4 hereof, for a period of not less than five (5) years from the Acquisition Date, the Board hereby hires, retains and employs the City, and the City hereby agrees, to render billing services for the Board, including but not limited to, notification to Users of the System of the Water Charges levied by the Board, collection thereof, and maintenance of the books, records and accounts of such billing and collection; provided, however, that the Board reserves to itself the power to (1) resolve billing disputes and other disputes regarding the levy of Water Charges not resolved at the administrative level and (2) delegate all or a portion of such powers to the City.

(B) The Board will take all actions necessary to adopt and implement (1) Water Charges for the System in conformance with Section 1230-j of the Authority Act and (2) a procedure for the discontinuance of water service in conformance with the provisions of Section 1230-j(2) of the Authority Act. The City and the Board shall, in cooperation with each other, develop and implement a plan for the effective management and enforcement of all collections of Water Charges, including, but not limited to, timely notices of arrears to Users and actual shut-off of services to Users who are delinquent in the payment of their Water Charges or otherwise violate the regulations of the Board.

(C) The City shall promptly implement a billing and collection program for all Board Water Charges in accordance with a schedule and scope of services to be established by the Board, in consultation with the Rate Consultant. Pending the establishment of such program, the City shall bill and collect Water Charges as it has historically done so prior to the Acquisition Date. The City shall deposit all Water Charge collections in the Board's Local Water Fund within two (2) business days of receipt thereof. Subject to Section 6.1 hereof, the City shall incur all costs and expenses, including but not limited to City employee compensation, postage, handling, computer hardware and software, etc. to perform such billing and collection services. The City acknowledges that a goal of the Board is to stabilize Water Charges to Users of the System, while maintaining adequate cash flow for the efficient operation, maintenance and repair of the System, together with capital improvements. The City acknowledges that all monies collected as Water Charges are the property of the Water Board. The City will use its best efforts to maintain an average annual collection rate for all Water Charges (including the collection of delinquent accounts as of the Acquisition Date) of not less than the average annual collection rate of the City during the ten (10) year fiscal period prior to the Acquisition Date. The City shall provide the Board with at least the following information: (i) current year percentage of collections of Water Charges in relation to current year billings of such Water Charges, (ii) total collections (including delinquent accounts) of Water Charges, as a percentage of current year billings of such Water Charges, and (iii) information, as requested by the Board, to provide a reasonable opportunity of due diligence, so that the Board will know the history of such billings and collections over the most recent five (5)-years.

(D) The Board shall provide the City with timely meter readings, and other data for significant industrial users ("SIU's") and other Users to enable the City to bill Users of the System. The City shall provide the Board with monthly reports, not later than the fifteenth (15th) day of each month, that fully advises the Board of all bills for Water Charges that have been issued and collected during the prior month, together with such other reports as the Board may request. The City shall provide the Board with such reports in a form and content as the Board may reasonably request. The City and the Board acknowledge that timely and accurate preparation and delivery of meter readings and related User information, and reports on bills and collections is essential to the operation and management of the System.

SECTION 5.2. LEVY OF WATER CHARGES. In accordance with Section 1230-j of the Act, the Board hereby directs the City to levy the amount of any delinquent Water Charges levied by the Board or by the City against the Users liable therefor and authorizes the City to exercise all of its powers pursuant to the provisions of the laws of the State covering enforcement and collection of unpaid taxes of the City and to enforce and collect such Water Charges. The City and Board shall establish and amend, as appropriate, a schedule for pro rata application of collections that are received for less than payment in full in accordance with experience of the City with other tax jurisdictions and in accordance with all applicable laws.

SECTION 5.3. LATE PAYMENTS. All late payments of Water Charges shall be the property of the Board, and shall be collected by the City through any applicable remedy available under current law on behalf of the Board in accordance with procedures established pursuant to Section 5.1 hereof. The City shall advise the Board, in writing, no later than July 31 and January 31 of each year of Water Charges that it has collected during the prior six (6) month period that were delinquent and collected with general City tax collections. The City shall provide such reports in form and content as the Board may reasonably request.

SECTION 5.4. DISCONTINUANCE OF BILLING SERVICES. In the event that either the Board or the City determines in its sole discretion that the City discontinue providing such billing and collection services, the party making such determination and said party's desire to terminate such services hereunder shall give written notice of such fact to the other party not less than two years prior to the date of the termination of such services. Notwithstanding the termination of billing services by the City pursuant to this Section, Section 5.2 and 5.3 of this Operation Agreement shall remain in full force and effect, and in such event the Board shall pay to the City the cost of services provided to the Board pursuant to Section 1230-j of the Act.

SECTION 5.5. OTHER CITY SERVICES. In addition to the services provided by the City pursuant to Section 5.1 hereof, the City shall also provide the Board with general overhead, support services and facilities, as the Board determines necessary and appropriate to perform its duties and obligations, including but not limited to, use of City officers, employees, agents and contractors for payroll, personnel, auditing, accounting, purchasing, legal and other administrative matters and the use of the City's facilities for meetings and other administrative functions.

SECTION 5.6. DISCONTINUANCE OF OTHER CITY SERVICES. In the event that either the Board or the City, in its sole discretion, determines that the City discontinue providing any services described in Section 5.5 hereof, the party making such determination and said

party's desire to terminate such services hereunder shall give written notice of such fact to the other party not less than one (1) year prior to the date of the termination of such services. In the event the services in Sections 5.1 or 5.5 are terminated by either party, the Board will only be responsible to pay for those services actually requested by the Board in writing and actually performed by the City.

ARTICLE VI

PAYMENTS BY THE BOARD

SECTION 6.1. PAYMENTS BY THE BOARD.

(A) As consideration for (1) the performance by the City of its obligations and agreements set forth herein, and (2) the City's provision to the Board with general overhead and support services and facilities, including the services of the City's officers and employees for billing, personnel, collection, auditing, purchasing, legal and other administrative matters, the use of City's facilities for meetings and other administrative functions, the Board agrees, pursuant to the Act, including but not limited to Section 1230-j thereof, and otherwise as permitted by law, to make the payments to the City described in subsection (B) of this Section 6.1.

(B) Subject to the statutory lien created by Section 1230-j(6) of the Authority Act, to Section 6.2 of this Operation Agreement and to the provisions of the Financing Agreement, the Board shall make the following payments to the City:

- (1) all expenses requested by the Board and incurred by the City for services described in Article V hereof, including, but not limited to, salaries, wages and fringe benefits of City employees, direct expenses without any markup or additions and costs of independent contractors engaged by the City, where such independent contracts are approved in advance by the Board. The categories of such expenses for such City services during the first year of this Operation Agreement and the estimated costs for the first year of such services shall be set forth in a certificate to be delivered by the City to the Board on the Acquisition Date;
- (2) the amount of any judgment or claim paid by the City (and not otherwise reimbursed) arising out of a tort claim that relates to the Board's management, operation, maintenance or repair of the System, where such claim was for events or action occurring after the Acquisition Date and the cost of such judgment or claim against the City is not paid directly to such claimant by the Board;
- (3) an amount sufficient to reimburse the City for Construction Costs incurred by the City that are (i) related to the System, and (ii) approved, in writing,

in advance by the Board and the Authority, including but not limited to, the Board's share of City street and right of way improvement costs wherein Board Facilities are replaced, repaired or otherwise improved as certified by the City to the Board.

- (4) Subject to the provisions of payment as set forth in Section 6.1(C) of this Operation Agreement, a payment in lieu of taxes ("PILOT payment") will be due and payable by the Board to the City each year beginning in 2008. The Base PILOT payment shall be \$700,000. The Actual PILOT payment amount to be paid by the Board to the City for the years 2008 through 2012 shall be determined in the following manner:

No later than July 30, 2007, the Board shall provide the City with a summary of annual metered water consumption by all water Users for the prior four-year period of 2003 through 2006. If the total water consumption for the last two years of this period (2005 and 2006) exceeds the total annual water consumption for the first two years of this period (2003 and 2004), consumption will be deemed to have increased and the Base PILOT payment to the City will be increased to an Actual PILOT payment which shall be a fixed amount for each year of the next five years (2008 through 2012) in accordance with the formula presented below:

$$\text{Base PILOT payment} \times \frac{\text{total annual water consumption for 2005 and 2006}}{\text{total annual water consumption for 2003 and 2004}} = \text{Actual PILOT Payment}$$

In the event that the total annual water consumption for 2005 and 2006 is equal to or less than the total annual water consumption for 2003 and 2004, consumption will have deemed to have stayed the same or decreased and the PILOT payment to the City will remain the same at the Base PILOT payment of \$700,000 for each year of the next five years (2008 through 2012).

Adjustments to the PILOT payment in 2013 and subsequent years will be determined every five years in a similar manner.

No later than July 30, 2012 and every five years thereafter, the Board shall provide the City with a summary of annual metered water consumption by all water Users for the prior five-year period. If the total water consumption for the last two and one-half years of this five-year period exceeds the total annual water consumption for the first two and one-half years of this same period, consumption will be deemed to have increased and the Actual PILOT payment to the City will be increased to a new fixed amount for each year of the next five years in accordance with the formula presented below:

Previous Actual PILOT payment X total annual water consumption for the last 2.5 years divided by the total annual water consumption for the first 2.5 years of the period equals the New Actual PILOT payment

In the event that the total annual water consumption for the last two and one-half years of any five-year period is equal to or less than the total annual water consumption for the first two and one-half years of the five-year period, consumption will have deemed to have stayed the same or decreased and the Actual PILOT payment to the City will remain the same for the next five years at the amount set for the previous period.

(C) The Board and the City acknowledge that the receipt of the PILOT payment is important to the City, and the City anticipates receiving the PILOT payment from the Board each Fiscal Year beginning in 2008 in the amount determined by the formula set forth in this Operation Agreement. The Board will include the PILOT payment in its Annual Budget each Fiscal Year and will establish its Water Charges such that the Board can pay the City the full amount of the PILOT payment and still achieve the required debt service coverage and make other deposits as required. If an event or series of events (an "Event") occurs during a Fiscal Year that could not have been reasonably foreseen by the Board, wherein the Board does not have sufficient funds to pay part or all of the PILOT payment to the City, the Board will take the following actions: (1) the Board will notify the City within ten (10) calendar days of such Event stating the nature of the Event and the estimated impacts on the Board's Annual Budget; (2) the Board will pay the City as much of the scheduled PILOT payment as it can reasonably afford within the Fiscal Year in which such Event occurs; (3) to the extent practical, the Board will amend its Annual Budget and Water Charges for the Fiscal Year in which an Event occurs to minimize or eliminate any difference between the Board's budgeted and actual PILOT payments to the City in the fiscal year (the "shortfall"); (4) the Board will pay the City any shortfall amount within the first one hundred eighty (180) calendar days of the Fiscal Year following the Event, plus interest on the shortfall amount with interest computed based on the City's cost of borrowing for the actual period of time regardless of whether or not the City actually borrowed funds during such period; and (5) the Board will include in its Annual Budget and Water Charges for the year following an Event sufficient funds to pay the PILOT payment for such year. Notwithstanding any other provision herein, the Board may prepay all or any portion of the PILOT payment to the City, as it deems appropriate, and in its sole discretion.

SECTION 6.2. METHOD OF PAYMENT.

(A) Amounts payable pursuant to Section 6.1(B) hereof shall be paid as follows:

- (1) No later than five (5) business days after passage of the City's Budget for the ensuing Fiscal Year, the City, acting by its Budget Director or such other person as the City shall designate, shall certify to the Board, with regard to such Fiscal Year, the amount, as included in the City's Budget, which the City reasonably anticipates it will expend in connection with each of the costs described in Section 6.1(B)(1) hereof in the ensuing Fiscal Year. Such certification shall also include an approximate monthly breakdown of expenses to be incurred in such Fiscal Year and an

estimated schedule of payments to be made by the Board to the City consistent therewith.

- (2) Prior to making payments pursuant to Section 6.1(B)(1), the Board shall have received, together with the certifications described in paragraph (1) above, a certificate of the Consulting Engineer or the Rate Consultant, in such form and with such exhibits as may be agreed upon by the City and the Board, to the effect that such amounts certified by the City for costs to be incurred in connection with Section 6.1(B)(1) hereof are reasonable and appropriate.
- (3) The Board shall commence payment of amounts in respect of expenses certified by the City pursuant to section 6.2(A)(2) hereof upon receipt of a written request therefor delivered by the City.
- (4) The Board shall commence payment of amounts in respect of Construction Costs certified by the City pursuant to Section 6.1(B)(3) hereof upon receipt of a written request therefor delivered by the City.
- (5) In the event that in any Fiscal Year, the City determines that its prior estimate of amounts it reasonably anticipates it will incur within such Fiscal Year in connection with each of the costs described in Section 6.1(B)(1) hereof, was incorrect, it shall deliver to the Board a supplemental certificate stating its new estimate of all such costs and evidence that such increased or decreased costs have been reflected in the City's Budget for such Fiscal Year by amendment or otherwise. In connection with the delivery of the certificate described in this paragraph, the City shall also deliver to the Board a certificate described in Section 6.2(A)(2) hereof. The City and the Board shall reconcile actual and estimated costs and payments each year, as soon as practicable, after the audit of the accounts and records of the Board and the City, respectively. The City or the Board shall pay any amount due to the other hereunder, after a reconciliation of accounts, as the case may be, within thirty (30) days of receipt of such reconciliation statement.

ARTICLE VII

PROCEDURES FOR FISCAL YEAR 2003

SECTION 7.1. PROCEDURES FOR DETERMINING OPERATION PAYMENTS FOR FISCAL YEAR 2003. Notwithstanding any other provisions herein:

(A) For Fiscal Year 2003, the actions to be taken pursuant to Article VI hereof shall be taken as follows: the certification required pursuant to Section 6.2(A)(1) shall be made not

later than the Acquisition Date and the certification of the Consulting Engineer or Rate Consultant described in Section 6.2(A)(2) shall not be required for Fiscal Year 2003.

(B) When an action required to be taken under this Operation Agreement cannot be timely performed during Fiscal Year 2003 because the specified time for such action is (1) prior to the Acquisition Date or (2) so soon after the Acquisition Date that the action could be timely taken only with extreme hardship to the City or the Board, then such action shall be deemed timely taken for purposes of this Operation Agreement if taken as soon as practicable after the Acquisition Date.

(C) For Fiscal Year 2003, the Board will pay *pro rata* the amounts the City has set forth in its annual budget for Fiscal Year 2003 with respect to the services described in Article V hereof attributable to the System.

ARTICLE VIII

OFFICERS AND EMPLOYEES OF THE BOARD

SECTION 8.1. OFFICERS AND EMPLOYEES. As of the Acquisition Date, in accordance with all applicable laws, the Board shall employ such officers and employees as may be required by the Board to manage, operate and maintain the System and to perform this Operation Agreement.

ARTICLE IX

PARTICULAR COVENANTS

SECTION 9.1. DISPOSITION OF PROPERTY.

(A) Other than Permitted Encumbrances, the Board will not sell, lease, sublease, assign, transfer, encumber or otherwise dispose of all or any part of the System, or any Property which may be acquired by the Board that it acquired from the City, or its interest in this Operation Agreement, without the prior written approval of the Authority and the City, which approval shall not be unreasonably denied, withheld or delayed. The Board shall provide the City with a written notice of its intention to sell, lease, sublease, transfer, encumber, or otherwise dispose of any such Property. Such notice shall include a full description of such Property, together with the terms and price, if any, of such disposition. The City may elect to acquire such Property upon the same terms and price in such notice, or if after sixty (60) days the City fails to respond to such notice, the City shall be deemed to have granted its consent thereto, and forever waived any future right to such Property. The Board will not be required to obtain any consent

from the City with respect to any Property it acquires from Persons other than the City, prior to any sale, lease, sublease, assignment, transfer, encumbrance or disposition thereof. The Board shall not approve any sale, lease, sublease, assignment, transfer, encumbrance or other disposition of all or any part of the System or any Property, or its interest in this Operation Agreement without first obtaining a certificate of the Consulting Engineer that such sale, lease, sublease, assignment, transfer, encumbrance or other disposition will not materially adversely affect the System or the Revenues of the Board. The proceeds from any such disposition shall constitute Revenues which shall be deposited by the Board in the Local Water Fund as promptly as practicable after receipt thereof by the Board.

(B) The Board, without the prior written consent of the City, may grant Permitted Encumbrances of or on the System which, in the reasonable judgment of the Board, do not interfere with the operation and maintenance of the System and the collection of the Revenues.

SECTION 9.2. ENCUMBRANCES. Other than pursuant to Permitted Encumbrances, the Board may not authorize any use of, or grant any lien, encumbrance, security interest, license, easement or right-of-way affecting, the System without the prior written approval of the Authority.

SECTION 9.3. COVENANT OF CITY AS TO RATES AND CHARGES. The City covenants that, upon the issuance of the Bonds by the Authority, the City will not thereafter levy fees, rents and other Charges (except for delinquent Charges) on any Users with respect to the System until all Bonds are paid or such Bonds are otherwise defeased in accordance with the terms of the Resolution.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. FURTHER ASSURANCES. The City, the Authority and the Board hereby covenant, from time to time, to do all acts and to make or enter into and deliver any contracts, agreements, leases, conveyances or other instruments as may be necessary or appropriate to effectuate this Operation Agreement.

SECTION 10.2. RECONVEYANCE. The City may require the Board to, and the Board shall, notwithstanding any provision contained herein to the contrary, reconvey the System to the City upon ninety (90) days written notice to the Board and the Authority; provided, however, no such reconveyance shall take effect unless and until (a) the date of which all Bonds are paid in full or provision therefor shall have been made in accordance with the Resolution, trust indenture or other instrument under which they were issued and (b) the City shall have paid or assumed all other liabilities and obligations of the Board and the Authority.

SECTION 10.3. NO PERSONAL LIABILITY. Nothing contained in this Operation Agreement and no act of the Authority, the Board or any officer or employee of the City

performed or omitted in pursuance, effectuation or implementation thereof shall be construed to give rise to or create any personal liability whatsoever on the part of any present or future individual member or officer or group of individual members or officers of the Authority or Board or any public officer or employee of the City.

SECTION 10.4. NO WAIVER. No failure to exercise, and no delay in exercising on the part of the City, the Authority or the Board, as the case may be, any right, power or privilege hereunder, shall operate as the waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

SECTION 10.5. AMENDMENTS. This Operation Agreement may be amended without the consent of the holders of any Bonds or the Trustee therefor, but such amendment or modification must be in writing, duly authorized by the City, acting by resolution of the City Council, and by resolutions of the Board and of the Authority.

SECTION 10.6. NOTICES.

(A) All notices, requests and other communications under this Operation Agreement shall be deemed to have been duly given if in writing when (1) delivered personally to the applicable address stated below, or (2) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (3) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. Except as provided in subsection (C) hereof, the addresses to which such notices, requests and other communications hereunder shall be delivered are as follows:

IF TO THE CITY:

Office of the Corporation Counsel of the City of Niagara Falls
City Hall
745 Main Street
Niagara Falls, New York 14302-0069

IF TO THE BOARD:

Niagara Falls Water Board
Michael C. O'Laughlin Municipal Water Plant
5815 Buffalo Avenue
Niagara Falls, New York 14304
Attention: Executive Director

With a copy to:

Office of the Secretary
Niagara Falls Water Board
Michael C. O'Laughlin Municipal Water Plant
5815 Buffalo Avenue
Niagara Falls, New York 14304

IF TO THE AUTHORITY:

Niagara Falls Public Water Authority
Michael C. O'Laughlin Municipal Water Plant
5815 Buffalo Avenue
Niagara Falls, New York 14304
Attention: Chairman

With a copy to:

Office of the Secretary
Niagara Falls Public Water Authority
Michael C. O'Laughlin Municipal Water Plant
5815 Buffalo Avenue
Niagara Falls, New York 14304

(B) A duplicate copy of each notice, certificate and other communication given hereunder shall be given to the Authority.

(C) Each party entitled to receive notices hereunder may, by notice given hereunder, designate any further or different addresses to which subsequent notices, requests and other communication shall be sent.

SECTION 10.7. SEVERABILITY. In the event that any one or more of the provisions contained in this Operation Agreement is or are invalid, irregular or unenforceable in any respect, the validity, regularity and enforceability of the remaining provisions contained in this Operation Agreement shall be in no way affected, prejudiced or disturbed thereby.

SECTION 10.8. HEADINGS. The Table of Contents and headings of the several articles and sections of this Operation Agreement and the captions in this Operation Agreement are inserted for convenience of reference only and shall in no way define, describe or limit the scope or intent of this Operation Agreement or control, affect the meaning of or be taken as an interpretation of any provision of this Operation Agreement.

SECTION 10.9. AUTHORIZED REPRESENTATIVES. The Board and the Authority may appoint one or more officers or employees as its authorized representatives for the purpose of taking any action to be taken by the Board or Authority hereunder, as the case may be. The Board and/or the Authority shall notify the City in writing of its authorized representatives and may change the same by notice in writing, effective when received.

SECTION 10.10. GOVERNING LAW. This Operation Agreement shall be governed by, and construed in accordance with, the Constitution and laws of the State.

SECTION 10.11. COUNTERPARTS. This Operation Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City has caused this Operation Agreement to be executed in its name by the Mayor of the City, the Authority has caused this Operation Agreement to be executed in its name by its Chairman, and the Board has caused this Operation Agreement to be executed in its name by its Chairman, all as of the date first above written.

APPROVED AS TO FORM:

THE CITY OF NIAGARA FALLS

Ronald D. Anton
Corporation Counsel

By: [Signature]
Mayor

NIAGARA FALLS WATER BOARD

ATTEST

Cynthia R. Baxter
CITY CLERK

By: [Signature]
Chairman

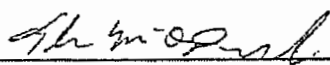
NIAGARA FALLS PUBLIC
WATER AUTHORITY

By: [Signature]
Chairman

STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

On the 14th day of April in the year 2003, before me, the undersigned, a notary public in and for said state, personally appeared Irene J. Elia, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

THOMAS M. O'DONNELL
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
COMMISSION EXPIRES APRIL 30, 2003



Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

On the 14th day of April in the year 2003, before me, the undersigned, a notary public in and for said state, personally appeared Brian F. Kane, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

THOMAS M. O'DONNELL
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
COMMISSION EXPIRES APRIL 30, 2003

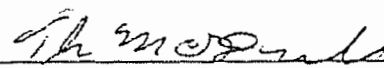


Notary Public

STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

On the 17th day of April in the year 2003, before me, the undersigned, a notary public in and for said state, personally appeared Carmen A. Colao, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

THOMAS M. O'DONNELL
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
COMMISSION EXPIRES APRIL 30, 2003



Notary Public

Exhibit A

FIRST AMENDMENT

TO

OPERATION AGREEMENT

This First Amendment, dated as of January 1, 2006 ("First Amendment"), by and between the City of Niagara Falls ("City"), a municipal corporation of the State of New York, the Niagara Falls Water Board ("Board"), a body corporate and politic constituting a corporate municipal instrumentality of the State of New York and the Niagara Falls Public Water Authority ("Authority"), a body corporate and politic constituting a public benefit corporation of the State:

WITNESSETH

WHEREAS, the City, the Board and the Authority entered into an Operation Agreement, dated as of April 1, 2003 ("Operation Agreement"); and

WHEREAS, the Board, by letter dated July 16, 2004, provided the City with notice of "Discontinuance of Other City Services" pursuant to Section 5.6 of the Operation Agreement; and

WHEREAS, the City, the Board and the Authority desire to amend Section 5.5 and Section 5.6 of the Operation Agreement to clarify, in some instances expand, and in some instances discontinue the "Other City Services" identified in Section 5.5 of the Operation Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, the parties hereto hereby agree as follows:

1. Effective Date. This Amendment shall be effective as of January 1, 2006 (the "Effective Date").

2. Amendment of Section 5.5 of the Operation Agreement. As of the Effective Date,

Section 5.5 of the Operation Agreement is hereby amended in its entirety to read as follows:

SECTION 5.5 - OTHER CITY SERVICES. In addition to the services provided pursuant to Section 5.1 of the Operation Agreement, the City shall also provide the Board with the services set forth in this Section. The costs or budget estimates of services to be rendered under this First Amendment are set forth in Attachment A. The costs and budget estimates may, if necessary, be revised each year.

(a) Transfer Of And Access To Water Board Records.

Upon seven (7) days prior written notice, the City shall provide the Board with the following Board records: billing registers; voucher packages and cancelled checks for water and sewer transactions prior to September 25, 2003; purchasing agreements; employee records, including the electronic copy of the up-to-date pay plan for each bargaining unit; legal records; vehicle and rolling stock equipment lists and maintenance history, including fuel and parts usage history, purchasing and warranty information, owners manuals and all spare keys; fixed asset inventory records, including record drawings for scanning by Board; and any other Board records which may be requested and necessary to perform the services included below. With respect to archived records the Board will take possession of the records within 30 days.

(b) Purchasing Services. The Board currently intends to have its own purchasing services in place on or before January 1, 2006. Notwithstanding the foregoing, the City shall continue to: (i) provide postage, utilities, fuel for Board vehicles and salt, the actual cost of which will be billed to the Board monthly; (ii) prepare competitive bids and requests for quotations as requested by the Board; and (iii) allow the Board to participate in the cooperative purchasing program, and give such notifications as are necessary, to ensure that the lowest unit cost is available to the Board, the City and other participants. A budget estimate for the City's continued preparation of competitive bids is set forth in Attachment A. However, it is acknowledged, understood and agreed that the City shall invoice the Board for services actually rendered.

(c) Finance Services. Year end audit access as previously provided by the City to the Board shall continue cooperatively for audit completion on or before February 28 in each year subsequent to 2006. The City will also provide check printing services to the

Board. The annual cost, if any, for Financial Services is set forth in Attachment A.

(d) Information Technologies ("IT"). The City shall provide to the Board the IT services listed below on an ongoing basis. The annual cost for IT Services is set forth in Attachment A.

(i) Access to any and all Board data contained in the New World software system or its successor software system, currently being used by the Board, and ongoing support, including, without limitation, user setup, updates to client software, security, output queues and other necessary related support as needed. During the time that the services set forth in this Section 5.5(d) are provided by the City, the Board shall pay the City a five percent (5%) share of the total current IBM annual lease, or any successor replacement for the IBM (as the same may be modified from time-to-time), estimated to currently be $\$68,496 \times .05 = \$3,425$. Any change in the total annual IBM lease cost to the City shall be proportionally reflected in the 5% allocated fee owed by the Board. The Board shall pay to the City a twenty percent (20%) share of the total current New World Software maintenance fee, estimated to currently be $\$64,050 \times .20 = \$12,810$. Any change in the New World or its successor software, in the total annual maintenance fee to the City for the New World software system, or its successor, shall, to the extent utilized by the Board, be proportionally reflected in the 20% allocated fee owed by the Board. Security Officer rights will remain with the City IT Department. System Administrator rights for Board New World user names will be granted by the Board System Administrator. Access to the AS400 will be via a Client Access session configured and installed by MIS.

(ii) Upon written request from the Board, the City shall provide the Board with documentation of all amounts charged.

(iii) The City shall bill the Board monthly for lease and maintenance fees, which will be 1/12 of the total annual fee. In addition, the City shall bill the Board monthly for agreed staff fees, which will be 1/12 of the total annual fees.

(iv) Reporting of any scheduled system unavailability at least 72 hours in advance and any unscheduled system unavailability within 15 minutes of when the unavailability occurs. Notwithstanding any other provisions of this Agreement, the City will contact the Board's designated representative by e-

mail and by phone and, if the City fails to reach the Board's designated representative by phone, then also by pager/cell phone. The City shall begin troubleshooting relative to any unscheduled system unavailability within 15 minutes after the occurrence of the problem or issue causing the unavailability. The City is responsible for determining and eliminating the source of any problem found to have causes outside of Board owned or controlled equipment. If a problem causing network degradation or outage is found to exist in or be caused by Board owned or controlled equipment, the Board will reimburse the City the cost incurred by the City from outside support services upon receipt by the Board of the applicable invoice. In the event the problem is caused by the Board, the City shall so advise the Board, in writing, within 10 days.

(v) The City guarantees ninety-nine percent (95%) or greater network availability with at least ninety-nine (95%) sustained packet throughput. The time periods in this paragraph shall not include weekends.

(vi) Creation and printing of all presently produced forms and reports (as the same may be modified by the Board from time-to-time), including, but not limited to, Water Bills, Unpaid Notices, Tax Transfer Notices, Consumption Reports.

(vii) EZ Rout import/export and any other procedures in current practice as required by Section 5.1(C) of the Operation Agreement.

(viii) An offer to the Board of any computer training offered to the City on New World Software system, or its successor and other basic software programs used by the City and the Board. The Board will reimburse the City the actual or proportional training cost incurred by the City for training on an individual basis within thirty (30) days from receipt by the Board of the applicable invoice.

(ix) Disaster recovery services to assist the Board in the event of any system failure. This shall include, without limitation, (A) backing up daily (except Sunday) and archiving all files on the AS400 pertaining to records belonging to the Board, (B) reinstating all archived and backed-up files as necessary or requested by the Board, (C) protecting all back up and archived files from damage, altering or theft and storing copies of backup and archived files both on site and at offsite.

(x) In a timely manner, implement all requests from a duly authorized Board staff member to add, amend or delete user rights and privileges provided on the IBM AS/400 and the Board supported New World software modules, or their successors. The City will make all necessary efforts to insure the IBM and New World software security and viability is not breached.

(xi) Provide any other services pertaining to the proper functioning of the AS400 application software and hardware, or their successors.

(e) Human Resource Services. The Board is required to rely on support from the City Human Resource Department for the following services:

(i) Maintaining Civil Service roster records;

(ii) All Civil Service administration -- e.g. classifying, preparing job specifications, exams, eligibility lists, probations, promotions and transfers.

(iii) The Board is responsible for keeping the City Human Resources Department advised of employee status which effect Human Resource Services.

(f) Engineering Services. The City shall continue to provide engineering services to the Board associated with ongoing and new water and sewer projects. A budget estimate for Engineering Services is set forth in Attachment A. However, it is acknowledged, understood and agreed that the City shall invoice the Board for Engineering Services actually rendered. Engineering services include the services listed below, which shall continue to be provided by qualified staff in similar manner as previously delivered.

(i) A list of projects requiring engineering services consisting of planning, design, bidding and construction and inspection phases for new projects and including ongoing projects in their current and remaining phases respective shall be provided and agreed to by the Board and the City. This list shall include a schedule of costs of engineering services for each phase of the listed project and a percent completion for each phase of ongoing projects. A monthly progress report shall be provided to the Board presenting the percent complete and a narrative describing the progress and activities for each project. An invoice shall be

prepared by the City from this report payable by the Board based on discussion and agreement with the Board.

(ii) Survey and statistical field work required for preliminary design, specifications, stamping and sealing.

(iii) Project design and prepared drawings, to be prepared and stamped as necessary.

(iv) Cost estimates for each project for bidding, budgeting and emergency procurement.

(v) Bidding and construction services that include, without limitation, preparation of bid documents, advertisement, distribution, receiving bids and opening, award recommendations, contract execution, job progress meeting, shop review and approval, addressing contractor questions and issues, processing change orders, processing payments and project close out activities and preparing and delivering as-built drawings.

(vi) Construction inspection services and written reports thereof to be prepared and submitted to the Board.

(vii) Preparation of Health Department Plan Reviews and DEC submissions as necessary.

(viii) Right of Way permitting for water and sewer outside maintenance work.

(ix) Inspection of required restoration work.

(x) Access to record drawings for review and scanning.

(xi) Expedited support for emergency water and sewer repairs.

(xii) Managing the underground utility locates program.

(g) Miscellaneous.

(i) City Services Cost Allocation. The cost allocations for the services provided under this First Amendment are set forth in Attachment A, the terms of which are expressly incorporated into this First Amendment.

(ii) Breach. In the event of a breach of the terms of this Section 5.5, the party alleging breach shall give written notice to the breaching party of the alleged breach. Thereafter, the parties shall attempt in good faith to resolve the issues raised by the alleged breach within 90 days thereafter. In the event the issues raised by the alleged breach are not resolved within such 90 day period, the parties shall submit the dispute to binding arbitration. The arbitration shall be conducted before a single arbitrator agreed to by the parties, or if no agreement as to an arbitrator can be reached, by a single independent arbitrator from a recognized arbitration service. The costs of the arbitration shall be paid by the breaching party if a determination of a breach is made or by the party alleging breach if a determination of no breach is made. The provisions set forth in this Section 5.5 shall govern notwithstanding any other provisions of this Agreement"

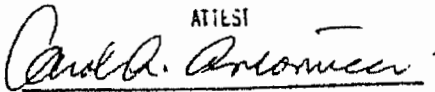
3. Amendment of Section 5.6 of the Operation Agreement.

SECTION 5.6 - DISCONTINUANCE OF OTHER CITY SERVICES. In the event that either the Board or the City, in their sole discretion, determine that the City discontinue providing any services described in Section 5.5 of this First Amendment, the party making such determination shall give written notice of such fact to the other party on or before July 1 for termination effective as of year end.

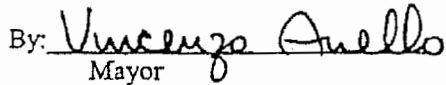
4. Other Provisions. Except as expressly amended herein, all other provisions in the Operation Agreement are hereby ratified and confirmed in all respects and shall continue in full force and effect.

5. Counterparts. This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

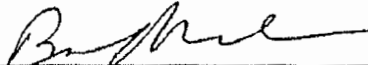
IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date first set forth above.

ATTEST

CITY CLERK

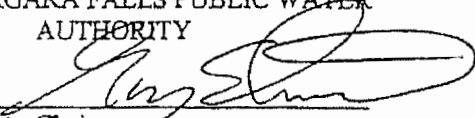
THE CITY OF NIAGARA FALLS

By: 
Mayor

NIAGARA FALLS WATER BOARD

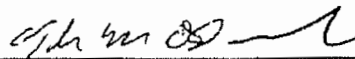
By: 
Chairman

NIAGARA FALLS PUBLIC WATER
AUTHORITY

By: 
Vice Chairman

STATE OF NEW YORK)
) SS.:
COUNTY OF Niagara)

On the 7th day of March in the year 2006, before me, the undersigned, personally appeared Vincent V. Amelio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

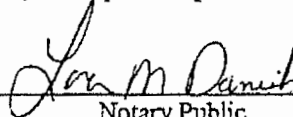


Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF)

THOMAS M. O'DONNELL
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
COMMISSION EXPIRES APRIL 30, 2007

On the 16 day of March in the year 2006, before me, the undersigned, personally appeared Brian Kane, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

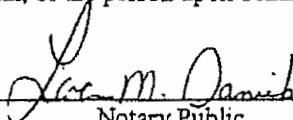


Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF)

LORA M. DANIELS
Commissioner of Deeds
Niagara Falls Water Board
Niagara Falls, New York
My Commission Expires 9/30/2007

On the 24 day of March in the year 2006, before me, the undersigned, personally appeared GARY Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

BFLO Doc. # 1475013.1

LORA M. DANIELS
Commissioner of Deeds
Niagara Falls Water Board
Niagara Falls, New York
My Commission Expires 9/30/2007

Attachment A

City Services Cost Allocation

The charges below are calculated pursuant to Section 6.1(B)(1) of the Operations Agreement between the City of Niagara Falls and the Niagara Falls Water Board and shall apply for services delivered from January 1, 2006 through December 31, 2006. Future cost assignments will be made developed and established pursuant to Section 6.1 "Payments by the Board" and Section 6.2 "Method of Payment" of the Operations Agreement.

<u>Service</u>	<u>Cost</u>
Section 5.5(b) Purchasing Services (Budget Estimate)	\$ 250 annually; \$250 per bid
Section 5.5(c) Finance Services	\$0.15 per check printed
Section 5.5(d) Information Technology	\$44,515
Section 5.5(f) Engineering Services (Budget Estimate)	\$77,555

Exhibit B

SECOND AMENDMENT TO
OPERATION AGREEMENT

This Second Amendment, dated as of September 26, 2008 ("Second Amendment"), by and between the City of Niagara Falls ("City"), a municipal corporation of the State of New York, the Niagara Falls Water Board ("Board"), a body corporate and politic constituting a corporate municipal instrumentality of the State of New York and the Niagara Falls Public Water Authority ("Authority"), a body corporate and politic constituting a public benefit corporation of the State:

WITNESSETH

WHEREAS, the City, the Board and the Authority entered into an Operation Agreement, dated as of April 1, 2003 ("Operation Agreement"); and

WHEREAS, the Board, by letter dated October 3, 2006, provided the City with a notice of discontinuance of Billing Services pursuant to Section 5.4 of the Operation Agreement; and

WHEREAS, the City, the Board and the Authority desire to amend Section 5.1 and Section 5.4 of the Operation Agreement as set forth below:

NOW, THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, the parties hereto hereby agree as follows:

1. Effective Date. This Amendment shall be effective as of September 26, 2008 (the "Effective Date").
2. Amendment of Section 5.1 and 5.4 of the Operation Agreement. As of the September 26, 2008, Sections 5.1 and 5.4 of the Operation Agreement are hereby amended in their entirety to read as follows:

SECTION 5.1 – BILLING AND COLLECTION.

(A) As of September 26, 2008 the City shall no longer provide Billing and Collection Services to the Board, except as provided in Section 5.1(B).

(B) As of September 26, 2008, the Board hereby hires, retains and employs the City, and the City hereby agrees, to provide the following Billing and Collection Services:

- (1) The City shall accept, on behalf of the Board, "in person" collections;
- (2) The City shall handle calls and complaints related to water and sewer bills. The City shall coordinate customer complaint investigations with the appropriate Board meter shop or administrative staff;
- (3) The City shall provide names and/or address changes relating to properties as they become available. Name and/or address changes shall be provided to the Board, in writing, by way of facsimile;
- (4) The City shall provide adjustment information necessary to correct a rate-payer's account as it becomes available. Adjustment information shall be provided to the Board, in writing, by way of facsimile;
- (5) The City shall provide the Board a detailed listing of properties taken through "in-rem" proceedings, with water and sewer account balances and the disposition of the sale. The Board's portion of proceeds from "in-rem" sales shall be transferred to the Board, with a reconciliation provided within a reasonable time of the sale;
- (6) The City shall include, with the tax searches issued by the City, a request for status of water and sewer bills;
- (7) The City shall file claims and keep track of bankruptcy payments related to water and sewer accounts;
- (8) The City shall assist the Board in administering the water shut-off program; and
- (9) The City shall have inquiry rights into water and sewer accounts, and revenue accounting processing access, on the

Board's financial software. (The Board to provide appropriate training to City personnel.) All processing shall be done on the Board's financial system. Cashier reports from the City shall be provided to the Board on a monthly basis.

(C) The City shall deposit all Water Charge collections in the Board's Local Water Fund within two (2) business days of receipt thereof. The City acknowledges that all monies collected as Water Charges are the property of the Water Board. The City will use its best efforts to maintain an average annual collection rate for the collection of delinquent accounts of not less than the average annual collection rate of delinquent accounts during the ten 10 Year fiscal period prior to September 26, 2008

(D) The City shall incur all costs and expenses, including but not limited to City employee compensation, postage, handling, computer hardware and software, etc. to perform such billing and collection services.

SECTION 5.4 – PAYMENT FOR SERVICE. In exchange for providing the services set forth in Section 5.1(B), 5.2 and 5.3, the Board shall pay seventeen (17) percent of the reasonable personnel costs of the City's Billing and Collection office staff. (The City's reasonable personnel costs for 2009 are set forth in Attachment A.) Personnel costs shall include wages and fringe benefits as required by labor agreement and/or law. The City shall provide the Board with a budget estimate for the personnel costs of its Billing and Collection office staff for any upcoming calendar year on or before August 1 of the preceding year. The Board shall not be responsible to pay for increases in the personnel costs for the City's Billing and Collection office staff, unless it has approved the increase. The Board shall not unreasonably withhold its approval.


SECTION 5.4.1 – DISCONTINUANCE OF BILLING SERVICES. The Billing and Collection Services provided under this Second Amendment shall continue to, and including, December 31, 2011. Billing and Collection Services, as set forth in Section 5.1(B), shall, thereafter, continue on a year-to-year basis. For periods after December 31, 2011 either party may terminate the agreement for the Billing and Collection Services, as set forth in Section 5.1(B), by giving at least one year prior written notice of its intention to terminate. Notwithstanding the termination of billing services pursuant to this Section, section 5.2 and 5.3 of the Operation Agreement, as amended, shall remain in

full force and effect, and in such event the Board shall pay to the City the cost of services provided to the Board pursuant to Section 1230-j of the Act.

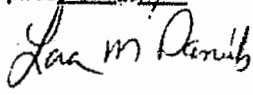
3. Other Provisions. Except as expressly amended herein, all other provisions in the Operation Agreement, as amended by the First Amendment, are hereby ratified and confirmed in all respects and shall continue in full force and effect.

4. Counterparts. This Second Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

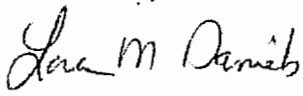
IN WITNESS WHEREOF, the parties have duly executed this Second Amendment as of the date first set forth above.

Attest

CITY CLERK

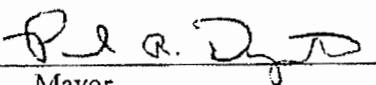
LORA M. DANIELS
Commissioner of Deeds
Niagara Falls Water Board
Niagara Falls, New York
My Commission Expires 12/31/2009



LORA M. DANIELS
Commissioner of Deeds
Niagara Falls Water Board
Niagara Falls, New York
My Commission Expires 12/31/2009



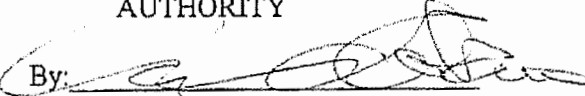
THE CITY OF NIAGARA FALLS

By: 
Mayor

NIAGARA FALLS WATER BOARD


By: 
Chairman

NIAGARA FALLS PUBLIC WATER
AUTHORITY

By: 
Chairman

STATE OF NEW YORK)
) SS.:
COUNTY OF NIAGARA)

On the 31st day of December in the year 2008, before me, the undersigned, personally appeared Paul A. Dyster, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

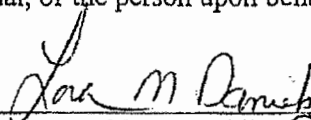


Notary Public

THOMAS M. O'DONNELL
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
COMMISSION EXPIRES 4/30/2011

STATE OF NEW YORK)
) SS.:
COUNTY OF NIAGARA)

On the 7th day of January in the year 2009, before me, the undersigned, personally appeared Michael McNally, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

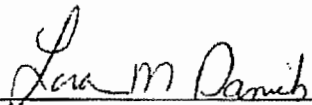


Notary Public Commissioner of Deeds

LORA M. DANIELS
Commissioner of Deeds
Niagara Falls Water Board
Niagara Falls, New York
My Commission Expires 12/31/2009

STATE OF NEW YORK)
) SS.:
COUNTY OF NIAGARA)

On the 9th day of January in the year 2009, before me, the undersigned, personally appeared Carmen Colao, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public Commissioner of Deeds

LORA M. DANIELS
Commissioner of Deeds
Niagara Falls Water Board
Niagara Falls, New York
My Commission Expires 12/31/2009

City of Niagara Falls, NY
Support Services and/or Facilities provided on behalf of the Water Authority
2009

BILLING & COLLECTION DEPT.

Title/Position	Annual Salary	FICA	Health Insurance	Dental Insurance	Life Insurance	Pension & GTLI	Total Cost	Percentage of time Allocated	Cost of providing Service
Billing Supervisor	\$ 57,587	4,405	18,003	1,320	207	4,607	\$ 86,130	17%	\$ 14,642
Principal Clerk (2)	73,871	5,651	24,495	1,848	266	5,910	112,041	17%	\$ 19,047
Sr. Cashier	38,121	2,916	6,491	528	137	3,050	51,243	17%	\$ 8,711
Account Clerks (2)	62,923	4,814	12,982	1,848	227	5,034	87,827	17%	\$ 14,931
Senior Clerk (1)	34,491	2,639	6,491	528	124	2,759	47,032	17%	\$ 7,995
Jr Account Clerks (1)	26,140	2,000	18,003	528	94	2,091	48,856	17%	\$ 8,306
Total Cost of B&C	\$ 293,133	22,425	86,466	6,600	1,055	23,451	\$ 433,129		\$ 73,632

Description of the work performed on behalf of the Water Authority:

Collection of Water/Sewer Bills

Handling all calls, complaints, tax searches, bankruptcies, etc.

Administers Water Shut-Off Program

City of Niagara Falls, NY
Support Services and/or Facilities provided on behalf of the Water Authority
2009

BILLING & COLLECTION DEPT.

Title/Position	Annual Salary	FICA	Health Insurance	Dental Insurance	Life Insurance	Pension & GTLI	Total Cost	Percentage of time Allocated	Cost of providing Service
Billing Supervisor	\$ 57,587	4,405	18,003	1,320	207	4,607	\$ 86,130	17%	\$ 14,642
Principal Clerk (2)	73,871	5,651	24,495	1,848	266	5,910	112,041	17%	\$ 19,047
Sr. Cashier	38,121	2,916	6,491	528	137	3,050	51,243	17%	\$ 8,711
Account Clerks (2)	62,923	4,814	12,982	1,848	227	5,034	87,827	17%	\$ 14,931
Senior Clerk (1)	34,491	2,639	6,491	528	124	2,759	47,032	17%	\$ 7,995
Jr Account Clerks (1)	26,140	2,000	18,003	528	94	2,091	48,856	17%	\$ 8,306
Total Cost of B&C	\$ 293,133	22,425	86,466	6,600	1,055	23,451	\$ 433,129		\$ 73,632

Description of the work performed on behalf of the Water Authority:

Collection of Water/Sewer Bills

Handling all calls, complaints, tax searches, bankruptcies, etc.

Administers Water Shut-Off Program