

Version Dated June 26, 2007

OPERATION, MAINTENANCE AND PELLET MARKETING SERVICES AGREEMENT

THIS AGREEMENT made in quadruplicate as of the day of , 2007, between:

CITY OF TORONTO
(hereinafter referred to as the "City")

of the First Part

- and –

VEOLIA WATER CANADA, INC.
(hereinafter referred to as the "Operator")

of the Second Part

Operation, Maintenance and Pellet Marketing Agreement

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OPERATION, MAINTENANCE AND PELLET MARKETING SERVICES AGREEMENT

THIS AGREEMENT made in quadruplicate as of the day of , 2007.

BETWEEN:

CITY OF TORONTO

(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

VEOLIA WATER CANADA, INC.,

(hereinafter referred to as the "Operator")

OF THE SECOND PART

RECITALS

WHEREAS:

1. The City owns and operates the City's main wastewater treatment plant known as the **Ashbridges Bay Treatment Plant** located at 9 Leslie Street in the City of Toronto (the "**ABTP**").
2. On September 29, 1998 the City issued a Request for Proposal for the beneficial use of biosolids, including the design and construction of facilities at the ABTP capable of producing Biosolids meeting agricultural use standards (the "**RFP**").
3. USF Canada Inc. as it was then known, submitted a Technical Proposal and a Price Proposal (the "**Proposal**") dated December 16, 1998 in response to the RFP.
4. On April 30, 1999, the City contracted with USF Canada Inc., now known as Veolia Water Canada, Inc. ("Operator"), it having changed its name effective March 2, 2004, for the design and construction of a biosolids pelletizer facility (the "**Services Agreement**") located at the ABTP (the "**Pelletizer Facility**"). City Council, by its adoption of Clause No. 23 of the Strategic Policies and Priorities Committee Report No. 5 at its meeting held on March 2, 3 and 4, 1999, authorized the Services Agreement.
5. The Services Agreement was supplemented by a letter agreement dated May 7, 2003 to provide the Operator with additional time to fulfill its obligations under the Services Agreement.
6. On August 21, 2003, a fire occurred at the Pelletizer Facility.
7. In the summer of 2005, the City and the Operator entered into an Amendment Agreement effective August 21, 2003 (the "**Amendment**") to the Services Agreement to amend the Services Agreement so to ensure the completion of construction of the Pelletizer Facility. City Council by its adoption of Clause No. 10 of Works Committee Report No. 1 at its meeting held on February 1, 2 and 3, 2005 and of Notice of Motion J (39) at its meeting held on May 17, 18 and 19, 2005, authorized the Amendment. At the same time and pursuant to the same authority, City Council

authorized City staff to enter into negotiations with the Operator related to this Agreement subject to a report back to the appropriate Committee regarding the proposed terms and conditions and City Council approval of this Agreement.

8. The City requires an operator to operate and maintain the Pelletizer Facility.
9. The City also requires Pellet marketing, handling and distribution services in order to beneficially use the Pellets produced by the Pelletizer Facility.
10. The City desires to retain the professional services of the Operator as an independent contractor to provide operation, maintenance, Pellet marketing, handling and distribution services, as set forth herein, and the Operator desires to provide such services pursuant to the terms hereof.
11. The City and the Operator have agreed to all of the terms and conditions in respect of the operation and maintenance of the Pelletizer Facility and the marketing, handling and distribution of the Pellets as evidenced by this Agreement.
12. The Operator's authority to enter into this Agreement is evidenced by corporate resolutions, certified copies of which are attached as Schedule 1.
13. Pursuant to the adoption by City Council of Clause No. [insert] of Public Works and Infrastructure Committee Report No. [insert] at its meeting held on [insert], City Council has authorized this Agreement with the Operator in respect of the operation and maintenance of the Pelletizer Facility and the provision of Pellet Marketing Services.

NOW, THEREFORE, THIS AGREEMENT WITNESSES that in consideration of the sum of \$2.00 and other good and valuable consideration, including the mutual covenants, contained herein, the receipt and sufficiency of which is hereby acknowledged, the City and the Operator hereby mutually covenant and agree, respectively, as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

In this Agreement, including the recitals thereto, the following terms have the following meanings unless the context otherwise requires:

"Affiliated Company" means, with respect to the Operator, any other person who has direct or indirect Control of the Operator, or is under direct or indirect Control of the Operator, and includes any person in like relation to an Affiliated Company.

"Agreement" means this Operation, Maintenance and Pellet Marketing Services Agreement and all schedules attached to it as they may be amended, modified, supplemented, restated, or replaced from time to time by mutual agreement signed by the appropriate representatives of the Parties.

"Annual Operations and Maintenance Report" means the report set forth in Article 3.7(g).

"Attractables" means all pieces of mobile plant, equipment and furniture which are not physically attached to the Pelletizer Facility and which are required in the current day-to-day operations and maintenance of the Pelletizer Facility.

"Battery Limits" means the lines and points set forth in Schedule 2.

“Biosolids” means the stabilized material generated at the ABTP from the anaerobic digestion and mechanical dewatering of municipal wastewater solids (sludge) during the wastewater treatment process.

“Biosolids Specification” means Biosolids with the following parameters: a) dry solids content between 25% and 30%; and b) the Biosolids are Non-Agricultural Source Material as defined in Ontario Regulation 267/03, amended to Ontario Regulation 474/06 of the *Nutrient Management Act, 2002*, S.O. 2002 c.4, as amended.

“Capital Improvement” means any expenditures for new equipment, replacement of existing equipment and/or enhancements or modifications to the Pelletizer Facility in accordance with Article 6 but does not include any Incident of Repair and Replacement or Corrective Maintenance.

“Certificate of Approval” mean the Certificate of Approval(s) issued by the Ministry of the Environment for the Province of Ontario in respect of the construction, operation, alteration, extension or replacement of any part of the Pelletizer Facility pursuant to the *Environmental Protection Act*, R.S.O. 1990, c.E.19, *Ontario Water Resources Act*, R.S.O. 1990, c.O.40, *Safe Drinking Water Act, 2002*, S.O. 2002, c.32 or other Laws as amended.

“Change of Law” means at any time, on or after the Execution Date of this Agreement, the coming into force of any new Law or amendments, or repeal of an existing Law and includes an Operational Change of Law and Marketing Change of Law.

“Change Order” means a written order prepared by or on behalf of the City directing the Operator to alter or modify its work under this Agreement or to take action or refrain from taking action contemplated in this Agreement, and includes any increase or decrease in the Commercial Operations Fee or other mutually agreeable payment under this Agreement.

“Change Request” means a written request prepared by the City or the Operator to alter or modify the work under this Agreement or to take action or refrain from taking action contemplated in this Agreement provided that no Change Request shall be implemented unless and until it has been approved by the City in a Change Order.

“City” means the City of Toronto, a municipality of the Province of Ontario and, where applicable, its Mayor, Councillors, officers, servants, employees, elected and appointed officials, consultants and agents.

“City’s Attractables” means all mobile plant, equipment and furniture owned by the City located at the Pelletizer Facility, and which are required in the current day-to-day operations and maintenance of the Pelletizer Facility.

“City Contract Manager” means the person designated by the City pursuant to Article 3.7(a)(i) of this Agreement.

“City Provided Utilities and Services” means those utilities and services set forth in Article 3.22.

“Civil Maintenance Program” means the program prepared by the Operator describing all Preventative Maintenance and Corrective Maintenance which are required for the Civil, Structural and Site-Related Assets as approved by the City, acting reasonably.

“Civil, Structural and Site-Related Assets” means the Pelletizer Facility building and other permanent fixed assets of the Pelletizer Facility but shall not include the Mechanical and Electrical Equipment.

“Claim(s)” means any and all loss, damage, injury, cost, charge, expense, debt, interest, fine, award, penalty or liability (including without limitation, business losses, reasonable legal fees and professional

fees and disbursements), claim, legal action, legal proceeding, charge, judgment, order or court order, resulting from or arising in connection with any obligations or responsibilities pursuant to this Agreement.

“CMMS” means the computerized maintenance management system with on-line access available to the City for monitoring purposes only used to schedule and record all maintenance and repairs performed on the Pelletizer Facility.

“Commercial Operations Fee” has the meaning set forth in Article 8.1.

“Compliance Criteria” means all terms, conditions, instructions, concentration limits and maximum permissible values listed or specified in the Certificate of Approval, as well as in all Laws, including all policies and guidelines having the force of law, which have been or will be issued by a Governmental Authority and which are applicable to the Operator for the operation and maintenance of the Pelletizer Facility or the marketing, handling or distribution of Pellets as they may exist from time to time during the Term of this Agreement. In the event of a conflict or difference between Compliance Criteria, the more stringent of the criteria shall apply.

“Commissioning Date” means that date when the Pelletizer Facility is operational and accepts Biosolids.

“Commissioning Fee” has the meaning set forth in Article 8.1.

“Commissioning Period” means that period beginning on the Commissioning Date and ending on the Start Date.

“Compliance Report” means all environmental or monitoring reports relating to operation or maintenance of the Pelletizer Facility or the Pellet Marketing Services required by Law to be prepared and submitted to a Governmental Authority.

“Consumables” means all exhaustible materials used in the day-to-day operation and maintenance of the Pelletizer Facility and includes, but is not limited to, chemicals, lubricants, office supplies, stock materials and fuel.

“Contract Year” means the 12 month period commencing on the Effective Date and ending at 11:59 p.m. on the day prior to the annual anniversary of the Effective Date, and shall mean, in each succeeding year, the period commencing at 12:00 a.m. on the anniversary of the Effective Date ending at 11:59 p.m. on the day prior to the annual anniversary of the Effective Date.

“Control” means where a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning.

“Corrective Maintenance” means the repair and correction of the Pelletizer Facility as a result of any Deficiency, failures or malfunctions of the Pelletizer Facility to optimize the service life of the Pelletizer Facility and to keep the Pelletizer Facility in the Required Condition.

“Default” means an event or condition (including an act or omission) the occurrence and continuance of which would, with the lapse of time or giving of notice, or both, become an Event of Default, and includes the events set forth in Article 27.1 and Article 30.1.

“Deficiency” means any Civil, Structural and Site-Related Assets, or any Mechanical and Electrical Equipment which is non-operational or unable to properly perform its design function in respect of the Pelletizer Facility or which creates an immediate material risk to human health or safety or to the environment.

“Direct Cost” means the actual net cost to the Operator directly related to the event or object under consideration. Operator Cost may include but is not limited to expenses, fees, disbursements, salaries, wages, products, payments to subcontractors and suppliers and rentals.

“Dry Tonne” means 1,000 kilograms or 2,204 pounds, on a dry basis. For example, one metric tonne of Biosolids at 92% solids equals 0.92 metric tonnes of dry solids.

“Electricity Cap” has the meaning set forth in Article 8.4(a).

“Effective Date” means the date that the Operator successfully completes the Secondary Testing.

“Employee Facility” has the meaning set forth in Article 3.1(b)(ii).

“Enhancements” means those capital upgrades set forth in Exhibit G-1 of the Amendment to the Services Agreement, and attached as Schedule 3 to this Agreement.

“Event of Default” has the meaning set forth in Article 27.2.

“Execution Date” means the date of execution of this Agreement set forth on the first page of this Agreement.

“Extension Period” has the meaning set forth in Article 2.1(d).

“Final Condition Survey” means the inspection and review by the City and the Operator of the Pelletizer Facility in accordance with a protocol to be prepared and provided by the Operator in accordance with Article 5.9 of this Agreement and approved by the City, acting reasonably.

“General Manager” means the General Manager of Toronto Water or the official designee appointed by the General Manager.

“Governmental Authority” means any legislative, executive, judicial or administrative department, board, commission, court, ministry, agency, department, body, court of law or other instrumentality of the federal, provincial, state or local government, including Toronto City Council, having jurisdiction over the Pelletizer Facility, the Pellet Marketing Services, this Agreement, the City and the Operator.

“Guarantor” means Veolia Water North America Operating Services, LLC.

“Incident of Repair and Replacement or Corrective Maintenance” is defined in Article 5.4 of this Agreement.

“Law” or **“Laws”** means any and all requirements under or prescribed by common law and any and all applicable federal, provincial, state or municipal Laws, by-laws, codes, orders, ordinances, rules, regulations or statutes affecting, applicable or otherwise relating to this Agreement.

“Mechanical and Electrical Equipment” means all major mechanical, electrical and instrumentation equipment that forms part of the Pelletizer Facility.

“Mobilization Fee” has the meaning set forth in Article 8.

“MOE” means the Ministry of Environment for the Province of Ontario or its successor Ministry.

“MOL” means the Ministry of Labour for the Province of Ontario or its successor Ministry.

“Natural Gas Cap” has the meaning set forth in Article 8.4(b).

“OHSA” shall mean the *Occupational Health and Safety Act* R.S.O. 1990 c.0.1 as amended and regulations thereto.

“Operating and Maintenance Costs” means the Direct Costs related to operating and maintaining the Pelletizer Facility pursuant to the provisions of this Agreement.

“Operational Change” means any change, adjustment or deletion in routine procedures related to the operation of the Pelletizer Facility which does not require prior notification of, or approval from, the MOE or any other Governmental Authority.

“Operations and Maintenance Plan” means the plan set forth in Article 3.2(d).

“Operations and Maintenance Manual” means the manual submitted by the Operator in accordance with the Services Agreement.

“Operator” means Veolia Water Canada, Inc., an Ontario corporation and where applicable, any Affiliated Company, its agents, employees, contractors, subcontractors, or any person for whom the Operator is, at Law, responsible.

“Party” means the City or the Operator and **“Parties”** means both of them.

“Pellet Marketing Plan” has the meaning set forth in Article 4.2 and in Schedule 4.

“Pellet Marketing Services” means those obligations set forth in Article 4.

“Pellets” mean the granular material resulting from Biosolids that have been heat dried through the pelletization process.

“Pelletizer Facility” means the City’s Biosolids Pelletizer Facility at the ABTP, including any modifications thereto during the Term of this Agreement, and including all City owned components and City owned equipment therein, Civil, Structural and Site Related Assets, Mechanical and Electrical Equipment, the Employee Facility and the lands set forth in Schedule 2.

“Permits and Licences” means permits, approvals, registrations and licences, authorizations, consents, waivers, exemptions, variances, certifications or other orders, decisions or authorizations which are required by Law or Governmental Authority including but not limited to those which were issued prior to the Execution Date and referenced in Schedule 5.

“Per Tonne Price” has the meaning set forth in Article 8.

“Preventative Maintenance” means routine and repetitive maintenance of the Pelletizer Facility required to optimize the service life of the Pelletizer Facility and to keep the Pelletizer Facility in the Required Condition.

“Process Change” means any change, adjustment, deletion or improvement to the Pelletizer Facility or the routine operating procedures which requires prior written approval from the City, the MOE or any other Governmental Authority, and does not include an Operational Change.

“Prudent Industry Practice” means those methods, techniques, standards and practices which, at the time are employed and in light of the circumstances known or believed to exist at the time, are generally accepted as reasonably prudent in the biosolids and residuals processing industry as practiced in North America with respect to a facility of a similar type as the Pelletizer Facility.

“Regulated Substance” means any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste, or hazardous waste,

petroleum or petroleum-derived substance, asbestos, or polychlorinated biphenyls, that is defined as such in, is subject to regulation under, or may form the basis for any requirement for investigation or remediation under any Law.

“Renewal Term” has the meaning set forth in Article 2.1(c).

“Renewal Term Notice” has the meaning set forth in Article 2.1(c).

“Repairs and Replacement” means all non-routine, non-repetitive activities, repairs or replacement of structures, machinery or equipment required for continuity of operations, safety, and operating performance that are necessary to prevent or correct a failure of the Pelletizer Facility and which are not included as part of Preventative Maintenance.

“Reports” means those reports required to be delivered by the Operator to the City under this Agreement including the reports set forth in Schedule 8.

“Required Condition” means the condition of the Pelletizer Facility that meets or exceeds the state and condition of the Pelletizer Facility on the Effective Date, except for normal wear and tear and abandoned equipment as provided in this Agreement.

“Reversion Date” means the date of the earlier of the expiry of the Term of this Agreement or the date of the termination of this Agreement.

“Routine Maintenance” means Corrective Maintenance or Preventative Maintenance or both.

“Safety Deficiency” means:

- (i) Material non-compliance with any Law relating to health and safety; or
- (ii) The creation by the Operator or the City of a health or safety hazard which is contrary to Law or contrary to the procedures established under Article 3.12.

“SCADA” means the Supervisory Control and Data Acquisition systems associated with the Pelletizer Facility, as updated from time to time, with approval of the City, and compatible with the City’s systems, and includes, but is not limited to the software library of current RPU programs, SCADA server programs, and other network component software configurations, SCADA HMI development platform consisting of two (2) SCADA software development keys and hardware, programming software installed on the hardware, and all associated network systems.

“Secondary Testing” means the conditions, requirements, and responsibilities for completion of the Secondary Test set forth in Schedule H of the Amendment, which is attached to this Agreement as Schedule 6.

“Secondary Test Period” means that period of time during which Secondary Testing is conducted.

“Spare Parts” means the parts and supplies listed on Schedule 7.

“Start Date” means the date on which the Operator begins the Secondary Testing.

“Term” means the term of this Agreement as set forth in Article 2 of this Agreement.

“Termination Date” means the date this Agreement is terminated in accordance with its terms and provisions.

“Transition Plan” means the information set forth in Schedule 11 of this Agreement.

“Uncontrollable Circumstance” has the meaning set forth in Article 20.

“Veolia Confidential Information” means [insert] [NTD: Veolia to define confidential information.]

1.2 Schedules

The following Schedules which are attached to this Agreement are incorporated by reference into this Agreement and are deemed to be a part of it:

Schedule	Schedule Description	Article #
Schedule 1	Operator’s and Guarantor’s Corporate Resolutions	Preamble 12
Schedule 2	City Pelletizer Facility and Battery Limits	Definitions
Schedule 3	Enhancements	Definitions
Schedule 4	Pellet Marketing Plan	Definitions
Schedule 5	Permits and Licences	Definitions
Schedule 6	Secondary Testing	Definitions
Schedule 7	Spare Parts List	Definitions
Schedule 8	Report Delivery Schedule	Article 3.7(k)
Schedule 9	City Policies	Article 3.16
Schedule 10	Reversion Date Certificate	Article 10.3
Schedule 11	Final Transition Plan	Article 10.5
Schedule 12	Insurance	Article 15.1
Schedule 13	Performance Bond	Article 15.2
Schedule 14	Letter of Credit	Article 15.2
Schedule 15	Guarantee Agreement	Article 24.1
Schedule 16	Legal Opinion	Article 24.2
Schedule 17	Termination Payment	Article 29

1.3 Entire Agreement

This Agreement, including all of the Schedules and attachments to this Agreement constitute the entire Agreement between the Parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written.

1.4 Priority of Documents

In the event of any conflict or inconsistency between this Agreement and any other Agreement between the City and the Operator, such documents shall be interpreted in accordance with the following order of priority: 1) Operation, Maintenance and Pellet Marketing Services Agreement, 2) the Schedules set forth in Article 1.1. 3) Amendment dated August 1, 2003 and 4) Services Agreement dated April 30, 1999.

1.5 Recitals

The recitals to this Agreement form part of this Agreement.

1.6 Headings

The provision of a table of contents, the division of this Agreement into Articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement and do not form part of this Agreement.

1.7 Final Contract Year

Where this Agreement requires the Operator to provide certain information or documents to the City in an annual Report during any Contract Year, the obligation of the Operator to provide such information or documents to the City in the final Contract Year shall survive the expiry or termination of this Agreement and the Operator shall supply the City with the required information or documents within the same time frame applicable to such information or documents as otherwise set forth in this Agreement.

1.8 Gender and Number

This Agreement shall be read with such changes of gender or number or corporate status as the context may require.

1.9 Amendments

No amendment to this Agreement shall be effective unless in writing and signed by all Parties to this Agreement.

1.10 Number of Days

Except as expressly stated to the contrary elsewhere herein, in computing the number of days, for the purposes of this Agreement, all days shall be counted including Saturdays, Sundays and legal holidays, provided, however, that if the final day of any period shall fall on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

Where "business day" is referred to herein, it shall be a day which is not a Saturday, Sunday, legal holiday, or day when the administrative offices of the City are closed.

Where "month" is referred to herein, it shall be a calendar month.

1.11 References to Law

Any references in this Agreement to any Law shall be deemed to be a reference to such Law as amended, restated or re-enacted from time to time. Any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, restated, consolidated and/or replaced from time to time and any successor statute thereto, unless otherwise expressly provided.

1.12 Standard of Care

The Operator shall fulfill its duties and obligations under this Agreement diligently and expeditiously in good faith, in a professional, competent, safe and prudent manner in accordance with Prudent Industry Practice using qualified and experienced staff and personnel in accordance with good business practices and management techniques. The Operator shall make available appropriately skilled workers, consultants or subcontractors as appropriate.

1.13 References to Currency

For the purpose of this Agreement, unless otherwise noted, all references to currency or money shall mean Canadian dollars.

1.14 Express Terms

The express terms herein control and supersede any course of performance, Prudent Industry Practice or usage of the trade inconsistent with any of the terms herein.

1.15 Construction of Agreement

In this Agreement:

- (a) The rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared it, shall not apply as it is agreed that the Parties directly or through their agents have participated in the preparation of this Agreement;
- (b) Any reference to an Article in this Agreement shall be interpreted as referring to all provisions designated by the same numerical and alphabetical reference preceding the decimal. Where reference is made in this Agreement to an Article, such reference shall be interpreted as referring to the provisions of the specific Article identified by such numerical reference;
- (c) The words “including” and “includes” are not intended to be limiting and shall mean including without limitation” or “includes without limitation”, as the case may be;
- (d) Unless otherwise specified in this Agreement, words describing material or terms that have a well-known technical or trade meaning shall be construed in accordance with the well-known meaning generally recognized by biosolids management professionals and engineers;
- (e) Any approval, consent or authorization, the Party from whom such approval, consent or authorization is being sought shall not unreasonably withhold or delay such approval, consent or authorization. The City, however, shall not be liable for any delay or additional Operator cost or damages associated with the period of time required to obtain the approval, consent or authorization of Toronto City Council to any matters related to this Agreement outside the authority of the General Manager referred to in Section 3.7(b)(i).
- (f) Any approval, consent or authorization specified in this Agreement shall be in writing unless specifically stated.
- (g) Throughout this Agreement, the singular shall include the plural and vice versa where applicable.

1.16 Approval

The Operator acknowledges and agrees that the review, approval or consent by the City related to any matter in this Agreement shall not in any way, limit, relieve, reduce or release the Operator from any of its rights, obligations, or liabilities hereunder

1.17 Information

Any information and material provided by the City to the Operator before or during the Term of this Agreement shall be for informational purposes only. The City gives no warranty or undertaking of

whatever nature and shall have no liability with respect to any such information or material including test results or sampling results provided to the Operator.

1.18 Electronic Information

The Operator shall, at its cost, if requested by the City, provide the City with electronic copies (in a form satisfactory to the City) of all information, reports, operation and maintenance manuals (excluding third party equipment specifications and catalogues), and record drawings required to be provided by the Operator to the City under this Agreement.

ARTICLE 2 TERM AND COMMENCEMENT DATE

2.1 Term

- (a) This Agreement shall become binding on the Execution Date.
- (b) Unless earlier terminated, in accordance with the terms and conditions of this Agreement, the term of this Agreement shall commence on the Effective Date and continue for a ten (10) year period ("Term").
- (c) The Term of this Agreement may be renewed on the same terms and conditions or such amended terms and conditions agreed to by the parties for one additional ten (10) year period by mutual agreement of the Parties (the "Renewal Term"). To implement the renewal, the City shall deliver to the Operator written notice (the "Renewal Term Notice") no later than fourteen (14) months prior to the expiry of the Term advising the Operator whether or not the City wishes to renew this Agreement for the Renewal Term. The Operator shall respond to the City's notice within sixty (60) days indicating whether it is agreeable to renewing this Agreement for the Renewal Term. If the Parties are agreeable to the renewal, the Parties shall execute a Renewal Term Agreement which contains any amendments to the terms and conditions of this Agreement agreed to by the Parties for the Renewal Term.
- (d) In the event the City does not provide the Renewal Term Notice or the Operator does not agree to renew this Agreement for the Renewal Term, the City shall be entitled, in its sole discretion, to provide notice to the Operator, no later than twelve (12) months prior to the expiry of the Term, to extend the Term of this Agreement on the same terms and conditions for a period of up to one (1) year immediately following the Term to allow for an effective transition of the Pelletizer Facility and the obligations of the Operator under this Agreement to a new operator (the "Extension Period"). The notice of the Extension Period (the "Extension Period Certificate") shall contain any necessary additional terms and conditions of the Extension Period agreed to by the Parties.
- (e) Wherever there is a reference to the Term in this Agreement it includes the Renewal Term or the Extension Period where renewed by the Parties or extended by the City.

2.2 Overlap Period

- (a) The Parties acknowledge and agree that this Agreement is separate and independent from the Services Agreement and the Amendment. For greater certainty, any and all rights, obligations and liabilities of the Parties under the Services Agreement and the Amendment are not superceded by this Agreement.

- (b) The Operator acknowledges and agrees that it is not entitled to and will not seek payment under this Agreement for any work or services performed by it, which are within the scope of work or services to be completed under the Services Agreement or the Amendment.
- (c) In the event that the Operator does not successfully complete Secondary Testing as required in the Services Agreement and Amendment, the City shall in its sole discretion be entitled to terminate this Agreement. In the event that the City terminates this Agreement pursuant to this provision, the Operator is not entitled to receive any further payments under this Agreement except for any payments set forth in the Termination Payment Schedule 17 provided the Operator takes all steps as directed by the City to allow for an effective transition of the Pelletizer Facility and the obligations of the Operator under this Agreement to a new operator.

2.3 Secondary Testing Period

- (a) The Operator shall assume and perform all of the responsibilities of the City for staffing and operations of the Pelletizer Facility and for the disposal of Pellets during the Secondary Testing Period under and in accordance with the Services Agreement and the Amendment. Without limiting the foregoing the Operator will provide Project Staff as required by the Services Agreement and any operational obligations of the City thereunder, including disposal of Pellets produced during the Secondary Testing Period (collectively the "Secondary Testing Period Services").
- (b) The Operator shall be fully responsible to the City for the Pelletizer Facility during the Secondary Testing Period.
- (c) The Operator shall indemnify, defend and save the City harmless for any Claim related to the Secondary Testing Period Services.

ARTICLE 3
OPERATION AND MAINTENANCE
OF THE PELLETTIZER FACILITY

3.1 Pelletizer Facility in General

Subject to the provisions of this Agreement, the Operator covenants and agrees that at all times during this Agreement, the Pelletizer shall, based upon the receipt of Biosolids that meet the Biosolids Specification be in the Required Condition. In addition, the Operator shall operate and maintain the Pelletizer in compliance with all Laws and Compliance Criteria .

(a) **Description of the Pelletizer Facility**

The Pelletizer Facility site is as set forth in Schedule 2 to this Agreement.

(b) **Use and Possession of the Pelletizer Facility and Employee Facility**

- (i) All Pelletizer Facility grounds, buildings and other equipment, vehicles and documents relating to the Pelletizer Facility now owned by the City or acquired by the City during the Term of this Agreement including the Enhancements (subject to the City paying the Enhancement buy-out amounts listed on Schedule 3) shall remain the property of the City, except as otherwise provided for herein.

- (ii) The City shall provide an area identified on Schedule 2 within a reasonable proximity of the Pelletizer Facility for the Operator to construct a shower/locker/office facility ("Employee Facility"). This Employee Facility will include a limited parking area for the Operator's employees. The City shall provide and maintain road access to and from the Employee Facility.
- (iii) The City owns the Pelletizer Facility and the Employee Facility, and the Operator shall act as an independent contractor or operator to the City for operation and maintenance of the Pelletizer Facility and Employee Facility. The Operator shall use all the Pelletizer Facility and Employee Facility exclusively for 1) the operation and maintenance of the Pelletizer Facility, 2) to support Pellet Marketing Services and 3) to fulfill the obligations under this Agreement. The Operator will not carry out any other business from the Pelletizer Facility, except where it has received the prior written approval of the City.
- (iv) The Operator's occupancy of the Pelletizer Facility and Employee Facility, shall be in the nature of a licence within the limits of the Pelletizer Facility, without exclusive possession, provided that the Operator shall have access to and control of the Pelletizer Facility and Employee Facility, to the extent reasonably necessary to perform its obligations under this Agreement.
- (v) The City shall provide the Operator free of charge access to and use of the Pelletizer Facility and the Employee Facility, and all equipment, improvements, structures and property located therein, at all times during the Term of this Agreement so that Operator may perform its obligations under this Agreement.
- (vi) The Operator shall develop and propose a right of access and usage protocol with respect to roadways, parking access and egress to and from the Pelletizer Facility and Employee Facility. The protocol shall be submitted to the City for final approval prior to the Start Date.

(c) **City Access to Facilities**

- (i) The City shall have access to the Pelletizer Facility, the Employee Facility and any other facilities used by the Operator to store, handle, process, transport or distribute Biosolids or Pellets under this Agreement (collectively the "Facilities") The Facilities at ABTP are hereinafter referred to as "On-site Facilities". All other Facilities not at ABTP used by the Operator in the delivery of services under this Agreement are hereinafter referred to as "Off-site Facilities".
- (ii) The Operator shall allow unrestricted access to On-site Facilities to the City Contract Manager without notice and without restriction, provided that such access shall not impair, in any material way, the ability of the Operator to perform its obligations in accordance with the terms of this Agreement. The City Contract Manager shall not have the right to direct or control the activities of the Operator during such period of access. The City Contract Manager and other persons having access to the On-site Facilities pursuant to the City's right of access, shall first complete such reasonable site safety training provided by the Operator before being allowed access and shall comply with all health and safety procedures of the Operator while on or at On-site Facilities.
- (iii) The Operator shall allow reasonable access during normal business hours to Off-site Facilities to the City Contract Manager with 24 hours written notice provided that such access shall not impair in any material way the ability of the Operator to perform its obligations in accordance with the terms of this Agreement. The City Contract Manager shall not have the right to direct or

control the activities of the Operator during such period of access. The City Contract Manager and other persons having access to the Off-site Facilities pursuant to the City's right of access, shall first complete such reasonable site safety training provided by the Operator before being allowed access and shall comply with all health and safety procedures of the Operator while on or at the Off-site Facilities.

- (iv) The Parties, acting reasonably, shall jointly develop a protocol for access to On-site Facilities and Off-site Facilities. Prior to entering the Pelletizer Facility, all visitors will be required to sign a visitor's log maintained by the Operator and a copy of the visitor's log will be sent to the City on a monthly basis.

3.2 Operation and Maintenance of the Pelletizer Facility

(a) The Services

- (i) The Operator shall begin to perform all activities and services for the operation and maintenance of the Pelletizer Facility as set forth in this Agreement on the Commissioning Date. The Operator agrees that, except as otherwise specifically provided for in this Agreement, it shall, following the Execution Date until the expiry or termination of this Agreement, at its costs and risks, manage, operate and maintain the Pelletizer Facility and all other activities set forth in this Agreement.
 - (ii) The Operator shall perform all necessary maintenance on the Pelletizer Facility. The City acknowledges that while maintenance work is on-going, equipment under maintenance will not temporarily be in the Required Condition.
- (b) The Operator shall ensure that all agreements with third parties with access to City property related to this Agreement, to the extent applicable, incorporate and be consistent with the City's safety, access and security policies as set forth in this Agreement.

(c) Performance Guarantee

- (i) The Operator shall operate and maintain the Pelletizer Facility such that the Pelletizer Facility accepts and processes the equivalent of 25,000 (with a range of 24,000 to 26,000) Dry Tonnes of Biosolids in each Contract Year (the "Performance Guarantee").
- (ii) The City and the Operator may from time to time agree by Change Order to modify the Performance Guarantee. Any change in the Performance Guarantee shall not relieve the Operator from any other obligation under this Agreement.
- (iii) The Operator shall accept all Biosolids delivered to the Pelletizer Facility and thereupon assume ownership of and responsibility for all Biosolids that meet the Biosolids Specification.
- (iv) The City shall provide Biosolids that meet the Biosolids Specification and subject to Article 3.2(g), in such quantities sufficient to enable the Operator to achieve the Performance Guarantee. In the event that the City provides Biosolids which do not meet the Biosolids Specification, the Operator shall use reasonable commercial efforts to process such Biosolids to comply with the Performance Guarantee and to conduct Pellet Marketing Services, but the Operator shall have no responsibility or liability to the City with respect to the Performance Guarantee

in the event the Operator cannot meet these obligations for the amount of Biosolids that do not meet the Biosolids Specification delivered by the City. The City shall pay to the Operator the Per Tonne Price for Pellets produced which contain Biosolids that do not meet the Biosolids Specification. The Operator shall document and submit to the City for review any additional Direct Cost incurred by the Operator or any credits to the City related to the Biosolids that do not meet the Biosolids Specification. The City shall pay such approved additional Direct Cost plus an administrative fee of 10% which includes profit and all applicable overheads on the Direct Cost to the Operator or deduct such credits from the Commercial Operations Fee, which are agreed to in writing with the Operator. If the Parties are unable to agree on the Direct Costs, if any, or the credits to the City, if any, of the Biosolids that do not meet the Biosolids Specification, then the Parties shall resolve any such dispute in accordance with dispute resolution process in Article 18.

- (v) The City shall provide Biosolids at an average rate of 2.85 Dry Tonnes per hour to a maximum of 4 dry tonnes per hour when the Pelletizer Facility is fully operational. In the event that the City supplies the Operator less than an average of 2.85 Dry Tonnes per hour in any calendar month of continuous operation of the Pelletizer Facility, the City shall pay to the Operator the Per Tonne Price for those tonnes that could not be produced due to the reduction in Biosolids supply. The Operator shall document and submit to the City the amount of lost production due to the reduction of Biosolids supplied by the City. The Operator shall deliver to the City fifteen (15) days before the start of each month, a production schedule for review by the City to enable the parties to coordinate the supply of Biosolids. Within seven (7) days of delivery of the production schedule, the City shall advise the Operator if the production schedule is acceptable to the City. In the event , the City does not accept the production schedule the Operator shall resubmit the production schedule to the City within three (3) days with the adjustments to the production schedule agreed to by the parties.

(d) **Operations and Maintenance Plan**

The Operator shall prepare and submit to the City an Operations and Maintenance Plan no later than ninety (90) days after the Effective Date for approval in writing by the City.

- (i) The Operations and Maintenance Plan shall be prepared in accordance with Prudent Industry Practice.
- (ii) The Operations and Maintenance Plan may only be changed, altered or modified by the Operator subsequent to the City approval of the first Operations and Maintenance Plan with the approval of the City, provided that, the City approval shall only be required for any change, alteration or modification, to the Operations and Maintenance Plan that has a material effect on the Pelletizer Facility.
- (iii) The Operations and Maintenance Plan shall contain the following:
 1. All operation and maintenance services intended to be provided pursuant to this Agreement;
 2. Operator's asset management and maintenance approach;
 3. Operator's proposed maintenance programs and procedures;

Operator's program for SCADA maintenance, CMMS implementation, facility optimization and development;

4. Operator's general maintenance and operations procedures including overall appearance, corrosion prevention and asset protection procedures; and

5. Operator's preventative maintenance program.

(e) **Operations and Maintenance Obligations**

Except as otherwise provided in this Agreement, the Operator shall provide and obtain all personnel, resources, materials, services and supplies necessary to operate and maintain the Pelletizer Facility to the standards set forth in and to the extent required by this Agreement. The personnel, resources, materials, services and supplies required to be provided and obtained by the Operator pursuant to this Agreement include, but are not limited to:

- (i) All necessary personnel resources, materials and services necessary to support operations, laboratory testing, SCADA system, regulatory compliance and reporting, janitorial, security (as required by the City, acting reasonably) and general building maintenance;
- (ii) All administrative and management personnel, resources, and services including Pelletizer Facility management, human resources, training, accounting and legal services, payroll, purchasing, technical support and information systems;
- (iii) All technical assistance and support to operate and maintain the Pelletizer Facility in accordance with this Agreement;
- (iv) Reasonable on-site technical assistance and support that may be required by the City related to applications and renewal of its Certificate of Approval;
- (v) All Attractables in excess of the City's Attractables which are required in the day-to-day operation and maintenance of the Pelletizer Facility;
- (vi) All process control laboratory sampling, testing and analyses, quality control and quality assurance required to be performed by the Operator by this Agreement, including any operational parameter testing required for the operation and maintenance of the Pelletizer Facility, but excluding sampling to be performed by the City or on behalf of the City described in Article 3.3;
- (vii) Insurance and financial security required by Article 15 of this Agreement;
- (viii) Prepare and submit those applications required by Article 3.7 (n) and 3.7 (o);
- (ix) Waste handling, transportation and disposal of all chemicals, oil, and other wastes and residues, at the Pelletizer Facility; and
- (x) Maintenance of the Pelletizer Facility, excluding the lands upon which the Pelletizer Facility are located and related landscaping which is the responsibility of the City.

(f) **Operations and Maintenance Manual**

- (i) The Operator shall within one (1) year of the Effective Date prepare a revised and updated Operations and Maintenance Manual as appropriate to reflect changes to operating and maintenance procedures for the remainder of the Term. Two copies of the updated Operations and Maintenance Manual shall be provided to the City to the reasonable satisfaction of the City.
- (ii) The Operator shall update and maintain current the Operations and Maintenance Manual during the Term, and in any event, shall update and maintain the Operations and Maintenance Manual as required by Law, and as required by the City, acting reasonably.
- (iii) If the Operator fails to comply with its obligations pursuant to this Article, the City, acting reasonably, may withhold five thousand dollars (\$5,000.00) from the Commercial Operations Fee payable until such time as the Operator can demonstrate to the satisfaction of the City that the Operator has complied with its obligations as set forth above.

(g) **Production Quantities**

The City has an obligation under this Agreement to provide the Operator with Biosolids at an average rate of the equivalent of 2.85 Dry Tonnes per hour to a target of 25,000 (with a range of 24,000 to 26,000) Dry Tonnes of Biosolids per Contract Year. The Operator shall operate the Pelletizer Facility throughout the Term in accordance with the approved monthly production schedule in Article 3.2(c)(v) and for the amount of time required to produce the equivalent of a target of 25,000 (with a range of 24,000 to 26,000) Dry Tonnes of Pellets per Contract Year which shall include a minimum of the equivalent of 5,000 Dry Tonnes of Pellets on a ninety (90) day rolling basis. The Operator shall require the prior written approval of the City to produce less than 24,000 Dry Tonnes of Pellets per Contract Year or Pellets in excess of 26,000 Dry Tonnes per Contract Year. The Operator shall use reasonable commercial efforts to operate the Pelletizer Facility twenty-four (24) hours per day, seven (7) days per week during the term subject to downtime required for equipment repair, maintenance, Uncontrollable Circumstance and emergencies.

(h) **Emergency Response**

The Operator shall respond to any emergency at the Pelletizer Facility in no more than one (1) hour or less from the time the emergency is discovered by the Operator. The initial response may consist of telephone calls or the dispatch of personnel. The Operator will provide a written Report to the City within forty-eight (48) hours describing the situation and actions taken or planned to be taken to remedy the unforeseen condition or emergency situation.

(i) **Scheduled Shutdowns by the Operator**

- (i) Unless otherwise provided in this Agreement, there shall be no cessation of operation ("Shutdown") at the Pelletizer Facility without the prior written approval of the City.
- (ii) If the Operator is required to schedule a Shutdown at the Pelletizer Facility for a twenty four (24) hour period or more, the Operator shall provide the City with at least thirty (30) days prior written notice of any Shutdown periods proposed by the Operator in the ordinary course of its obligations under this Agreement ("Shutdown Notice"). The City shall advise the Operator within twenty (20) days of receipt of the Shutdown Notice whether the proposed Shutdown is approved.

- (iii) In the event that the City does not approve the proposed Shutdown, the Operator may reschedule the proposed Shutdown and reapply to the City for approval of the rescheduled proposed Shutdown.
- (iv) In no circumstances shall there be a Shutdown by the Operator at the Pelletizer Facility for thirty (30) consecutive days. A Shutdown at the Pelletizer Facility for greater than thirty (30) consecutive days shall be an Event of Default.

(j) **Consumables and Spare Parts**

Beginning on the Effective Date, the Operator shall have stocked at the Pelletizer Facility at least two (2) month's supply of Consumables and the Spare Parts listed on Schedule 7. The City shall pay the Operator its Direct Cost plus 10% associated with this initial two (2) month supply of Consumables. During the Term of this Agreement, the Operator shall maintain at least one (1) month's supply of Consumables at the Pelletizer Facility. At the Reversion Date, the Operator shall ensure that there is a two (2) month supply of Consumables and the Spare Parts at the Pelletizer Facility. If the aggregate value of the two month supply of Consumables, plus annual CPI adjustments as set forth in Article 8, on the Reversion Date exceeds the value of Consumables as of the Effective Date, the City shall reimburse the Operator for any excess cost.

3.3 Testing and Sampling

(a) **Compliance Testing**

- (i) The City shall sample and test Biosolids in accordance with requirements under the *Nutrient Management Act, 2002*, S.O. 2002, c.4 as amended at a location agreed to by both the Operator and the City. This location shall be outside the Pelletizer Facility Battery Limits as defined in Schedule 2. The City may, at its discretion, subcontract this testing to an independent third party. The City shall, if requested by the Operator, split each sample with the Operator.
- (ii) The City shall provide the Operator copies of all Biosolids compliance test results within fifteen (15) business days of receiving the results. The Operator shall be responsible for interpreting the results as they pertain to the operation of the Pelletizer Facility and the Pellet Marketing Services.
- (iii) The Operator shall conduct sampling and testing of the Pellets produced by the Operator in accordance with applicable requirements under:
 - (a) The *Nutrient Management Act, 2002*, S.O. 2002, c.4 as amended and any accompanying Regulations;
 - (b) The *Fertilizers Act*, R.S.C 1985 c.10 as amended and accompanying Regulations;
 - (c) The Certificate of Approval for the Pelletizer Facility; and
 - (d) Laws.
- (iv) In addition to sampling and testing requirements under Article 3.3(a)(iii), the Operator shall take a representative monthly sample of Pellets and perform an analysis for metals, nutrients, pathogens, and total solids content as listed in the *Fertilizers Act*, R.S.C. 1985 c.10 as amended.

- (v) On a monthly basis, the Operator shall provide the City with copies of all Pellet test results for the previous month within fifteen (15) business days of the end of the month. The Operator shall be responsible for interpreting the results as they pertain to the operation of the Pelletizer Facility and the Pellet Marketing Services.
- (vi) The Operator shall provide the City with a copy of any and all information provided to the Canadian Food Inspection Agency in preparing and updating the label for Pellets and will provide the City with an updated label when applicable.
- (vii) The Operator shall provide the City with a copy of any and all supporting documentation that is provided to the Canadian Food Inspection Agency related to the evaluation of the Pellets as a fertilizer and any other information requested by the Canadian Food Inspection Agency related to the safety and efficacy of the Pellets under the *Fertilizers Act*, R.S.C. 1985, c.10 as amended.
- (viii) The City, at its cost, shall without notice and without restriction be entitled to obtain samples of Pellets at the Pelletizer Facility or any other facility or location owned or controlled by the Operator to perform independent testing. The Operator shall cooperate with the City in this regard.

(b) **Total Solids Testing**

- (i) The City shall, at the City's cost, test for percentage total solids of the Biosolids entering the Pelletizer Facility at the location identified in Article 3.3(a)(i) as follows:
 - i) a minimum of four (4) times daily for the first thirty (30) days of the Term;
 - ii) a minimum of two (2) times daily during normal business hours for the subsequent sixty (60) days of the Term; and
 - iii) a minimum of one (1) time daily during normal business hours for the balance of the Term.
- (ii) The Operator shall, at its cost, ensure the availability of one of its representative to be in attendance at all of the total solid testing samplings.
- (iii) The Operator may, at its cost, obtain additional samples and conduct additional tests for percentage solids.

(c) **Other Testing**

The City, at its cost, may request additional testing be carried out by the Operator or conducted by the City or by an independent third party.

3.4 Change of Law

(a) **General**

- (i) Subject to the provisions of this Article 3.4, the City shall be responsible for the costs necessary to address a Change in Law. If either Party becomes aware of a

Change of Law or an impending Change of Law that impacts the obligations of either Party under this Agreement, it shall, on a timely basis, notify the other Party.

- (ii) Should any procedures or standards set forth in this Agreement conflict with procedures or standards contained in any Law, the more stringent procedures or standards shall apply.
- (iii) In the event of a Change of Law, the Parties will negotiate with each other to effect, if necessary, (i) modifications to the Pelletizer Facility; (ii) modifications to the Performance Guarantee; (iii) modifications to Operator's Pellet Marketing Plan; (iv) modifications to Operator's other obligations in this Agreement; and (v) adjustments to the Commercial Operations Fee.
- (iv) The Parties agree to cooperate to minimize the Direct Cost or impact on the Pelletizer Facility and maximize any credit to the City related to any Change of Law.

(b) Change of Law Related to Operation of the Pelletizer Facility

If at any time during the Term of this Agreement either the City or the Operator identifies a Change of Law which impacts the operation and maintenance of the Pelletizer Facility ("Operational Change of Law"), the following process will apply:

- (i) The Operator shall only be entitled to a Change Order for an Operational Change of Law if the Operational Change of Law, in the City's discretion acting reasonably, has a total Direct Cost over the remaining Term of the Agreement in excess of ten thousand dollars (\$10,000.00). Otherwise, the Operator shall be solely responsible for all of the costs and impacts related to the Operational Change of Law.
- (ii) The Operator or the City will deliver a Change Request and Change Report to the City regarding the Operational Change of Law.
- (iii) No later than thirty (30) days after receipt of the Operator's Change Request and Change Report, the City shall either:
 - 1. approve the Change Request and Change Report, with any agreed modifications, by issuing a Change Order. The Change Order will include the Direct Cost plus 10% of implementing the Change Order. The Operator shall implement the steps in the Change Order to maintain compliance with the Operational Change of Law; or
 - 2. advise the Operator that the City does not agree with the Change Request and Change Report.
- (iv) In the event that the Parties do not reach agreement on the operational changes and amendments to this Agreement necessary to maintain compliance with the Operational Change of Law, prior to the point in time when the Operator must take some action to maintain compliance with the Operational Change of Law, the Operator shall, in the most economical way practicable, maintain compliance with the Operational Change of Law. If the Parties subsequently agree on the operational changes and amendments to the Agreement resulting from the Operational Change of Law, then the City shall issue a Change Order covering the Direct Cost plus 10% of implement the Change Order. The Operator shall

implement the steps in the Change Order to maintain compliance with the Change of Law. If however the Parties do not subsequently agree on the operational changes and amendments to the Agreement resulting from the Operational Change of Law, the dispute between the Parties may be referred to the dispute resolution process in Article 18.

- (v) If the Parties do not reach agreement as provided for in Article 3.4(b)(iv) on the Operational Change of Law, the City, in the first instance, shall pay the Operator its Direct Cost plus an administrative fee of 10% which includes profit and all applicable overheads on the Direct Cost related to its efforts to maintain compliance with the Operational Change of Law. However, following the resolution of the dispute in accordance with Article 18 regarding the necessary operational changes and amendments to this Agreement resulting from the Operational Change of Law, the City shall pay the Operator such additional amounts ordered to be paid to the Operator or the Operator shall reimburse the City, or the City may deduct such amount from the Commercial Operations Fee or any other amount due to the Operator under this Agreement, any amount which the City paid to the Operator to maintain compliance with the Operational Change of Law which the City had no obligation to pay.
- (vi) The City reserves the right to use this Operational Change of Law provision to pursue credits or reductions to the Commercial Operations Fee should an Operational Change of Law result in a reduction in the cost of operating or maintaining the Pelletizer Facility.
- (vii) Subject to the provisions of this Article 3.4, the Operator shall be entitled to receive reasonable engineering design fees associated with implementing a Capital Improvement, a Process Change or an Operational Change under this Article 3.4, but not the cost of preparing the Change Request or Change Report which the City views as part of the services, knowledge and expertise being paid for within the Commercial Operations Fee.

(c) **Change of Law Related to Marketing, Handling or Distribution Services**

If at any time during the Term of this Agreement either the City or the Operator identifies a Change of Law which impacts the marketing, handling or distribution services under this Agreement (“Marketing Change of Law”), the following process will apply:

- (i) The City and the Operator agree to discuss any Marketing Change of Law that:
 - 1. affect the direct cost of marketing, handling or distribution of twenty percent (20%) or more of the Pellets produced by the Pelletizer Facility on an annual basis; or
 - 2. affect the end usage of Pellets within Ontario and has a total Direct Cost over the remaining terms of this Agreement in excess of \$20,000.00..
- (ii) The costs related to Marketing Change of Law that do not affect the direct cost of marketing, handling or distribution of 20% or more of the Pellets produced by the Pelletizer Facility on an annual basis or the end usage of Pellets within Ontario are solely the responsibility of the Operator. Otherwise, the Direct Cost of a Marketing Change of Law, subject to the terms of this Agreement, is the responsibility of the City. The Operator is required to develop and have in place contingency plans to mitigate the impact on its marketing, handling and distribution services of any Marketing Change of Law.

- (iii) When a Marketing Change of Law may have a direct cost impact in accordance with Article 3.4(c)(i), the Operator will deliver a Change Request and Change Report to the City regarding the impact of the Marketing Change of Law to the reasonable satisfaction of the City. The Operator shall include in the Change Report a detailed business case documenting and supporting its Change Request including any proposed amendments to the Pellet Marketing Plan and this Agreement.
- (iv) The City shall evaluate the Operator's Change Request and Change Report, and shall within forty-five (45) days of receipt either approve the Operator's Change Request and Change Report, request more information or clarification, reject the request, or request the Operator assess and evaluate alternate measures in order to achieve compliance with the Marketing Change of Law.
- (v) If the Parties agree in writing on the amendments to this Agreement necessary to maintain compliance with a Marketing Change of Law, the City shall issue a Change Order. The Operator shall implement the steps in the Change Order to maintain compliance with the Marketing Change of Law.
- (vi) In the event that the Parties do not reach agreement in writing on the impact of the Marketing Change of Law and amendments to this Agreement, the dispute between the Parties may be referred to the dispute resolution process in Article 18.
- (vii) The City reserves the right to use this Marketing Change of Law provision to pursue credits or price reductions to the Commercial Operations Fee.

(d) **Compensation**

Any increase or decrease to the Commercial Operations Fee or other mutually agreed to payment as a result of this Article shall be reflected in a Change Order.

- (e) For the purpose of this Article 3.4, an Operational Change of Law and a Marketing Change of Law shall include any amendments or repeal of any Certificate of Approval, Permits or Licenses or applicable regulatory interpretations after the Execution Date so long as any such change was not initiated by the Operator or caused by any act or omission of the Operator.

3.5 Process Change or Operational Change initiated by the Operator

- (a) Subject to the terms of this Agreement, Process Change or Operational Change may be made by the Operator during the course of this Agreement. The Operator shall be responsible for all costs and risks associated with any Process Change or Operational Change including, but not limited to, the risk of obtaining and complying with all applicable amendments to the Certificate of Approval and all Laws.
- (b) No material Process Change will be made by the Operator without the prior written approval of the City.
- (c) Operational Change by the Operator will not require the prior written approval of the City. However, the Operator shall inform the City of any material Operational Change in its monthly Reports to the City.

3.6 Operating and Management Policies and Procedures.

(a) **Policies and Procedures**

Within its Operation and Maintenance Plan, the Operator shall prepare operating and management policies and procedures with respect to the day-to-day operations of the Pelletizer Facility, including but not limited to quality control and quality assurance procedures, daily work practices, minimum staffing policies, labour practices and communication procedures with ABTP management. The Operator shall consult with the City in the preparation of such operating and management policies and procedures and shall permit the City to review and provide comments on them.

(b) **Operator's Employees**

The Operator shall develop strategies to minimize labour disruption at the Pelletizer Facility and shall within one (1) year of the Start Date advise the City in writing of such strategies. The Operator shall on an annual basis, review the strategies referred to in this Article and shall advise the City of any changes to such strategies.

3.7 Communications and Reporting

(a) **Managers**

- (i) The City shall designate one person, the City Contract Manager, to act as its liaison and coordinator with the Operator. The Operator shall employ a person designated as the Operator Manager, who shall, among his or her other duties, serve as the Operator's liaison with the City and who shall be the Operator representative primarily responsible for dealing with the City. The Operator shall submit the name of its designated Operator Manager to the City for approval, which approval shall not be unreasonably withheld or delayed. The Operator shall, where practicable, provide the City with at least thirty (30) days prior written notice of any change in the Operator Manager.
- (ii) The City and the Operator shall also appoint designees to the respective Manager's positions to act on behalf of the respective Manager in the respective Manager's absence. The Operator's designee for the Operator Manager must be approved, in writing, by the City, which approval shall not be unreasonably withheld or delayed. The Operator shall provide the City with at least thirty (30) days prior written notice of any change in the Operator Manager.
- (iii) The City reserves to itself the right to make requests, in writing, upon reasonable notice to the Operator, that the Operator replace the Operator Manager or designee, and the Operator shall, subject to any Law, take all reasonable steps to replace the Operator Manager or designee, in response to any such reasonable request from the City. The City or the Operator may refer any dispute with respect to this Article to the dispute resolution process pursuant to Article 18.
- (iv) The Operator, through the Operator Manager, shall advise the City in writing, of any and all conditions, events, issues, suggestions, recommendations, and the like which materially affect the safe operation of the Pelletizer Facility. The Operator Manager shall promptly inform the City Contract Manager of any emergencies and the occurrence of any events relating to the Pelletizer Facility which could give rise to a breach of a Compliance Criteria, a Default, an Event of Default, or a Claim(s), and which an independent operator would be reasonably expected to report to an owner in accordance with Prudent Industry Standard.

- (v) The Operator, through the Operator Manager, shall promptly advise the City in writing, of any and all inspections, investigations, notices of violation, breach or violation of Compliance Criteria or prosecutions by any Governmental Authority, relating to the Pelletizer Facility or this Agreement.

(b) **General Manager**

- (i) The General Manager, in consultation with the Deputy City Manager responsible for Toronto Water, has the authority to act on behalf of the City in all matters related to this Agreement and to render any final decisions on behalf of the City required by this Agreement except that the General Manager in consultation with the Deputy City Manager responsible for Toronto Water, shall not have the authority to extend or renew this Agreement under Article 2 or make any material changes to the Agreement without express written authority from the Toronto City Council.

(c) **Meetings with the City**

- (i) The City Contract Manager or his designee shall meet with the Operator Manager or his designee once per month as directed by the City to discuss and review compliance with the terms of this Agreement, and the operation and maintenance of the Pelletizer Facility. The Operator shall record the substance of any matters discussed at each such meeting in Minutes of Agreement Review Meeting, which are to be provided to the City Contract Manager and the General Manager. The City, acting reasonably, may alter the frequency of the meetings to reflect whether or not there is a need to meet. The date and time of the meetings shall be scheduled as agreed upon from time to time by the Managers.
- (ii) The Operator shall, at its cost, attend such other meetings with the City, or persons designated by the City, as required by the City, acting reasonably.

(d) **Compliance Reports**

- (i) The Operator shall prepare and provide to the City, within thirty (30) days of the end of the applicable reporting period, Compliance Reports related to the operation and maintenance of the Pelletizer Facility or to the Pellet Marketing Service to be submitted by the City to the Governmental Authority. This includes all necessary information and data required by the City to complete its National Pollutant Release Inventory Reports to the Governmental Authority pursuant to the *Environmental Protection Act*, R.S.O. 1990, c.E.19 as amended.
- (ii) The City and the Operator will jointly determine the level of detail required in all Compliance Reports and will endeavour to minimize the administrative and managerial burden on the Parties associated with reporting. The City will assist the Operator to establish templates for Compliance Reports.
- (iii) Compliance Reports that must be submitted to any Governmental Authority directly by the Operator as required by the Certificate of Approval, the Permits and Licences or any other Law shall be delivered to the City Contract Manager at the same time that the Operator delivers such Compliance Report to the applicable Governmental Authority. All Compliance Reports shall be provided to the City in electronic PDF format and in hard copy.

(e) **Quarterly Operations Reports**

The Operator shall compile, maintain and provide to the City Quarterly Operations Reports within thirty (30) days of March 31, June 30, September 30 or December 31 in each Contract Year. Quarterly Operations Reports shall be in a format approved by the City and shall include information required by the City, acting reasonably, including, but not limited to, the following information as it applies to the Pelletizer Facility for the preceding month:

- (i) Any actions required from the City;
 - (ii) Details of the safety program and any *OHSA* issues including any type of incidents, lost time accidents, first aid, medical and near misses;
 - (iii) Any changes to health and safety procedures;
 - (iv) Equipment utilization times;
 - (v) Laboratory analysis relating to Pelletizer Facility process and operation;
 - (vi) The quantity of electricity and natural or digester gas consumed at the Pelletizer Facility, plus the identification of any peak usage trends during that same period;
 - (vii) Staffing levels indicating terminations and new hires;
 - (viii) List of complaints received, action plans and remedies; and where complaints received were determined not to be valid;
 - (ix) Forecasts of any potential adverse conditions which may impact on the operations of the Pelletizer Facility and proposed mitigation plans;
 - (x) Forecasts of the natural or digester gas utilization and demand for the Pelletizer Facility in each of the next six (6) months, including anticipated peak usage times during that same period;
 - (xi) Communications with Governmental Authority, including details of all inspections, investigations, notices of violation, orders issued or prosecutions commenced by Governmental Authority;
 - (xii) Employee training/certification programs which have been carried out by the Operator pursuant to Article 3.11;
 - (xiii) Health and safety activities occurring at the Pelletizer Facility, including meeting minutes of all meetings of the Health and Safety Committee;
 - (xiv) Reporting on any labour relations issues that could potentially affect the operation of the Pelletizer Facility or the ABTP;
 - (xv) Reporting on Pellet production quantities and Pellet Marketing Services;
 - (xvi) Report any Pellet blending activities undertaken by the Operator or any Affiliated Company of the Operator; and
 - (xvii) Such other information as the City deems necessary, acting reasonably, to ensure that it has sufficient information to assess the operation and maintenance of the Pelletizer Facility.
- (f) **Quarterly Maintenance Reports**

The Operator shall compile, maintain and provide to the City Quarterly Maintenance Reports within thirty (30) days of March 31, June 30, September 30 or December 31 as the case may be. The Quarterly Maintenance Reports shall be in a format approved by the City, shall contain information required to be provided by the City, acting reasonably, and shall include, but not be limited to, the following information:

- (i) A report of equipment condition and all maintenance work including Preventative Maintenance, Corrective Maintenance, Routine Maintenance and Repairs and Replacement performed;
- (ii) Signed copies or a certified listing of all work orders verifying that the work was completed by the Operator;
- (iii) A list of major planned maintenance for the next quarter, including identification of any periods in which one or both trains are expected to be shut down; and
- (iv) A list of equipment modified or abandoned, including the justification of the actions taken by the Operator.
- (v) A list of equipment which costs more than one thousand dollars (\$1,000.00) and less than ten thousand dollars (\$10,000.00) to replace, which the City has authorized the Operator in writing to run to failure instead of maintain.

The lack of required documentation or incomplete records in the Quarterly Maintenance Report shall be presumed to mean that the Preventative Maintenance or Corrective Maintenance was not completed by the Operator, unless the Operator is able to demonstrate that the activities have been completed and unless such lack of documentation or incomplete records is caused by an Uncontrollable Circumstance.

(g) **Annual Operations and Maintenance Reports**

By the last day of February in each calendar year, the Operator shall provide the City with an Annual Operations and Maintenance Report summarizing the operations and maintenance activities of the previous Contract Year including a year-end condition summary of the Pelletizer Facility. The Annual Operations and Maintenance Report shall meet the requirements of the MOE and be in a format approved by the City, acting reasonably, and shall include, but not be limited to, the following information:

- (i) A general overview of the operations of the Pelletizer Facility in the previous Contract Year including any major achievements of the Operator, the reliability of the Pelletizer Facility and the performance of the Pelletizer Facility. Such overview shall be no longer than (10) pages;
- (ii) A summary of the information provided in the Quarterly Operations Reports and Quarterly Maintenance Reports with annual averages or totals where applicable for the previous Contract Year. This information shall be presented in tabular and graphical form with a brief written narrative to highlight key points in each article;
- (iii) An analysis of annual natural or digester gas and electricity consumption figures for the Pelletizer Facility;
- (iv) A summary of major equipment modified or abandoned, including justification of actions taken by the Operator; and

- (v) A summary of the Capital Improvements completed by the Operator in the relevant Contract Year; and

The failure to provide the City with Annual Operations and Maintenance Reports within 15 days of the stipulated time shall be considered an Event of Default.

(h) **Annual Pellet Marketing and Distribution Report**

By the last day of February in each calendar year, the Operator shall provide the City with a Pellet Marketing and Distribution Report in which the Operator will provide a summary of all Pellet Marketing Services undertaken during the previous Contract Year. The Pellet Marketing and Distribution Report shall include but is not limited to:

- (i) Quantity of pellets produced and shipped to the various end use markets;
- (ii) List of viable end use markets for the pellets;
- (iii) Amount of pellets in inventory and/or in storage at the end of the Contract Year;
- (iv) Summary of incidents, formal complaints, issues encountered and resolutions during the course of transporting, storing and management of the Pellets;
- (v) Forecast of marketing activities for the upcoming year, forecasted changes in market segments and contingency plans for alternate end use markets;
- (vi) Summary of promotional and public relations activities undertaken including copies of print advertising used during the past year;
- (vii) Summary of published articles and presentations undertaken by the Operator and/or its sub-contractors related to the services and activities in this Agreement; and
- (viii) Summary of beneficial end use research activities and copies of published articles; and
- (ix) Such other non-confidential information excluding any Veolia Confidential Information as the City deems necessary, acting reasonably, to ensure that it has sufficient information to assess the marketing, distribution and handling of the Pellets.

The failure to provide the City with Annual Pellet Marketing and Distribution Reports within 15 days of the stipulated time shall be considered an Event of Default.

(i) **Financial Reports**

- (i) The Operator will provide to the City its annual financial statements and the Guarantor's audited financial statements prepared in accordance with generally accepted accounting principles, within one hundred and eighty (180) days of the fiscal year end of the Guarantor.
- (ii) Except as required by Law, including the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, where the Operator or the Guarantor are not required by Law to release their respective financial statements, the City agrees not to release to the general public the audited financial statements of the Operator or the Guarantor.

(j) **Deficient or Late Compliance Reports**

The Operator shall be responsible for filing all Compliance Reports assigned to it under this Agreement and required by it under Permits and Licences. If the Operator fails to file a Compliance Report or files a deficient Compliance Report as determined by the Governmental Authority within the time specified in the Permits and Licences, Certificate of Approval or Laws, or within any extension period granted by the Governmental Authority, the Operator shall pay any fine or penalty assessed against either Party and such a failure shall be an Event of Default.

(k) **Deficient or Late Reports to the City**

- (i) The City and the Operator will jointly develop and/or confirm a Report Delivery Schedule for all Reports to the City as set out in Schedule 8.
- (ii) Where the City determines that a Report is deficient, the City has a maximum of thirty (30) days after receipt by the City of the Report, to provide the Operator with written feedback and request modifications. Beyond this thirty (30) day period, a Report is considered accepted and final. If feedback is provided or modifications are requested, the Operator has an additional thirty (30) days to resubmit the Report.
- (iii) The City, at its discretion, may withhold from the Commercial Operations Fee the amount of \$5,000.00 for each Report submitted that is late or deficient in the City's opinion. The Operator waives its right to payment of the \$5,000.00, if any such Report is still not in a form acceptable to the City within ninety (90) days of its original due date.
- (iv) After the second submittal of the same report the City may at its option complete, correct or update an Operator's deficient Report and deduct the reasonable cost of performing this work from the Commercial Operations Fee.
- (v) The Operator shall be excused from the time periods set forth in this Article, and shall not be in breach of this Agreement or subject to a holdback, liquidated or other damages, if it fails to file a complete Report to the City due to late receipt of sampling, testing or analytical results from a third party, on the condition that the Operator used its reasonable commercial effort, to obtain such results in a timely fashion. Notwithstanding that any such Report may be deficient, the Operator shall submit the Report to the City, by the original due date, accompanied by a description identifying those portions of the Report which are deficient and the reasons for the deficiency in the Report.
- (vi) Failure to submit any Report required by this Agreement for a period of six (6) months, or a repeated failure to submit Reports when due, may, at the City's discretion, be considered an Event of Default.

(l) **Inspections and Review of Records and Documentation**

The Operator shall permit the City and its authorized representatives, during the Term of this Agreement, and without unreasonable disruption to the Operator, to examine and retrieve documents or records required for operating and maintenance of the Pelletizer

Facility on a frequency to be determined by the City acting reasonably. Subject to the confidentiality provisions in Article 13.3 of this Agreement, the Operator shall permit the City to make copies of and take extracts from such records and documents.

(m) **Communications with Governmental Authority**

The City shall be the primary contact with any Governmental Authority, including but not limited to the MOE and other applicable regulators, for those matters related to the operations and maintenance of the Pelletizer Facility. The City will invite the Operator to attend or participate in such meetings with the MOE and other applicable regulators relevant to the Operator's obligations pursuant to this Agreement. The City will also keep the Operator informed of such discussions with the Governmental Authority relevant to the Operator's obligations under this Agreement. The Operator may communicate directly with the Governmental Authority on matters dealt with in this Agreement where the Operator is under a legal obligation to report directly to the Governmental Authority or where the Operator has obtained the prior written approval of the City Contract Manager. The Operator shall report forthwith to the City regarding any such discussions.

(n) **Certificate of Approval**

- (i) The City, as owner of the Pelletizer Facility, shall continue to be the holder of all the Certificate of Approval for the Pelletizer Facility and shall be responsible for preparing and filing applications for any new Certificate of Approval and/or amendments to the existing Certificate of Approval. It is the responsibility of both the City and the Operator to notify the other in writing of any changes or amendments required to the Certificate of Approval as soon as possible upon the notifying Party becoming aware of the necessity for such changes or amendments.
- (ii) The Operator, at its cost, shall, upon the City's request, provide to the City on-site personnel and managers assigned to the Pelletizer Facility to provide technical expertise to assist the City in preparing and filing applications for renewal, new or amended Certificate of Approval for the Pelletizer Facility.
- (iii) Any additional costs and expenses of operating or maintaining the Pelletizer Facility resulting from an amendment to the Certificate of Approval shall be the responsibility of the Party that initiated the amendment to the Certificate of Approval.

(o) **Permits and Licences**

- (i) The Operator shall ensure that at all times it maintains all necessary and appropriate Permits and Licences held in the name of the Operator that are required to fulfill its obligations pursuant to this Agreement, including the Compliance Criteria.
- (ii) The Operator shall prepare and file, at its cost, on a timely basis with the appropriate Governmental Authority all applications for Permits and Licences and renewals of Permits and Licences which are required in connection with the operation and maintenance of the Pelletizer Facility or the provision of the Pellet Marketing Services and provide copies of such applications to the City at the same time within such application and filed with the appropriate Governmental Authority.

- (iii) The Operator shall, at its cost, assist the City with on-site personnel and managers assigned to the Pelletizer Facility in obtaining and maintaining whatever Permits and Licences in the City's name that are required to operate and maintain the Facilities.
- (iv) The Operator, at its cost, shall, upon the City's request, provide to the City on-site personnel and managers assigned to the Pelletizer Facility to provide technical expertise to assist the City in preparing and filing applications for new or amended Permits and Licences for the Pelletizer Facility.
- (v) The Operator shall, at the City's cost, take all steps to transfer the Permits and Licences required to fulfill its obligations under this Agreement to the City, if requested by the City upon termination or expiry of this Agreement.

(p) Complaints

- (i) The Operator shall use reasonable commercial efforts to contain and control the odour, dust, noise or any other nuisances to the public emitted from the Pelletizer Facility. The Operator shall take an active role, in cooperation with the City, to improve the local residents' understanding of the operation of the Pelletizer Facility.
- (ii) If the Operator or the City receives any complaints in relation to odour, dust, noise or any other nuisances to the public, or any other matter related to the Pelletizer Facility or this Agreement, the Party receiving the complaint shall notify the other Party immediately. The Operator, with the participation of the City, shall conduct an investigation of the complaint for validity. If the complaint is determined by the Operator not to be valid, the Operator shall, within three (3) business days of the time of receipt the complaint, notify the City and shall identify why the complaint was deemed to be invalid. If the City disagrees with the Operator's determination that the complaint was invalid, the Operator shall be obligated within five (5) days of receiving notice from the City to prepare the action plan contemplated herein as if determined the complaint was valid. Otherwise, within five (5) business days of the time of the notification of a valid complaint the Operator shall prepare and provide to the City for approval, its proposed action plan to respond to the complaint and prevent a reoccurrence of the situation which gave rise to the complaint. Upon the City's approval in writing of the Operator's action plan, as may be modified by the City, the Operator shall implement the action plan, within a time period to be determined by the City acting reasonably.
- (iii) If the odour, dust, noise or any other nuisances to the public referred to in Article 3.7(p)(ii) are the result of the Operator's breach of this Agreement or Operator fault, and the Operator fails to comply with its obligations pursuant to Article 3.7(p)(ii), in addition to any other rights of the City under this Agreement, the City may withhold ten thousand dollars (\$10,000.00) from the Commercial Operations Fee for the month in which the Operator failed to comply with such obligations and this amount shall be paid to the Operator by the City upon prompt compliance by the Operator with its obligations pursuant to Article 3.7(p)(ii). The withholding of a portion of the Commercial Operations Fee as set forth herein is in addition to any other rights and remedies of the City.
- (iv) If the odour, dust, noise or any other nuisances to the public referred to in Article 3.7(p)(ii) are the result of the Operator's unexcused breach of this Agreement or the Operator fault, and the Operator continues its failure to comply with its obligations in Article 3.7(p)(ii) for a period of fourteen (14) days from receipt of

the complaint, such failure shall be considered an Event of Default. In addition, the City may, in its sole discretion, withhold twenty thousand dollars (\$20,000.00) from the Commercial Operations Fee for each month in which the Operator fails to comply with its obligations in Article 3.7(p)(ii), and the cumulative amount shall only be paid to the Operator by the City upon compliance by the Operator with its obligations pursuant to Article 3.7(p)(ii). The withholding of a portion of the Commercial Operations Fee as set forth herein is in addition to any other rights and remedies of the City pursuant to this Agreement.

- (v) For complaints resulting from an Uncontrollable Circumstance, the Operator shall immediately take all reasonable steps to mitigate the source of the complaint. Within a time period agreed to by the Parties, the Operator shall submit to the City, its recommended action plan to rectify the source of the complaint. Upon receiving the Operator's recommended action plan, the City shall, as it deems necessary, implement said action plan or a modified or different appropriate action plan, at the City's cost, or have the Operator implement such plans as approved by the City.

(q) **Interface with Public**

- (i) All visitors to the Pelletizer Facility not designated by the City or authorized by the Operator and with consent of the City shall require the City's approval and shall be required to make an appointment with the Operator prior to visiting the Pelletizer Facility.
- (ii) The Operator shall ensure that access to the Pelletizer Facility is provided in a safe and responsible manner, and shall require that all persons given access to the Pelletizer Facility conform to all occupational health and safety requirements, policies and procedures for the Pelletizer Facility and the ABTP.
- (iii) The City shall be responsible for all communications with the media with respect to the Pelletizer Facility or this Agreement. The City shall, where reasonable and necessary, provide the Operator with the opportunity to make recommendations and suggest modifications to communications with the media with respect to this Agreement. The Operator shall, where reasonable and necessary, provide input to the City on communications with the media when requested to do so by the City.
- (iv) The Operator must obtain the City's consent prior to communicating with the media with respect to any aspect of the Pelletizer Facility or this Agreement. The Operator does not require City consent to respond to media enquiries with respect to other unrelated business of the Operator.
- (v) The Operator, at its cost, shall assist the City by making available its personnel and managers assigned to the Pelletizer Facility, when requested by the City, acting reasonably, in any public communications regarding the Pelletizer Facility or this Agreement.
- (vi) From time to time, the Operator may prepare articles, marketing material and/or advertising material detailing the activities undertaken by the Operator under this Agreement. The Operator shall provide the City with a thirty (30) day review period of any such materials. Any such materials require prior written approval by the City prior to being released by the Operator.

3.8 Contingency and Emergency Planning

- (i) The Operator shall review all relevant existing contingency and emergency preparedness plans at the Pelletizer Facility and the ABTP. The Operator shall, within thirty (30) days of the Start Date, submit revised contingency and emergency preparedness plans for the Pelletizer Facility to the City for its approval.
- (ii) The Operator shall update such contingency and emergency preparedness plans annually. The Operator shall ensure that any such plans comply with all Laws and are consistent with the standards and policies of the City, including the site rules for the ABTP.
- (iii) The Operator shall train its employees, contractors and key suppliers in all aspects of applicable contingency and emergency plans and will ensure refresher training is provided yearly.
- (iv) The Operator shall ensure that all employees, contractors and suppliers have current copies of applicable contingency and emergency plans and that these plans are readily accessible at all times.

3.9 SCADA System

- (i) The Operator shall operate and maintain the SCADA system associated with the Pelletizer Facility and shall be responsible for training its staff in its proper use. The Operator shall be responsible for maintenance of the SCADA system, backing up all data, and modifications to the SCADA system as may be required.
- (ii) The Operator shall at all times during the Term ensure that the SCADA System in use is fully compatible with the computer systems used by the City at the ABTP.
- (iii) The Operator shall, at all times during the Term, except where otherwise authorized by the City, provide to the City secure SCADA nodes. The Operator shall ensure that the City has unrestricted "real-time", on-line access to the SCADA system on a "view only" basis at a location or locations specified by the City.
- (iv) The Operator shall, within sixty (60) days after the Execution Date, provide the City with a Routine Maintenance schedule for the SCADA system, and which is acceptable to the City, acting reasonably.
- (v) The Operator may, at its cost, from time to time upgrade the SCADA system software as necessary. The Operator shall submit all technical documentation related to any upgrade to the City.
- (vi) The Operator shall provide to the City HMI programming required to accommodate any new or additional Pelletizer Facility or Capital Improvements during the Term of this Agreement.
- (vii) The Operator shall, at its cost, on a weekly basis create back-up copies of historical SCADA trends and report files. On a monthly basis the Operator shall create back-up copies of all other electronic information contained in the SCADA system, including RPU programs, computer programs and manually collected. This information shall be stored by the Operator and made available to the City upon request. All back-up copies of all electronic information referred to herein

shall contain any changes completed prior to the time the back-up copies are made.

- (viii) The Operator shall, at its cost, and following receipt of consent from the City, which consent is not to be unreasonably withheld or delayed, upgrade, the computer hardware related to the two personal computers used for the SCADA system every three (3) years during the Term, commencing in the fourth year of the Term.

3.10 Signage and Labelling

The Operator acknowledges that the City has established a system of signage and labels for the Pelletizer Facility, which the Operator shall not change without first receiving consent from the City Contract Manager. The Operator shall, at its cost, be responsible for all signage related to the Pelletizer Facility required by Law.

3.11 Employee Training or Certification

The Operator shall, throughout the Term of this Agreement:

- (a) Staff the Pelletizer Facility with competent, qualified and, where required by Law, certified personnel;
- (b) Implement and review annually, on-site training programs for employees of the Pelletizer Facility to keep current their skill and knowledge of technologies related to the Pelletizer Facility;
- (c) Maintain all required certification programs for employees of the Pelletizer Facility in effect prior to the Start Date and implement new or revised certification programs as required to comply with Law or the requirements of any Governmental Authority subject to the City paying for any additional costs incurred by the Operator in accordance with Article 3.4; and
- (d) Provide details of its training or certification program including training received by each employee in its Quarterly Operations and Maintenance Reports to the City.

3.12 Health and Safety Procedures

- (a) The Operator agrees to indemnify and save the City harmless for any Claim as a result of a breach by the Operator of the *OHSA*.
- (b) The Operator agrees to assume full responsibility for compliance with the *OHSA* for its activities, including the activities of its employees, contractors and suppliers.
- (c) The Operator further acknowledges and agrees that any material breach of the *OHSA* whether by the Operator or any of its employees, contractors and suppliers shall be a Default by the Operator.
- (d) The Operator shall provide access to the City, or its representatives to the Pelletizer Facility to inspect the Pelletizer Facility and confirm compliance with the *OHSA*. The City does not assume any liability or risk for non-compliance by the Operator with the *OHSA* by reason of such inspection unless such non-compliance is caused by City fault.
- (e) The Operator agrees that any Claim that may be assessed against the City by reason of a breach or breaches of the *OHSA* by the Operator or any of its employees, contractors

or suppliers will entitle the City to set-off the Claim so assessed against any monies that the City may from time to time owe the Operator under this Agreement.

- (f) The Operator shall provide the City with a list of all controlled hazardous materials or products containing hazardous materials as defined under the *OHSA*, or designated substances in accordance with the Workplace Hazardous Materials Information System as defined under the *OHSA* and shall provide appropriate Material Health and Safety Data Sheets for these substances used for the performance of the Operator's required work hereunder, prior to the performance of the work and shall ensure that same are kept current.
- (g) The City shall provide the Operator with copies of relevant City health and safety policies and procedures applicable to the ABTP site. For its activities and services related to this Agreement, the Operator shall prepare and establish written health and safety procedures that meet or exceed the standards set by the City for the protection of its employees, contractors, suppliers, the City's employees and visitors to the Pelletizer Facility. The health and safety procedures shall be submitted to the City. The Operator shall during the Term maintain and enforce the health and safety procedures, and shall update such procedures from time to time. The Operator shall provide to the City any changes in its health and safety procedures in the Quarterly Operations and Maintenance Reports.
- (h) The Operator and all of its employees, contractors and suppliers, and the City and all of its employees and subcontractors (when the City, its employees or subcontractors, are performing work at the Pelletizer Facility pursuant to this Agreement) shall, at all times, be required to:
 - (i) Maintain a safe work-site in accordance with safe working practices; and
 - (ii) Use or wear the necessary protective equipment, devices, clothing, and footwear as required by the *OHSA* and Regulations, procedures and by-laws.
- (i) The Operator shall maintain a record of health and safety activities for each month of the Term, which record shall include:
 - (i) Minutes of health and safety committee meetings, including a list of attendees;
 - (ii) Details of all safety related inspections conducted at the Pelletizer Facility, including those conducted by the Joint Health and Safety Committee(s), the MOL and any other Governmental Authority having jurisdiction over health and safety; and
 - (iii) Details of all medical aid, lost time, and accidents or incidents occurring at the Pelletizer Facility.
- (j) The Operator shall provide the City a quarterly report on health and safety incidents.
- (k) The Operator shall ensure that any equipment supplied or used by the Operator is safe and suitable for the job. Any equipment deemed unsafe in accordance with the *OHSA* and its regulations will be removed and replaced by the Operator, except in the case of City equipment, which shall be removed and replaced by the Operator at the City's cost following notification by the Operator to the City that such equipment is unsafe in accordance with the *OHSA*, and after failure by the City within a reasonable period of time to remove and replace such equipment.

- (l) All accidents and health and safety related incidents occurring at the Pelletizer Facility that require reporting pursuant to any Law shall be reported by the Operator in writing to the City immediately after the occurrence, the Operator shall provide the City with copies of any notification received by the Operator or provided by the Operator to any Governmental Authority including the Workplace Safety and Insurance Board.
- (m) Where the Operator undertakes a construction project at the Pelletizer Facility under this Agreement, the Operator shall be designated as the “constructor” for the purposes of the *OHS*A, or shall designate its contractor as the “constructor” under *OHS*A. The foregoing shall apply notwithstanding that the Operator may have been referred to as the “Operator” in this and other related documents.

3.13 Safety Audits and Non-Compliance

- (a) The City may, at its sole discretion, conduct safety audits of the Pelletizer Facility, which may include inspections of physical conditions and reviews of the Operator's compliance with all applicable safety legislation and regulations.
- (b) If, as a result of the City's safety audit or otherwise, it is determined by a qualified person, acceptable to the Parties, acting reasonably, that a Safety Deficiency has occurred then the Operator shall correct the Safety Deficiency to the satisfaction of the qualified person within the time frame determined by the City, acting reasonably. Where the Safety Deficiency is caused by a City breach of this Agreement, Uncontrollable Circumstance or performance limits of the Pelletizer Facility, the City shall pay the cost of correcting such Safety Deficiency. Where the Safety Deficiency is caused by an Operator breach of this Agreement or the acts or omissions of the Operator, the Operator shall pay the cost of correcting such Safety Deficiency.
- (c) If the Operator fails to correct the Safety Deficiency to the reasonable satisfaction of the qualified person within a reasonable time frame after notice and agreement as to which Party shall pay for such Safety Deficiency, such failure shall be considered an Event of Default and, the City may, in its sole discretion, withhold twenty thousand dollars (\$20,000.00) from the Commercial Operations Fee for each month in which the Operator fails to comply with its obligations in Article 3.13(b) and this amount shall be paid to the Operator by the City upon compliance by the Operator with its obligations pursuant to Article 3.13(b), provided however, that such amounts shall not be withheld for so long as the Operator is using reasonable commercial efforts to correct such Safety Deficiency. The withholding of a portion of the Commercial Operations Fee as set forth herein is in addition to any other rights and remedies of the City.

3.14 Ontario Human Rights

- (a) The Operator covenants and agrees to comply with the provisions of the *Human Rights Code*, R.S.O. 1990, c.H.19.
- (b) The Operator agrees to indemnify and save the City harmless for any fines or damages assessed by any Governmental Authority to the extent arising from the Operator's breach of the *Human Rights Code*, R.S.O. 1990, c.H.19.
- (c) The Operator further acknowledges and agrees that any breach of the *Human Rights Code*, R.S.O. 1990, c.H.19, by the Operator or any of its subcontractors shall be an Event of Default under Article 27.2.

3.15 Workplace Safety and Insurance Act

- (a) The Operator acknowledges and agrees that it is not, nor is anyone hired by it, entitled to coverage by the City under the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c.16, as amended, and the Operator shall be responsible for and shall pay all dues and assessments payable under the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c.16, or any Law, in respect of itself, its employees and operations, and shall furnish the City if requested, with such satisfactory evidence that it has complied with the Law. If the Operator fails to do so and in the event a Governmental Authority seeks to hold the City responsible for such dues and/or assessments, the City shall have the right to deduct such sum or sums of money from the Commercial Operations Fee due to the Operator that would be sufficient to cover those dues and/or assessment and the City shall have the right to pay such sum or sums of money to the appropriate Governmental Authority. The City is not the employer of the Operator or its personnel under any circumstances whatsoever.
- (b) The Operator shall within 30 days of the end of each Contract Year, provide the City Contract Manager with clearance certificates from the Workplace Safety and Insurance Board for the Operator and its subcontractors.

3.16 City Policies

- (a) Prior to the execution of this Agreement, the Operator will review, familiarize and comply with all the City Policies set forth in Schedule 9 to this Agreement. The Operator acknowledges that the cost of complying with these policies has been included in the Commercial Operations Fee.
- (b) If during the term of this Agreement, the City introduces new policies to which the Operator is expected to comply, then Commercial Operations Fee adjustments, if any, will be evaluated in the same way as an Operational Change of Law under Article 3.4 of this Agreement.

3.17 Technical Support

The Operator, at its cost, shall provide the necessary technical support to perform all of its obligations under this Agreement including for the proper operation and maintenance of the Pelletizer Facility and the Pellet Marketing Services.

3.18 Litigation Support

The Operator shall provide to the City at the City's request, technical assistance in connection with actions, claims, suits, administrative or arbitration proceedings or investigations in connection with the operation or maintenance of the Pelletizer Facility or the Pellet Market Services. Such technical assistance will only be at the City's cost if the actions, claims, suits, administrative or arbitration proceedings or investigations in connection with the Pelletizer Facility do not arise from the actions, omission, neglect, misfeasance or nonfeasance by the Operator or its agents, workers or persons employed by the Operator, including subcontractors, whether such proceedings are pending, threatened, or already initiated.

3.19 Security

- (a) The overall responsibility for securing the ABTP site against unauthorized access, theft or damage shall remain with the City.

- (b) The Operator shall be responsible for securing the Pelletizer Facility against unauthorized access, theft or damage as per the site security plan to be developed and from time to time updated by the Operator.

3.20 Operator's Use of Subcontractors

The Operator shall not, without the prior written approval from the City, employ or hire the services of a subcontractor for services costing greater than fifty thousand dollars (\$50,000.00) to assist the Operator in the performance of its operation and maintenance obligations of the Pelletizer Facility under this Agreement.

3.21 City's Ability to Repair

- (a) Where the Operator fails to correct, repair or begin correcting or repairing a Deficiency after notice within the time required, the City may, upon thirty (30) days notice to the Operator, correct or repair the Deficiency and deduct the cost to the City of conducting such work from the Commercial Operations Fee.
- (b) The rights of the City pursuant to this Article 3.21 are in addition to any other rights and remedies available to the City.

3.22 Utilities

- (a) The City shall accept sewage discharged from the Pelletizer Facility and provide effluent water, potable water, electricity and natural or digester gas to the Pelletizer Facility on an uninterrupted basis. These utilities are provided at no cost provided that natural or digester gas and electricity are used exclusively for the operation of the Pelletizer Facility and the production of Pellets. The Operator commits that, based on an annual production rate of 25,000 Dry Tonnes of Biosolids per year, the consumption of natural gas used in the pelletization process will be not more than 3,200 kJ/kg of water evaporated and the electricity consumption used in the pelletization process will be not more than 57 kWh per tonne of water evaporated.
- (b) The Operator acknowledges and agrees that the City may, in whole or in part, replace the supply of natural gas to the Pelletizer Facility with digester gas. The City agrees to pay all Capital and Direct Costs, including the impact, if any, on the cost of operating or maintaining the Pelletizer Facility, related to the conversion of the Pelletizer Facility from natural gas to digester gas in accordance with Article 6.

ARTICLE 4 PROVISION OF PELLET MARKETING SERVICES

4.1 Scope of Pellet Marketing, Handling and Distribution Services

- (a) The Operator shall provide Pellet marketing, handling and distribution services as set forth in this Agreement and in this Article 4 with the objective of developing and securing beneficial end use markets for the Pellets produced by the Operator at the Pelletizer Facility. The Operator shall, at all times during the Term of this Agreement, use best efforts to develop diversified, beneficial use end markets.
- (b) **Landfill Disposal**

- (i) The Operator may, with the prior written approval of the City, dispose of Pellets in a sanitary landfill provided the amount of Pellets disposed are not greater than 25% of the annual production in the first year of the Term, and no greater than 15% of the annual production of Pellets in any subsequent year. There shall be a reduction of the Per Tonne Price by fifteen percent (15%) for any Biosolids or Pellets disposed of in a landfill or other disposal location or facility beyond the limits provided in this Article 4.1(b)(i).
 - (ii) As a pre-condition to the City providing its approval to the Operator to dispose of Pellets in the United States of America in any sanitary landfill or other disposal location or facility, the Operator, at its cost, shall:
 - (a) Arrange the necessary due diligence reviews, including physical/geologic setting, compliance history, facility design, spill/release/incident history, operational concerns, financial status, and waste acceptance procedures regarding the proposed landfill or other disposal location in form and content satisfactory to the City; and
 - (b) Further secure, indemnify, and save the City harmless from any Claims arising under or related to any Law, including, without limitation, the *Comprehensive Environmental Response, Compensation and Liability Act* (“*CERCLA*”) as amended, or any State equivalent, that relates to the disposal of the pellets transported or delivered to disposal site.
 - (iii) The Operator shall be responsible for all costs associated with the disposal of Pellets in any sanitary or other disposal location or facility.
- (c) Notwithstanding anything in this Agreement or the Pellet Marketing Plan, the Operator shall require the prior written approval of the City to:
- (i) use Pellets in any process, including a thermal process, as fuel or to make fuel; or
 - (ii) sell Pellets for use in any process, including a thermal process, as fuel or to make fuel.
- (d) The Operator shall perform the following:
- (i) Transport, store, process, blend (except with sewage biosolids, from another municipality or any other biosolids product from any municipality unless approved in writing by the City), market, sell, apply, beneficially use or use Pellets produced at the Pelletizer Facility in accordance with this Agreement and the Pellet Marketing Plan;
 - (ii) Engage in all marketing, handling and distribution activities required under this Agreement in a manner that reflects positively on the City;
 - (iii) Develop and implement a Public Consultation Plan as set forth in the Pellet Marketing Plan;
 - (iv) Develop Odour Control and Monitoring Plan in order to minimize the impact of odours after the Pellets leave site and before they are transferred to a third party; and

- (v) Keep a written log of all public inquiries, complaints received, and actions taken by the Operator regarding the complaints. On at least a monthly basis, the Operator will report all public inquiries and complaints to the City.

4.2 Pellet Marketing Plan

- (a) The Operator shall submit to the City a Pellet Marketing Plan prior to the Start Date for review and approval by the City. The Operator shall update the Pellet Marketing Plan and submit the updated Pellet Marketing Plan to the City 30 days prior to the anniversary of each Contract Year. As a minimum, the Pellet Marketing Plan will contain:
 - (i) The Operator's market research detailing the estimated market for various beneficial end uses of the Pellets. This includes estimated market size for each of the identified end uses;
 - (ii) Summary of the Operator's target markets, segments and geographical emphasis for next (3) three years;
 - (iii) Planned promotional activities and outreach programs aimed at developing beneficial use end markets for the Pellets;
 - (iv) Public Consultation Plan;
 - (v) Three (3) year market projections and description of challenges and/or barriers that must be overcome;
 - (vi) Partnership opportunities and business relationships the Operator intends to pursue in order to maximize beneficial end use markets;
 - (vii) Distribution channels the Operator intends to use and/or develop; and
 - (viii) The Pellet Marketing Plan need not disclose Veolia Confidential Information.
- (b) The City reserves the right to reject the Pellet Marketing Plan or any updates thereto, if the City determines, in its sole discretion, that it is not achievable and/or contains insufficient details for the City to review. If the City rejects the Pellet Marketing Plan or any updates thereto, the Operator shall amend and re-submit the Pellet Marketing Plan, as required until it is approved by the City. The City shall not be responsible for any costs related to any delay in the approval of the Pellet Marketing Plan or any updates thereto resulting from the Operator's failure to submit a satisfactory Pellet Marketing Plan or update the Operator shall not transfer or sell Pellets to any third party six months after the Effective Date, unless and until such time as the initial Pellet Marketing Plan has been submitted and approved by the City.

4.3 Pellet Handling and Distribution Services

- (a) The Operator shall:
 - (i) Prepare, submit to the City and periodically update a Pellet Handling and Distribution Plan which details all activities, measures and contingency plans related to the on-site and off-site storage, handling and transportation of Pellets;
 - (ii) Load and transport all Pellets from the Pelletizer Facility in tractor-trailers or trucks with weather-tight boxes and covers, or other similarly enclosed

- transportation method and take all reasonable steps to minimize dust, odour, noise and any other nuisances to the public;
- (iii) The Operator and the City will develop and amend, from time to time, a protocol for on-site logistics regarding the storage and movement of Pellets;
 - (iv) Weigh out on scales provided by the City all Pellets transported off the ABTP site, in accordance with reasonable procedures provided and updated from time to time by the City;
 - (v) Implement a Pellet inventory control and reconciliation system;
 - (vi) Subject to the limitations on blending set forth in this Agreement, the Operator may use Pellets as a blending agent to supplement other fertilizer and soil products. In addition, the Operator may blend other materials with the Pellets to fortify the Pellet quality. The Operator shall report to the City in writing any blending activities
 - (vii) The Operator shall not enter into any agreement related to the handling and distribution of Pellets without the prior written approval of the City.
- (b) The City shall:
- (i) Use all reasonable efforts to assist the Operator, to register the Pellets, if registration is required by Law, including, but not limited to, registering the Pellets as fertilizer, with all necessary Governmental Authority.

ARTICLE 5
PROTECTION OF ASSETS AND
MAINTENANCE OF PELLETIZER FACILITY

5.1 General

- (a) The Operator shall accept the Pelletizer Facility on an “as is, where is” basis on the Start Date.
- (b) For the purpose of this Article, the Pelletizer Facility shall be divided into two general categories of assets: (a) Civil, Structural and Site-Related Assets; and (b) Mechanical and Electrical Equipment. Each category of assets shall be subject to its own program of asset protection and Routine Maintenance.
- (c) The Operator shall implement and conduct maintenance at the Pelletizer Facility in accordance with Prudent Industry Practice, equipment manufacturers’ and/or suppliers’ instructions together with requirements detailed in the Operations and Maintenance Manual, so as to economically optimize the service life of the Pelletizer Facility, and so that upon the Reversion Date the Pelletizer Facility is returned to the City in the Required Condition. The Operator shall make provisions for enforcing existing equipment warranties and guarantees, and for maintaining, after the Effective Date, all warranties and guarantees on new equipment purchased after the Execution Date.
- (d) The Operator shall include any specialized testing specified as part of its preventive and predictive maintenance program. The specialized testing may include vibration testing and analysis, wear particle analysis or oil analysis, infrared thermography, ultrasonic

testing, laser alignment systems, performance monitoring, non-destructive testing, image scoping systems, ultrasonic thickness gauges, structural failure detection, videography and air quality monitoring.

- (e) The Operator shall ensure that all process and equipment is functional and available for service subject to Scheduled Shutdowns (as described in Article 3.2(h)) for required maintenance and related activities at all times during the Term.
- (f) The Operator will return the Pelletizer Facility to the City on the Reversion Date in the Required Condition.

5.2 Civil Maintenance Program

- (a) The Operator shall prepare and submit for approval by the City, one (1) month prior to the Effective Date, the Civil Maintenance Program. Commencing on the Effective Date, the Operator shall conduct all Corrective Maintenance and Preventative Maintenance on the Civil, Structural and Site-Related Assets in accordance with the Civil Maintenance Program. Subject to the provisions of Article 5.4, the Operator shall be responsible for the cost of all Corrective Maintenance and Preventative Maintenance.
- (b) The City and the Operator shall review the Civil Maintenance Program on an annual basis. The Operator shall submit proposals for any substantial changes in the Civil Maintenance Program to the City. The Operator may not implement any material changes to the Civil Maintenance Program without the prior written approval of the City.
- (c) Effective one hundred and twenty (120) days following completion of the implementation of the CMMS, the Operator shall ensure that the backlog for all Corrective Maintenance and Preventative Maintenance on Civil, Structural and Site Related Assets does not exceed two (2) months for the first six (6) months after the Effective Date and one (1) month for the balance of the Term of this Agreement subject to the availability of repair and replacement parts.
- (d) If the backlog for Corrective Maintenance or Preventative Maintenance exceeds the time periods set forth in Article 5.2(c), the City may, acting reasonably, withhold two thousand dollars (\$2,000.00) from the Commercial Operations Fee. The amount which has been withheld shall only be paid to the Operator when the required Corrective Maintenance and Preventative Maintenance has been completed in any two (2) successive calendar months, following the month in which amount was withheld. The withholding of a portion of the Commercial Operations Fee as set forth herein is in addition to any other rights and remedies of the City.

5.3 General Housekeeping

- (a) The Operator shall, at its cost, carry out Routine Maintenance at the Pelletizer Facility, including, without limitation, window washing, janitorial services, building repairs, painting, roofing, corrosion control, spalling and cracking of concrete, integrity of railings and walkways.
- (b) The Operator agrees to maintain the cleanliness and appearance of the interior and exterior of the Pelletizer Facility in the Required Condition, normal wear and tear excepted.

5.4 Repair and Replacement of Mechanical and Electrical Equipment, and Civil, Structural and Site-Related Assets

- (a) For the purpose of this Article 5.4, an Incident of Repair and Replacement or Corrective Maintenance shall mean:
- (i) A random failure, deterioration or reasonable and expected wear and tear of a single item or event of Civil, Structural and Site-Related Assets or a part thereof, outside the control of the Operator, including an Uncontrollable Circumstance, that causes an adverse impact either immediately, or in the long term, upon the integrity of the functionality of that item or part thereof or of the Pelletizer Facility; or
 - (ii) A random failure, deterioration or reasonable and expected wear and tear of a single item or event, of Mechanical and Electrical Equipment or part thereof outside the control of the Operator, including an Uncontrollable Circumstance. Such item or event may be related to any piece of Mechanical and Electrical Equipment which is manufactured and sold as a self-contained functional unit; and
 - (iii) shall exclude Capital Improvements.
- (b) The first twenty thousand dollars (\$20,000.00) of the cost of each and every individual Incident of Repair and Replacement or Corrective Maintenance on the Electrical Equipment and Mechanical Equipment, or the Civil, Structural and Site-Related Assets (the "R&R Cap"), including the cost of materials, third party contract labour, construction labour and any other amounts approved by the City, shall be the sole responsibility of the Operator.
- (c) The City shall, only upon having first authorized the Incident of Repair and Replacement or Corrective Maintenance, pay the amount in excess of the R&R Cap for an Incident of Repair and Replacement or Corrective Maintenance where:
- (i) The Operator has notified the City of the Incident of Repair and Replacement or Corrective Maintenance in excess of the R&R Cap before incurring any cost in excess the R&R Cap; and
 - (ii) The Incident of Repair and Replacement or Corrective Maintenance is not a result of the Operator's negligence or failure to perform Corrective Maintenance and Preventative Maintenance; the Operator has performed all Preventative Maintenance as recommended by the equipment manufacturer's or suppliers or the Prudent Industry Practice, and approved by the City as part of the equipment Preventative Maintenance program; and
 - (iii) The Incident of Repair and Replacement or Corrective Maintenance are clearly documented, outlining the work required, the specifications for the proposed work, the sub-contracted services necessary, the proposed sub-contractor, the reason for the occurrence, and the cost; and
 - (iv) The Mechanical and Electrical Equipment has been operated within the manufacturer's and/or supplier's limitations with the exception of those instances where Operator is required to safely operate equipment outside of manufacturer's and/or supplier's limitations to address an Uncontrollable Circumstance, or to comply with written requests from the City; and
 - (v) The costs of the Repairs and Replacement or Corrective Maintenance are reasonably incurred.

- (d) Where the total estimated cost of an Incident of Repair and Replacement or Corrective Maintenance is in excess of R&R Cap which is the responsibility of the Operator and the seven thousand five hundred dollars (\$7,500.00) amount which is the responsibility of the City, the Operator shall use its reasonable commercial efforts to obtain three (3) written competitive bids for the repair of the failure or Deficiency. The Operator will submit the bids to the City for approval except where an emergency situation occurs. The Operator may sole source any such repair with the written approval of the City when only one supplier is available.
- (e) In the case of an emergency situation and where reasonably possible, the Operator shall provide the City with an estimate of the cost of the Repairs and Replacement or Corrective Maintenance required to correct the emergency situation and shall obtain the written consent of the City before implementing the Repairs and Replacement or Corrective Maintenance, unless in the professional opinion of the Operator, the nature of the emergency situation does not make it reasonably possible to provide such a cost estimate prior to correcting the emergency situation.
- (f) The Operator shall not proceed with the work related to an Incident of Repair and Replacement or Corrective Maintenance where the cost for an Incident of Repair and Replacement or Corrective Maintenance is estimated to exceed the R&R Cap without the prior written consent of the City, except in the event of an emergency situation in which case Article 5.4(f) shall apply or in the event the Operator does not seek reimbursement from the City.
- (g) Where the Operator disagrees with or disputes the City's decision regarding an Incident of Repair and Replacement or Corrective Maintenance or whether the Operator's expenditures for an Incident of Repair and Replacement or Corrective Maintenance have been reasonably incurred, the Parties shall refer the matter to the dispute resolution process pursuant to Article 18 of this Agreement.
- (h) Beginning on the first anniversary of this Agreement, the R&R Cap specified in this Article 5.4 shall be increased by five hundred dollars (\$500.00) per year at the start of each Contract Year.

5.5 Maintenance of Mechanical and Electrical Equipment

- (a) The Operator shall conduct a review of the Mechanical and Electrical Equipment at the end of each Contract Year. The annual review of Mechanical and Electrical Equipment shall be prepared in accordance with a protocol prepared by the Operator, and approved by the City. The Operator shall submit the results of this review as part of the Annual Operations and Maintenance Report pursuant to Article 3.7(f) of this Agreement.
- (b) The Operator shall annually update the Preventative Maintenance program for the Mechanical and Electrical Equipment and submit any proposed changes to the Preventative Maintenance Program to the City for review and approval at the start of each Contract Year.
- (c) Throughout the Term of this Agreement, the Operator shall perform all Preventative Maintenance on the Mechanical and Electrical Equipment in accordance with the Preventative Maintenance Program.
- (d) The Operator shall ensure that the backlog for all Corrective Maintenance and Preventative Maintenance on the Mechanical and Electrical Equipment is performed as required, but in no event shall it exceed two (2) months for the first six (6) months after the Start Date and one (1) month for the balance of the Term of this Agreement. If the

backlog for Corrective Maintenance and Preventative Maintenance exceeds these criteria, the City may, acting reasonably, withhold two thousand dollars (\$2,000.00) from the monthly Commercial Operations Fee. Additional payment shall be withheld for each month in which the performance is below the required level and shall only be paid to the Operator when the required Corrective Maintenance and Preventative Maintenance has been completed in any two (2) successive months, following the month(s) in which amount was withheld. The withholding of a portion of the Commercial Operations Fee as set forth herein is in addition to any other rights and remedies of the City.

5.6 Further Testing by the City

From time to time, the City may wish to undertake, at its cost, specialized testing including, but not limited to, vibration, thermographic and electrical analysis, instrumentation maintenance and oil and grease sampling to confirm the level of Corrective Maintenance and Preventative Maintenance performed by the Operator. The Operator shall provide the City with access to the Civil, Structural, Site Related Assets and Mechanical and Electrical Equipment to undertake such activities provided such access does not interfere with the Operator's ability to meet other obligations pursuant to this Agreement. City shall provide the Operator with copies of the written results of all City conducted testing.

5.7 Computerized Maintenance Management System

- (a) The Operator shall install the CMMS for use in the Pelletizer Facility. The CMMS shall be capable of, but not be limited to, the following tasks:
 - (i) Set up and implementation of a data base of Mechanical and Electrical Equipment to monitor;
 - (ii) Scheduling and controlling Preventative Maintenance and Corrective Maintenance;
 - (iii) Providing a record of repair for each piece of equipment or line segment at the Pelletizer Facility;
 - (iv) Monitoring of Preventative Maintenance and Corrective Maintenance programs and associated costs;
 - (v) Issuing work orders; and
 - (vi) Issuing equipment status and repair priority reports.
- (b) The Operator shall maintain and update the CMMS including data entry, troubleshooting, backup and all necessary software upgrades for the Term of this Agreement.
- (c) The City shall have direct on-line view-only access at all times to the CMMS maintained by the Operator.
- (d) The Operator shall enter the data considered necessary, according to the Maintenance Plan, in the CMMS within one hundred and twenty (120) days of the Start Date.
- (e) The City shall have unrestricted "real time" access to the CMMS on a "view only" basis at a location or locations specified by the City acting reasonably. Costs for hardware at the City locations and software licences for the City hardware access will be borne by the City.

- (f) At the City's option, the Operator may be required to train the City's personnel in the use of the CMMS over the Term of this Agreement. If the City exercises this option, the City shall pay all Direct Cost plus 10% associated with this training.

5.8 Warranties

The City and the Operator shall cooperate in enforcing all warranties and warranty rights with respect to the Civil, Structural and Site-Related Assets and Mechanical and Electrical Equipment installed in the Pelletizer Facility prior to the Start Date and during the Term of this Agreement and generally in all Claims to be made against third parties.

5.9 Final Condition Survey

- (a) Twelve (12) months before the expiry of the Term of this Agreement, the City and the Operator shall conduct a detailed inspection of the Pelletizer Facility, and the Operator shall prepare a Final Condition Survey of the Pelletizer Facility. The Operator shall submit the Final Condition Survey report to the City at least ten (10) months before the expiry of the Term of this Agreement. Without limiting the generality of the foregoing the Final Condition Survey shall survey the condition of the following, including:
 - (i) All Civil, Structural and Site Related Assets, including structural components including the structure of the Pelletizer Facility building, foundations and walls;
 - (ii) Any cracks, spalling or defective concrete;
 - (iii) All steel surfaces;
 - (iv) All Electrical systems and lighting;
 - (v) The exterior finishes of the Pelletizer Facility buildings;
 - (vi) The interior finishes of the Pelletizer Facility buildings;
 - (vii) All Mechanical and Electrical Equipment, including all process equipment, moving parts, motors, mixer, dryer, valves, conveyors and all other process related equipment;
 - (viii) All monitoring systems, computer hardware and software, SCADA and other related systems;
 - (ix) The building roof;
 - (x) The building mechanical systems, building automation systems and controls and HVAC and other components;
 - (xi) The odour control system;
 - (xii) All exterior components, including drainage systems, gates, fence, alarm system; and
 - (xiii) Without limiting the generality of the foregoing, the Final Condition Survey shall identify any element or part of the Pelletizer Facility that is not in the Required Condition.

- (b) As a part of the Final Condition Survey, the City may request, at its cost, that the Operator retain an independent third party, acceptable to the City to drain all tanks, chambers or vessels that cannot normally be inspected at the Pelletizer Facility to conduct an inspection of the aforementioned structures, provided such actions do not interfere with the Operator's production schedule or its ability to meet its other obligations in this Agreement.
- (c) Based on the City's inspection and the results of the Final Condition Survey, the City shall prepare a list of Deficiencies (the "Final Condition Deficiencies"), if any, and submit it to the Operator no later than eight (8) months before the expiry of the Term of this Agreement. The Operator shall prepare a plan for remediation to correct the Final Condition Deficiencies and submit the plan to the City no later than seven (7) months before the expiry, of the Term of this Agreement. The Operator, however, shall be responsible to correct Deficiencies at the Pelletizer until the Reversion Date.
- (d) The Operator shall correct or repair all the Final Condition Deficiencies no later than one (1) month prior to the expiry of this Agreement. The Operator shall have no obligation to correct or repair any Final Condition Deficiencies which:
 - (i) Result from normal wear and tear provided the Operator has complied with its obligations pursuant to this Agreement to repair and maintain the Pelletizer Facility;
 - (ii) Result from an Uncontrollable Circumstance;
 - (iii) Result from of the City failing to approve a Capital Improvement; and
 - (iv) Result from a City Event of Default as contemplated by Article 30 of this Agreement.
- (e) If the Operator has not corrected or repaired the Final Condition Deficiencies by the one (1) month deadline set forth in Article 5.9(d), the City may, acting reasonably, withhold the estimated cost of correcting or repairing the Final Condition Deficiencies, plus a further fifteen per cent (15%) of the last monthly payment of the Commercial Operations Fee until the Operator has performed the required corrections or repairs to the satisfaction of the City. If the Operator has not corrected the Final Condition Deficiencies by the Reversion Date, the City may use the funds held back to correct the Final Condition Deficiencies on the Operator's behalf. The withholding of a portion of the Commercial Operations Fee as set forth herein is in addition to any other rights and remedies of the City.
- (f) The Operator shall have the right to contest the City's determination or identification of any Final Condition Deficiencies hereunder, and the requirement to repair same, by submitting the matter to the dispute resolution process pursuant to Article 18.

ARTICLE 6
CAPITAL IMPROVEMENT

6.1 General

- (a) Unless otherwise agreed to by the Parties, the City shall be responsible for the cost of Capital Improvements other than those set forth in Article 6.1(b).
- (b) Throughout the Term of this Agreement, the Operator, at its cost, and with the prior written approval of the City, may install or implement a Capital Improvement at the Pelletizer Facility.
- (c) The City may arrange to have the work related to Capital Improvements, which are to be paid for by the City, completed by the Operator or a third party. If the City elects to retain a third party to perform a Capital Improvement, the Operator shall cooperate with the City and the third party to implement the Capital Improvement. In the event that the City elects to retain a third party to perform any Capital Improvements, the City shall be responsible for the performance of such third party, and to the extent the third party's performance of the Capital Improvement impairs or impedes the Operator's ability to meet its obligations under this Agreement, the Operator shall not be in breach of this Agreement as a result of the third party's performance.
- (d) The Operator shall not rely in any way on the City's annual capital budgets and acknowledges that the identification of a Capital Improvement in the City's annual capital budgets in no way ensures that the Capital Improvement will be undertaken by the City, or in any way alters the obligations of the Operator.

6.2 Prohibition

The Operator shall not make any structural changes, alterations or additions to the Pelletizer Facility, save as expressly provided in this Agreement, and no Capital Improvement shall be undertaken, implemented or removed by the Operator without the prior written approval of the City, at its sole discretion.

6.3 Ownership of Capital Improvements

All Capital Improvements shall be and shall remain the property of the City. The Parties agree that before any Capital Improvements funded by the Operator are undertaken, a fee schedule will be agreed to by the Parties to address amortization of the Capital Improvement and any necessary payment to the Operator in the event of the termination of this Agreement prior to the expiry of the Term of this Agreement.

6.4 Proposal for Capital Improvements

The Operator and the City shall meet at the end of each Contract Year to review the City's capital budgets for the upcoming Contract Year. The City shall determine the timing of the meetings following consultation with the Operator. One (1) month prior to the meeting(s) set forth herein the Operator and City will exchange proposals as to Capital Improvements, which the other Party proposes to be completed in the upcoming Contract Year and in the remaining years of the Term of this Agreement. The City, in its sole discretion, shall decide whether or not to accept the Operator's proposals and where the City decides to accept the Operator's suggestions the Parties shall jointly develop a schedule for the implementation and installation of approved Capital Improvements for the upcoming Contract Year.

6.5 Impact of Capital Improvements

- (a) **Capital Improvements Paid for by the City**

- (i) The City agrees to reimburse the Operator for any applicable insurance cost increases (both one-time and ongoing) related to any Capital Improvements or other alterations made to the Pelletizer Facility by the City during the Term of this Agreement. The Operator must demonstrate a cost impact in excess of costs actually incurred by the Operator at the Start Date. Such reimbursement shall be made pursuant to Article 8 of this Agreement.
- (ii) Regardless of whether a Capital Improvement is being implemented for the City, by the Operator, or a third party retained by the City, the Operator shall provide assistance in the management and accommodation of the implementation of any Capital Improvements made to the Pelletizer Facility. The City shall use reasonable commercial efforts to minimize disruptions to the operation of the Pelletizer Facility as a result of any Capital Improvement by the City.
- (iii) The Operator shall cooperate with the City to minimize disruption during the construction of the Capital Improvement and shall prepare supporting information identifying any impact to the Operating and Maintenance Costs that results from the construction or implementation of the Capital Improvement including any costs associated with disruption during the construction period. The changes in costs shall be reviewed and approved in writing by the City prior to implementing the Capital Improvement and any applicable payments shall be made as a Change Order pursuant to Article 26 of this Agreement.
- (iv) Prior to the completion of any Capital Improvement, either the City or the Operator shall be entitled to make a claim for a decrease or increase in operating or maintenance costs arising from or in connection with the operation or maintenance of any Capital Improvements made by the City during the Term of this Agreement, including, but not limited to any decrease or increase in the number of Incidents of Repairs and Replacement or Corrective Maintenance, any decrease or increase in the cost of Routine Maintenance, any decrease or increase in the number or the cost of employees or subcontractors of the Operator and any decrease or increase in the usage of Spare Parts, or Consumables by the Pelletizer Facility.
- (v) When requested by the City, the Operator shall participate with on-site personnel in the design and implementation of all proposed Capital Improvements, provided however that in doing so the Operator does not incur any Direct Cost. In the event that the Operator anticipates that it will incur Direct Cost, the Operator shall provide the City with a written estimate of the Direct Cost prior to commencing any work. The City agrees to pay the Operator for its Direct Cost plus 10% which have been pre-approved by the City. The participation by the Operator shall include but is not limited to:
 - 1. Providing technical and operational expertise during the design process including attending design meetings;
 - 2. Providing liaison and coordination services during the construction phase and attending site meetings;
 - 3. Participation in new equipment acceptance testing during the start-up and commissioning phase; and
 - 4. Providing input and reviewing operations and maintenance manuals for the new equipment.

- (vi) The Operator may make proposals to the City by offering to provide engineering and/or construction management services for Capital Improvements to the Pelletizer Facility.

(b) Capital Improvements Paid for by the Operator

- (i) Capital Improvements to be paid for by the Operator shall require the prior written approval of both the Operator and the City.
- (ii) The Operator shall ensure minimal disruption to the production of Pellets during the construction of a Capital Improvement and shall prepare and submit supporting information satisfactory to the City identifying any impacts to the Operating and Maintenance Costs that result from the construction or implementation of a Capital Improvement, including any costs associated with disruption during the construction period. Operating and Maintenance Costs associated with any such Capital Improvements shall be the responsibility of the Operator unless otherwise agreed to in writing by the City.
- (iii) The Operator shall be responsible for any ongoing and additional insurance costs as a result of any Capital Improvement made by the Operator during the Term of this Agreement. The City shall have no obligation to reimburse the Operator for any of its costs and financing fees related to the Capital Improvement under this Article 6.5(b).
- (iv) The City shall provide reasonable assistance to the Operator in the implementation of any Capital Improvement made to the Pelletizer Facility by the Operator.
- (v) If any construction liens are registered against the ABTP or the Pelletizer Facility lands as a result of work done or materials supplied to the Pelletizer Facility by the Operator or its subcontractors, then the Operator agrees to obtain and register a discharge of such lien or obtain an order to vacate the lien by depositing security with the court within thirty (30) days thereafter and if the Operator fails to do so, the City may pay into court, the amount required to obtain such a discharge and the amount so paid by the City, together with all disbursements and costs of such proceedings on a substantial indemnity basis shall be deducted by the City from the Commercial Operations Fee.

ARTICLE 7
EFFICIENCY SAVINGS

7.1 Efficiency Savings

The Operator shall actively pursue improvements in the effectiveness and efficiency of the Pelletizer Facility and is encouraged to approach the City with recommendations in this regard, including strategies for improving the effectiveness and efficiency in the provision of services by the Operator.

ARTICLE 8
COMPENSATION PAYABLE TO THE OPERATOR

8.1 Fee Structure

- (a) Per Tonne Price
 - (i) The “Per Tonne Price” shall be \$159.54 per Dry Tonne of Biosolids processed by the Operator through the Pelletizer Facility subject to any adjustment provided for in this Agreement. Subject to the terms and conditions of this Agreement, the Per Tonne Price is inclusive of all of the Operator’s Operating and Maintenance Costs for the Pelletizer Facility and Pellet Marketing Services costs including marketing, handling and distribution costs of Pellets pursuant to this Agreement.
- (b) Mobilization Fee
 - (i) The City shall pay the Operator a mobilization fee of \$180,000.00 for mobilization and training (“Mobilization Fee”). The Operator shall invoice the Mobilization Fee in three equal monthly payments beginning two (2) months after the Execution Date, or the start of mobilization by the Operator, whichever is later.
- (c) Commissioning Fee
 - (i) The City shall pay the Operator a commissioning fee of fifty percent (50%) of the Per Tonne Price for each Dry Tonne of Biosolids processed by the Operator through the Pelletizer Facility during the Commissioning Period (“Commissioning Fee”).
- (d) Secondary Testing Fee
 - (i) The City shall pay the Operator a Secondary Testing fee of the Per Tonne Price for each Dry Tonne of Biosolids processed by the Operator through the Pelletizer Facility during the Secondary Testing Period (“Secondary Testing Fee”).
- (e) Commercial Operations Fee
 - (i) The Commercial Operation Fee shall be the Per Tonne Price multiplied by the Dry Tonnes of Biosolids processed by the Operator through the Pelletizer Facility during each month after the Effective Date (“Commercial Operations Fee”).
 - (ii) On a monthly basis, after the Effective Date, the City shall pay the Operator an estimated Commercial Operations Fee of \$332,369.68 (which is computed by multiplying the Per Tonne Price by the monthly processing target rate of 2,083.3 Dry Tonnes) (“Estimated Commercial Operations Fee”) The Estimated Commercial Operations Fee shall be paid monthly by the City to the Operator and adjusted in accordance with Article 8.2.
- (f) First Contract Year Idling Fee
 - (i) During the first Contract Year only, the City may request that the Operator reduce processing of Biosolids through the Pelletizer Facility for a maximum period of fourteen (14) consecutive days (“Processing Reduction Period”). During the Processing Reduction Period, the Operator will not operate one of the two dryer trains effectively reducing the total Biosolids processing rate to a maximum of two (2) Dry Tonnes of Biosolids per hour. In lieu of payment by the City of the Commercial Operations Fee during the Processing Reduction Period, the City shall pay the Operator the Per Tonne Price for each Dry Tonne of Biosolids processed by the Operator through the Pelletizer Facility during the Processing Reduction Period (to a maximum of two (2) Dry Tonnes of Biosolids per hour) plus fifty percent (50%) of the Per Tonne Price multiplied by the daily estimated

production rate of one (1) dryer train equalling 34.25 Dry Tonnes per day (25,000 Dry Tonne / 365 days / 2 dryer trains) for the Biosolids not processed by the one idle dryer train due to the Processing Reduction Period.

- (ii) The following conditions shall apply to any request by the City for a Processing Reduction Period:
 - 1. City shall be limited to request only one (1) Processing Reduction Period in any thirty (30) day period.
 - 2. City shall only have the right to request up to a total of six (6) Processing Reduction Periods in the first Contract Year
 - 3. City shall provide the Operator with a minimum of fourteen (14) days notice prior to the proposed start date for each Processing Reduction Period.
 - 4. Operator shall have the right to reschedule the start of a Processing Reduction Period within seven (7) days of the City's proposed Processing Reduction Period.

8.2 Adjustments

(a) Volume Adjustment

- (i) The Operator will regularly measure and record the volume of Biosolids and Pellets processed through the Pelletizer Facility. Commencing three months after the Effective Date and every three (3) months thereafter for the Term, the Parties shall conduct a reconciliation of the total amount of Biosolids measured in Dry Tonnes, which were processed by the Pelletizer Facility during the prior three (3) months period ("True-Up Period"). If, during a True-Up Period, the Pelletizer Facility processed more than 6,250 Dry Tonnes of Biosolids (the "Target Amount"), then the City shall pay the Operator the Per Tonne Price for each Dry Tonne of Biosolids processed during the True-Up Period in excess of the Target Amount ("Excess Amount"). In the event that the Pelletizer Facility processed less Biosolids than the Target Amount during a True-Up Period, other than as provided for in this Agreement, then Operator shall give the City a credit for the difference between the Target Amount and the actual amount of Dry Tonnes of Biosolids processed multiplied by the Per Tonne Price ("Credit Amount"). The Operator shall include any Excess Amount or Credit Amount on the next Monthly Invoice (as defined in Article 8.6(a)).

(b) Inflation Adjustment

- (i) Starting on the first anniversary of the Effective Date of this Agreement and annually thereafter, the Per Tonne Price will be adjusted for the succeeding Contract Year by an amount equal to the percentage by which the "CPI all cost for Toronto" has changed over the prior Contract Year ("CPI Adjustment"), based on the following formulas:
 - 1. Per Tonne Price (year 2) = Per Tonne Price (year 1) x [1 + percentage change in CPI] (where CPI is expressed as a decimal, for example, 5% written as 0.05); and

2. In no event shall the CPI Adjustment be less than 2% or greater than 7%.

The CPI Adjustment shall be calculated as soon as practicable following the end of a Contract Year. The Per Tonne Price and the Commercial Operations Fee shall be adjusted effective upon, and retroactive to, the commencement of the applicable Contract Year. The retroactive amount of the Commercial Operations Fee payable to the Operator shall be invoiced by the Operator on the next Monthly Invoice.

- (c) Other Adjustments to the Commercial Operations Fee.
 - (i) Either the City or the Operator may submit a Change Request with respect to any other adjustment to the Commercial Operations Fee pursuant to this Agreement.
 - (ii) The Party seeking any other adjustment to the Per Tonne Price or the Commercial Operations Fee for any reasons other than those related to Articles 8.2(a) and 8.2(b) shall no later than thirty (30) days after becoming aware of a circumstance or event that may result in a change to the Per Tonne Price or Commercial Operations Fee submit a Change Request to the other Party.
- (d) Change Requests under Article 8.2(c) above, shall be reviewed and discussed by the City and the Operator when they arise.

8.3 Procedure for Adjustments to the Commercial Operations Fee

- (a) The Party that delivers a Change Request for an adjustment to the Commercial Operations Fee shall promptly deliver a Change Report to the other Party containing the information and material to support the claim for an adjustment to the Commercial Operations Fee. The Change Report shall comply with the requirements of Article 26 and shall include sufficient information to demonstrate that:
 - (i) there has been a material change in the operation and maintenance of the Pelletizer Facility or in the Pellet Marketing Services; and
 - (ii) the material change was not caused by the negligence or wilful misconduct of the Party requesting the adjustment to the Commercial Operations Fee; and
 - (iii) there has been a material change to the actual Operating and Maintenance Costs.
- (b) The Operator shall cooperate with the City and provide the City with any information related to the Operating and Maintenance Costs, which the City determines that it requires, related to a claim for an adjustment to the Commercial Operations Fee.

Any adjustment to the Commercial Operations Fee shall be made retroactive to the earlier of:

- (i) the date on which the impact on the Operating and Maintenance Costs of such event was first documented by the Party; or
- (ii) the date of the Change Request.

8.4 Utilities

City shall be responsible to provide the Operator with all effluent water, potable water, electricity, natural gas, digester gas sanitary sewage connection and compressed air (“dry” and from the existing plant systems and used for instrumentation purposes only) (“Utilities”) on an uninterrupted basis. City shall provide all Utilities to the Operator at the battery limits to the Pelletizer Facility at no cost to the Operator.

- (a) Electricity Cap.
 - (i) The City shall provide to the Operator a maximum of 57kwh of electricity per Tonne of water evaporated for the pelletization process only for a maximum of 25,000 Dry Tonnes of Biosolids processed by the Operator through the Pelletizer Facility each Contract Year (“Electricity Cap”). The Operator agrees to reimburse the City for the cost of electricity used in excess of the Electricity Cap for the pelletization process only .
- (b) Natural Gas Cap
 - (i) The City shall provide to the Operator a maximum of 3200 KJ/kg of natural gas per Tonne of water evaporated for the pelletization process only for a maximum of 25,000 Dry Tonnes of Biosolids processed by the Operator through the Pelletizer Facility each Contract Year (“Natural Gas Cap”). The Operator agrees to reimburse the City for the cost of natural gas used at the Pelletizer in excess of the Natural Gas Cap for the pelletization process only.
- (c) The Operator shall assume the risk of an increase in electricity or natural gas consumption by the Pelletizer Facility during the Term and there shall be no change to the Electricity Cap or Natural Gas Cap over the Term except if the change in consumption is as a result of the following: (i) normal wear and tear; (ii) a Capital Improvement; (iii) an Operational Change of Law; (iv) a Marketing Change of Law; (v) an Uncontrollable Circumstance; (vi) a breach of the Agreement by the City; (vii) Biosolids that do not meet the Biosolids Specifications or (viii) a Process Change or Operational Change approved in writing by the City, in which case, the Electricity Cap and/or the Natural Gas Cap shall be increased or decreased as the case may be, to account for the actual increase or decrease in natural gas and/or electricity consumption.
- (d) Within thirty (30) days of the end of each Contract Year, the Parties shall review the actual rate of consumption of electricity and natural gas at the Pelletizer Facility in the previous Contract Year. In the event that the consumption of electricity and/or natural gas at the Facilities in the previous Contract Year exceeded the Electricity Cap and/or Natural Gas Cap, the City may deduct from the next Monthly Invoice, the cost of the excess electricity and/or natural gas used by the Operator from the Commercial Operations Fee payable by the City. In the event that the consumption of electricity and/or natural gas at the Pelletizer Facility in the previous Contract Year was less than the Electricity Cap and/or the Natural Gas Cap and the reduction in electricity and/or natural gas consumption at the Facilities was not as a result of normal wear and tear or a Capital Improvement by the City, then the City shall pay the Operator a consumption rebate equal to fifty percent (50%) of the City’s electricity cost savings or natural gas cost savings, and such amount shall be paid to the Operator by no later than ninety (90) days after the commencement of the Contract Year.
- (e) Any adjustments to the Electricity Cap or the Natural Gas Cap in any Contract Year resulting from efficiency improvements or capital improvements shall be dealt with in accordance with the provisions of Article 26 of this Agreement.

8.5 Method of Payment

- (a) The Operator shall deliver to the City an invoice on the first (1st) business day of each calendar month, setting forth the amounts due to the Operator for that calendar month ("Monthly Invoice).
- (b) The City shall pay the Monthly Invoice within forty five (45) days after the Monthly Invoice has been submitted to the City Contract Manager except in the event that the City does not approve a Monthly Invoice, in which case, the City will promptly notify the Operator in writing giving reasons for the non-approval. The Operator shall make such necessary amendments and re-submit the amended Monthly Invoice to the Owner for written approval and payment within forty five (45) days of the re-submittal date.
- (c) Commissioning Period
 - (i) During the Commissioning Period, the Operator shall include the Commissioning Fee and Mobilization Fee, if applicable, on the Monthly Invoice. Each Monthly Invoice for the Commissioning Fee shall identify the actual amount of Dry Tonnes of Biosolids processed by Operator in the prior month.
- (d) Secondary Testing Period
 - (i) During the Secondary Testing Period, the Operator shall include the Secondary Testing Fee on the Monthly Invoice. Each Monthly Invoice for the Secondary Testing Fee shall identify the actual amount of Dry Tonnes of Biosolids processed by Operator in the prior month.
- (e) After the Effective Date
 - (i) After the Effective Date, the Operator shall include the Estimated Commercial Operations Fee and any such other amounts due under this Agreement during the month on the Monthly Invoice. The amount payable to the Operator by the City shall be adjusted, if necessary, pursuant to this Article 8.

8.6 Interest

Any amount properly due to the Operator or to the City under this Agreement but unpaid, shall bear interest from the due date until paid at an annual rate of two percent (2%) above the prime rate published from time to time by the Royal Bank of Canada.

8.7 Payment of Taxes

- (a) Payment of Taxes and Fees by the Operator

Subject to Article 8.7(b), the Operator shall be responsible and liable for payment of all applicable federal, provincial, state and local taxes, surcharges and fees that apply to any and all, income, equipment, materials, supplies, or activities that are used or incurred by the Operator in the direct or indirect performance of Operator's obligations under this Agreement (excluding property owned by the City).

- (b) City Tax Responsibility to the Contractor

All amounts payable by the City to the Operator under this Agreement do not include any applicable Canadian federal goods and services tax ("GST"). The City shall be responsible to pay to the Operator GST, if applicable. The City shall have no obligation to reimburse the

Operator any portion of the GST rebate that is refundable to the City through/by Canada Revenue Agency or its successor.

8.8 Withholding of Commercial Operations Fee

Except as otherwise provided in this Agreement, the City shall not withhold any portion of the monthly payment of the Commercial Operations Fee which is not in dispute and shall promptly advise the Operator of the basis for the City's withholding of any portion of the monthly payment of the Commercial Operations Fee.

8.9 Disputes

Any dispute relating to this Article 8 shall be resolved pursuant to the dispute resolution process in Article 18 of this Agreement.

8.10 Construction Lien Act

In the case of payments under this Agreement for construction services, all amounts payable by the City to the Operator under this Agreement shall be adjusted to comply with the *Construction Lien Act*, R.S.O. 1990, c.C.30, when applicable, including the requirement under section 22 of the *Construction Lien Act*, R.S.O. 1990, c.C.30 to maintain a 10% holdback.

ARTICLE 9 DOCUMENT RETENTION

9.1 Maintain Records

The Operator shall:

- (a) maintain at all times at the ABTP complete and accurate reports, certificates, schedules, notices, requests, information, materials, test results, samples, books, records, accounts and documents in respect of this Agreement (collectively "Information") required for any inspection by a regulatory body or Governmental Authority or for the audit in Article 9.2;
- (b) ensure that the City has access to such Information in order that it may exercise its rights of inspection and audit;
- (c) ensure that such Information is retained for a period of not less than seven (7) years following the termination or expiry of this Agreement; and
- (d) store and organize original paper documents related to this Agreement at a secure convenient location to be made available by the City on the City's premises.

9.2 Right of Audit

The City, or its nominee, may, upon written notice of one (1) week to the Operator, inspect and audit the information required to be maintained by the Operator under this Agreement, including financial records respecting the operation and maintenance of the Pelletizer Facility and of the Pellet Marketing Services excluding competitive information designated by the Operator to be Veolia Confidential Information. The City shall be entitled to make copies or take extracts of the Operator's documents subject to the City providing the Operator with a list of the documents or extracts that have been taken. Such inspection and/or audit may take place at any reasonable time during the Operator's regular business hours at the

Operator's location where the information is stored and organized or such other location where such records are kept. Such inspection and audit shall be at the City's cost.

ARTICLE 10
REVERSION OF THE PELLETIZER FACILITY

10.1 Surrender of Facility in Required Condition

In addition to and without prejudice to the other rights of the City upon the Reversion Date, the Operator covenants that the Pelletizer Facility shall be in the Required Condition on the Reversion Date and shall not contain any Deficiencies including any Deficiencies identified in the Final Condition Survey pursuant to Article 5.9.

10.2 Reversion Transition Plan

The Operator shall, unless the Agreement is terminated or unless otherwise agreed to by the Parties:

- (a) Not less than seven (7) months prior to the Reversion Date, prepare and deliver to the City the following:
 - (i) An up to date inventory of all equipment used in the operation of the Pelletizer Facility, whether owned or leased by the Operator and an estimate of the remaining useful life for each item;
 - (ii) Copies of all plans and manuals related to the Pelletizer Facility;
 - (iii) A list of all patents, and Permits and Licences; and
 - (iv) All other Operator non-proprietary information and material reasonably required by the City in order to assume the management, operation and maintenance of the Pelletizer Facility and the handling distribution and marketing of Pellets excluding any Veolia Confidential Information.
- (b) Not later than four (4) months prior to the Reversion Date, the Operator shall provide representatives of the City with unrestricted access to the Pelletizer and the assistance of such knowledgeable personnel of the Operator as the City may deem necessary in order to allow the City to examine the Pelletizer Facility and to familiarize itself with the management, operation and maintenance of the Pelletizer Facility.
- (c) The Parties shall, if necessary, during the last thirty (30) days of the Term of this Agreement, agree upon and appoint a single independent expert at the City's cost to conduct a physical inventory and listing ("Final Inventory") of all Equipment used in the management, operation and maintenance of the Pelletizer Facility. The Final Inventory shall include:
 - (i) The number or, as applicable, units of all such Consumables; and
 - (ii) A reasonably detailed description of all major Mechanical and Electrical Equipment, including the physical condition, the date of purchase, the identification number, if any, and the manufacturer's or supplier's name.
- (d) The Operator shall, at the City's cost, provide a minimum of two (2) months of relevant training in the operation and management of the Pelletizer Facility to the City and shall

assist the City in such other manner as the City may reasonably request to ensure the orderly transition of the operation and maintenance of the Pelletizer Facility on the Reversion Date.

10.3 Surrender of Pelletizer Facility

On the Reversion Date, the Pelletizer Facility, shall revert to the City in accordance with and subject to the terms and conditions in this Agreement and all of the rights of the Operator in the Pelletizer Facility, and any modifications thereto, shall thereafter terminate and become null and void other than rights which as by their terms are intended to survive and the Operator shall forthwith:

- (a) Leave the Pelletizer Facility in a neat, broom-cleaned and orderly condition;
- (b) Vacate the site;
- (c) Surrender possession, control and operation of and the Pelletizer Facility and deliver to the City or its nominee, the Pelletizer Facility, and all City Attractables used in connection therewith;
- (d) Deliver to the City a sufficient quantity of consumables to operate and maintain the Pelletizer Facility for two (2) months pursuant to Article 3.2(i);
- (e) Deliver to the City a Reversion Date Certificate in the form attached as Schedule 10 confirming that:
 - (i) The Pelletizer Facility is in the Required Condition subject to any agreed deficiencies;
 - (ii) The Operator has delivered to the City current record drawings of the Pelletizer Facility in the original electronic format and in a size and format reasonably required by the City;
 - (iii) The Operator has delivered all Reports required to be delivered pursuant to this Agreement and as set forth in the Report Delivery Schedule - Schedule 8; and
 - (iv) The Operator has delivered copies of the up-to-date as-built drawing, specifications and operations and maintenance manuals related to the Pelletizer Facility.

10.4 Transfer and Further Assurances

The Operator and the City each agrees that, upon the request of the other, it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers, assurances, certificates and the like as may be necessary or desirable to effect the purposes of this Article 10, whether before or after the Reversion Date.

10.5 Final Transition Plan

If requested by the City, the Operator shall deliver to the City for a fixed fee to be determined at the time of the request a Final Transition Plan in accordance with Schedule 11 for the transition of the Operator's responsibilities for the operation and maintenance of the Pelletizer Facility.

ARTICLE 11
SUSPENSION OF AGREEMENT OR TERMINATION OTHER THAN FOR DEFAULT

11.1 Suspension by the City

The City may suspend performance of the work under this Agreement and/or terminate this Agreement for any reason whatsoever by giving written notice to that effect to the Operator. Such suspension or termination shall be effective in the manner specified in the notice.

11.2 Operator to Suspend Operations

Upon receiving the notice of suspension or termination in accordance with the provisions of this Article 11, the Operator shall suspend or cause the suspension of all operations except those which, in the opinion of the Operator, are necessary for the safety of personnel or users of the Pelletizer Facility or for the care and preservation of the work under this Agreement. Subject to any directions in the notice of suspension or termination, the Operator shall discontinue or cause to be discontinued the ordering of products, material, equipment and consumables and shall make reasonable efforts, in the event of termination of this Agreement, to cancel existing orders on the best terms available and as approved in writing by the City.

11.3 No Removal of Materials

During the period of suspension, the Operator shall not remove or permit the removal from the Pelletizer Facility of any products, materials, equipment or consumables intended to be incorporated or used in the performance of the work under this Agreement without the prior written approval of the City.

11.4 Expiry of Suspension

If the period of suspension expires within ninety (90) days after the issuance of the notice of suspension by the City, the Operator shall resume performance of the work under this Agreement.

11.5 Suspension Payment

Notwithstanding any other provision of this Agreement, the Operator shall only be entitled to receive and the City shall only be required to pay the Operator an amount equal to one hundred and seventy-five percent (175%) (which includes full compensation for any and all lost pellet marketing or sales opportunities) of the Per Tonne Price multiplied by the daily estimated production rate of 68.5 Dry Tonnes (25,000 Dry Tonne / 365 days) for each day that the period of suspension continues which includes full compensation for any and all lost pellet marketing or sales opportunities.

11.6 Termination of Agreement

If the period of suspension does not expire within ninety (90) days after the issuance of a notice of suspension from the City, then either the City or the Operator shall have the option to terminate this Agreement upon providing thirty (30) days prior written notice to the other hereunder.

11.7 Termination Provisions

If this Agreement is terminated pursuant to this Article, the provisions of Article 28.4 (Termination Transition Provisions), Article 29 (Termination Payments) and Article 28.3 (Other Termination Rights) shall apply.

ARTICLE 12
INTELLECTUAL PROPERTY

12.1 Intellectual Property

Prior to the Start Date, the Operator shall identify, in writing, for the City, any and all intellectual property which it will use, or apply for the purposes of this Agreement and shall during the Term advise the City, in writing, of any and all further intellectual property used or applied for the purpose of this Agreement.

12.2 Operation and Maintenance Intellectual Property

The Operator shall retain the exclusive rights to all such identified intellectual property, trade secrets, patents, patent applications, copyrights, know-how, industrial designs, licensed software, proprietary technology or systems, or any other form of intangible property rights, such as inventions, innovation and computer software, owned by it or developed by or for it in connection with its operations and maintenance of the Pelletizer Facility during the Term of this Agreement with the exception of the CMMS, SCADA and all associated software and electronic information, which shall remain the exclusive property of the City. The Operator shall grant to the City a perpetual nonexclusive fully paid up licence, to continue to use all such intellectual property in connection with the operation and maintenance of the Pelletizer Facility after the expiry or termination of this Agreement, without charge to the City. The licence shall be specific to the City and the Pelletizer Facility and, this provision shall apply only to the intellectual property for which the Operator has the right to grant such a licence to the City.

12.3 Supply of Goods to the City

The Operator shall ensure, to the extent reasonably possible, that no black market or grey market goods or materials are supplied to the City pursuant to this Agreement, and that every person supplying goods, materials or services, shall be deemed to have warranted that they are genuine and lawfully supplied.

12.4 Pellet Marketing Services Intellectual Property

The Operator shall retain, in connection with the Pellet Marketing Services, the exclusive rights to all intellectual property, trade secrets, patents, patent applications, copyrights, know-how, industrial designs, licensed software, proprietary technology or systems, or any other form of intangible property rights such as customer lists, inventions, innovation and computer software, owned by it or developed by or for it. The Operator shall grant to the City a perpetual nonexclusive fully paid up licence, to continue to use all such intellectual property in connection with the Pellet Marketing Services including the marketing, handling and distribution of Pellets after the expiry or termination of this Agreement, without charge to the City. The licence shall be specific to the City and the Pelletizer Facility. This provision shall apply only to the intellectual property for which the Operator has the right to grant such a licence to the City.

ARTICLE 13
CONFIDENTIALITY AND NON-DISCLOSURE

13.1 Non- Disclosure

The Operator shall not disclose any information which is not otherwise available to the public relating to this Agreement or the Pelletizer Facility without the prior written approval of the City other than (i) to the City Contract Manager, (ii) as required from time to time by the City or the City personnel operating equipment or processes affecting the Pelletizer Facility, (iii) as required under Law or (iv) to any employee, officer, director, accountant or legal counsel of the Operator with a need to know the information for the purpose of administration of this Agreement. Without limiting the generality of the foregoing, the Operator agrees that it will not make any public statements regarding this Agreement or the Pelletizer Facility or allow entry into the Pelletizer Facility except as provide for in the Agreement of any person's not an employee of the Operator without the prior written approval of the City. This Article shall not prohibit disclosure by the Operator of the existence and terms of this Agreement. However, any such disclosure by the Operator shall require the prior written approval of the City, in its sole discretion.

13.2 Municipal Freedom of Information and Protection of Privacy Act

This Agreement and all schedules attached hereto shall be public documents and subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 c.M.56 ("MFIPPA"). The Parties agree to fully cooperate to keep confidential all of the information falling within the exceptions to disclosure allowed by the MFIPPA.

13.3 Confidential Information

During the Term of this Agreement, either Party may advise the other Party that certain information or documents relating to this Agreement are confidential and should not be released or disclosed to any person except as required by Law. In these circumstances, the Party shall identify any such information or documents, the reasons why such information or documents are confidential and should not be disclosed, and the potential harms that may result if the information is, or documents are disclosed.

**ARTICLE 14
TRADE MARK**

14.1 Trademark

The name of the Parties and all related marks, slogans, logos and designs, belongs to the respective Party exclusively, and shall not be used in any way by the other Party unless otherwise approved in writing by such Party.

**ARTICLE 15
INSURANCE AND FINANCIAL SECURITY**

15.1 Insurance Policies

The Operator, at its cost, shall obtain and maintain, throughout the Term of this Agreement, the insurances set forth in Schedule 12 to this Agreement.

15.2 Financial Security

- (a) Performance Bond

On the Execution Date, the Operator shall deliver to the City and maintain, throughout the Term of this Agreement, at its cost, a Performance Bond in the form attached as Schedule 13 ("Performance Bond"), in the amount of ten million dollars (\$10,000,000.00) (Cdn), issued by a surety licensed and authorized to issue bonds in Ontario as security for the Operator's performance under this Agreement.

(b) Letter of Credit

On the Execution Date, the Operator shall deliver to the City and maintain, throughout the Term of this Agreement, at its cost, an Irrevocable Standby Letter of Credit in favour of the City in the form attached as Schedule 14 in the amount of four million dollars (\$4,000,000.00) (Cdn), issued by a Canadian chartered bank listed on Schedule "A" to the *Bank Act*, 1991, c.46, The Irrevocable Standby Letter of Credit shall secure the Operator's obligation to deliver, maintain and renew the Performance Bond throughout the Term of this Agreement. The City shall have the right, without prejudice to the City's other remedies set out in this Agreement, to draw on the Irrevocable Standby Letter of Credit for the full amount thereof and the City shall retain the amount so drawn to be used by the City to meet any of the Operator's obligations under this Agreement in the event that the Operator breaches its obligation to maintain the Performance Bond in full force and effect throughout the Term of this Agreement or the Performance Bond is not renewed as provided for in the Performance Bond. In the event that the Operator is able to cure any failure to maintain or renew the Performance Bond within sixty (60) days following any draw by the City on the Irrevocable Standby Letter of Credit, the City shall return the amount so drawn and unused by the City provided the Operator delivers to the City a new irrevocable standby letter of credit in the amount and form referenced in this provision.

ARTICLE 16

REPRESENTATIONS AND WARRANTIES

16.1 General Representations and Warranties of the Operator

The Operator hereby represents, warrants and covenants to the City, in addition to any other representations and warranties made by the Operator in favour of the City in this Agreement as of the Execution Date and acknowledges that the City is relying upon and is entering into this Agreement in reliance on such representations, warranties and covenants as follows:

- (a) The Operator is a corporation duly incorporated under the Law of the Province of Ontario and validly subsisting under the Law of the Province of Ontario and has all necessary corporate power and authority to own its properties and carry on business as presently carried on and is duly licensed, registered and qualified in all jurisdictions where its property is owned or leased or the nature of the activities conducted by it makes such licensing, registration or qualification necessary. The Operator has sent to the appropriate Governmental Authority all material annual returns and financial statements required to be sent under the Law of the Province of Ontario. The Operator has the corporate power and authority to carry on business as currently carried on by it. No act or proceeding has been taken by or against the Operator in connection with the dissolution, liquidation, winding up, bankruptcy or reorganization of the Operator;
- (b) The Operator has the corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments. The execution and delivery of this Agreement and such other agreements and instruments and the completion of the transactions contemplated by this Agreement and such other agreement and instruments have been duly authorized by all necessary corporate action on the part of the Operator;

- (c) This Agreement constitutes a valid and binding obligation of the Operator enforceable against the Operator in accordance with its terms. The Operator is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act*, R.S. 1985, c.B.3, (Canada);
- (d) The execution, delivery or performance of this Agreement by the Operator and the fulfilment of its obligations herein do not and will not conflict with or result in a breach of:
 - (i) Any Law affecting the Operator;
 - (ii) Any of the terms or conditions of the constating documents of the Operator; and
 - (iii) Any agreement, document or instrument to which the Operator is a party or by which the Operator is bound or to which any property of the Operator is subject.
- (e) To the best knowledge of the Operator, after due inquiry, there is no action, suit, proceeding, claim, application, complaint or investigation in any court or before any arbitrator or before or by any regulatory body or governmental or non-governmental body pending or threatened by or against the Operator which would materially affect its ability to enter into or perform its obligations pursuant to this Agreement; and, to the best knowledge of the Operator, there is no factual or legal basis which could give rise to any such action, suit, proceeding, claim, application, complaint or investigation;
- (f) The Operator has, and at all relevant times will have, the necessary experience, expertise and resources to observe, perform and fulfill its obligations under this Agreement in accordance with the terms hereof;
- (g) The Operator has disclosed and shall continue to disclose to the City during the Term of this Agreement all relevant information relating to any obligations or liabilities of the Operator that may have a material adverse impact on the representations and warranties set forth in this Agreement or the performance by the Operator of its obligations hereunder, the Operator shall make such disclosure immediately upon the occurrence of such event or change;
- (h) The Operator shall be responsible and liable for all acts or omissions of its employees, agents, officers and directors and, if applicable, those of its contractors and subcontractors relating to the performance of this Agreement;
- (i) The Operator or, if applicable, any of its contractors and subcontractors, and any of their respective directors, officers, employees, agents or representatives are not, and will not, be in a Conflict of Interest as defined in Article 22 of this Agreement;
- (j) The Operator has investigated and satisfied itself with respect to the condition of and every condition affecting the Pelletizer Facility; and
- (k) The Operator is aware of all Laws related to the operation and maintenance of the Pelletizer Facility and related to the marketing, distribution and handling of Pellets and related to any other matter under this Agreement and the Operator will comply with all such Laws.

16.2 General Representations and Warranties of the City

The City hereby represents, warrants and covenants to the Operator and acknowledges, in addition to the any other representations and warranties made by the City in favour of the

Operator in this Agreement, that the Operator is relying upon and is entering into this Agreement in reliance on such representations, warranties and covenants as follows:

- (a) The execution and delivery of this Agreement has been authorized by the City and such authorization has not been rescinded or otherwise modified;
- (b) This Agreement has been executed and delivered by the City and constitutes a legal, valid, and binding obligation of the City, enforceable against it in accordance with its terms;
- (c) To the knowledge of the City there is no action, suit or proceeding pending or threatened against the City which would materially affect the City's ability to enter into or perform obligations pursuant to this Agreement; and
- (d) The City is a municipal corporation.

ARTICLE 17 **INDEMNIFICATION**

17.1 Operator Indemnity

Subject to Article 17.2, the Operator covenants to defend, indemnify and save harmless the City from and against any and all Claims of any nature whatsoever and howsoever caused by the Operator resulting from or relating to:

- (a) Any breach, violation or non-performance of this Agreement;
- (b) The existence or the alleged existence of any dangerous condition in or at the Pelletizer Facility;
- (c) Any acts performed or omitted to be performed (including, without limitation, any negligent acts or omissions);
- (d) Any damage to property, either real or personal, either owned by the City or others (including any member of the public), howsoever occasioned;
- (e) Any personal or bodily injury to or death of any person or persons (including, any member of the public), howsoever occasioned;
- (f) Any inaccuracy in or breach of any of the representations, warranties or covenant contained in this Agreement, or any document given pursuant to this Agreement;
- (g) Any liabilities relating to the reversion of the Pelletizer Facility, including any claims of all employees who are terminated by the Operator;
- (h) Any infringement or breach of any patent, trade secret, service mark, trade name, copyright, official mark, moral right, trademark, industrial design or other proprietary rights of any person conferred by contract, common law, statute or otherwise in respect to the work or services or any matter performed by the Operator, or anyone else for whom the Operator is, at Law, responsible, or is occasioned by the Operator in connection with work done or services provided by the Operator under this Agreement.
- (i) Any third party claims, actions, suits or proceedings related to the Operator under this Agreement; or

- (j) All costs, expenses and legal fees (on a substantial indemnity basis) that may be incurred or paid by the City in enforcing this Agreement and/or that may be incurred or paid by the City in connection with any Claim, action, suit or proceeding with respect to a matter for which the Operator is obligated to indemnify the City pursuant to this Agreement.

17.2 Exception

The Operator shall not be obligated to indemnify and save harmless the City from and against any Claims sustained or incurred by the City to the extent that the same are caused or contributed to by the wilful neglect, wilful misconduct or negligence of, or breach of this Agreement by the City. Notwithstanding the foregoing, the City shall, at all times, be entitled to make any and all Claims for contribution and relief from liability available to it at Law or in equity respecting contributory negligence in respect of any such claims contributed to by the wilful neglect, wilful misconduct or negligence of, or breach of this Agreement by the Operator or any person for whom the Operator is, at Law, responsible.

17.3 City Indemnity

Subject to Article 17.4, the City covenants to defend, indemnify and save harmless the Operator from and against any and all Claims of any nature whatsoever and howsoever caused by the City resulting from or relating to:

- (a) Any breach, violation or non-performance by the City of this Agreement;
- (b) Any negligent acts or omissions by the City;
- (c) Any inaccuracy in or breach of any of the representations or warranties contained in this Agreement; and
- (d) All costs, expenses and legal fees (on a substantial indemnity basis) that may be incurred or paid by the Operator in enforcing this Agreement and/or that may be incurred or paid by the Operator in connection with any Claim action, suit or proceeding with respect to a matter for which the City is obligated to indemnify the Operator pursuant to this Article.

17.4 Exception

The City shall not be obligated to indemnify and save harmless the Operator from and against any Claims sustained or incurred by the Operator to the extent that the same are caused or contributed to by the wilful neglect, wilful misconduct or negligence of, or breach of this Agreement by the Operator or any persons for whom the Operator is, at Law, responsible. Notwithstanding the foregoing, the Operator shall, at all times, be entitled to make any and all Claims for contribution and relief from liability available to it at Law or in equity respecting contributory negligence in respect of any such claims contributed to by the wilful neglect, wilful misconduct or negligence of, or breach of this Agreement by the City or any person for whom the Operator is, at Law, responsible.

17.5 Notice of Third Party Claim

In the event that either the City or the Operator receives notice of a Claim in respect of which the City or the Operator is obligated to indemnify the other pursuant to this Agreement, the Party shall within fourteen (14) days of receipt of such notice of a Claim give written notice thereof to the other Party. Such notice shall specify with reasonable particularity (to the extent that such information is available) the factual basis for the Claim, if known.

17.6 Legal Counsel

Notwithstanding the Operator's duty to defend the City in Article 17.1, the City, acting reasonably, reserves the right to appoint its own legal counsel to represent it, at the cost of the Operator, in respect of any Claim.

17.7 Cooperation

The City and the Operator shall keep each other reasonably informed of any matters and any Claims to which this Article 17 applies.

ARTICLE 18 **DISPUTE RESOLUTION**

18.1 Dispute Resolution

In the event of any dispute arising out of or relating to this Agreement, including the giving or withholding of any consent or approval by the City, such dispute shall be referred, in the first instance, to the City Contract Manager and the Operator Manager for resolution and the Operator shall, except as otherwise provided in this Agreement implement the direction of the City until such dispute is resolved. If the dispute is not resolved to the mutual satisfaction of the Parties by the City Contract Manager and the Operator Manager within fifteen (15) days after written notice from a Party to the Other Party requiring the dispute to be resolved (the "Dispute Notice"), the dispute shall be referred to the General Manager and the President of the Operator for resolution. If the dispute is not resolved to the mutual satisfaction of the Parties by the General Manager and the President of the Operator within thirty (30) days after the Dispute Notice, then the dispute shall be resolved by litigation, at first instance, in the Ontario Superior Court, or its successor Court in Toronto, Ontario.

18.2 Provisional Remedies

No Party shall be precluded from initiating a proceeding in the Ontario Superior Court or its successor Court, in Toronto, Ontario, for the purpose of obtaining any emergency or provisional remedy to protect its rights which may be necessary and which is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders.

18.3 Continuing Performance

At all times during the Terms of this Agreement, notwithstanding the existence of any dispute, the Operator and the City shall continue to perform their respective obligations in accordance with the provisions of this Agreement without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Agreement. For greater certainty, the City shall continue to make payment to the Operator of the amounts due under the Agreement except any amounts that are the subject of any disputes.

18.4 Claims on Termination

Notwithstanding anything contained in this Agreement, the dispute resolution procedure set forth in this Article shall no longer apply to disputes between the Parties after the expiry or termination

of this Agreement. The Parties shall be entitled after the expiry or termination of this Agreement to commence legal proceedings in the Ontario Superior Court or its successor Court in Toronto, Ontario, seeking any recourse available to it.

ARTICLE 19
ANNUAL PERFORMANCE REVIEW

19.1 Annual Performance Review

The City may conduct an annual performance review of the Operator pursuant to this Agreement, to be conducted no later than ninety (90) days following the end of each Contract Year. Notwithstanding the right of the City to conduct the annual performance review, the City may review the Operator's performance at any time during the Term of this Agreement. The form and content of an annual performance review, and the procedure for the annual performance review to be conducted by the City shall be at the sole discretion of the City, provided the review does not cause material interference with the operation and maintenance of the Pelletizer Facility, and the Operator shall cooperate with the City in the review, as reasonably required by the terms of this Agreement. The Operator shall be obligated to correct any failure to comply with any obligation under this Agreement identified in the Annual Performance Review.

ARTICLE 20
UNCONTROLLABLE CIRCUMSTANCE

20.1 Uncontrollable Circumstance

An Uncontrollable Circumstance is any act, event or condition which is beyond the reasonable control of the Party relying thereon as justification for a delay in, non-compliance with, or non-performance of any obligation of such Party pursuant to this Agreement, and shall be limited to the following:

- (i) An act of God, landslide, lightning, earthquake, hurricane, flood, tornado, volcanic event, fire, explosion, acts of public enemy, acts of terrorism, war (whether or not war is declared),
- (ii) Provided that such act, event or condition is not the result of wilful or negligent action, error or omission or a lack of reasonable diligence of the Party asserting the Uncontrollable Circumstance; a catastrophic equipment failure, failure or interference with normal sources of supply, blockade, sabotage, insurrection, riot or radiation or radioactive contamination of the Pelletizer Facility;
- (iii) An order of any court, administrative or Governmental Authority of competent jurisdiction provided that such order is not the result of wilful or negligent action, error or omission or a lack of reasonable diligence of the Party against whom such an order is issued;
- (iv) The suspension or termination of any Permits and Licences, including but not limited to any Certificate of Approval relating to the operation or maintenance of the Pelletizer Facility or related to the Pellet Marketing Services, to the extent that such suspension or termination is not the result of wilful or negligent action, error or omission or a lack of reasonable diligence of the Party asserting the occurrence;
- (v) Loss or inability to obtain service from a utility for a period in excess of six (6) consecutive hours provided that such occurrence is not the result of wilful or negligent action, error or omission or a lack of reasonable diligence of the Party asserting the occurrence; or

- (vi) Strikes, or lockouts provided that such occurrence is not the result of wilful or negligent action, error or omission or a lack of reasonable diligence of the Party asserting the occurrence.

However, a failure by a Party to perform its obligations under this Agreement arising from or related to such Party's insufficient cash flow or its economic or financial condition generally shall not constitute an Uncontrollable Circumstance.

20.2 Performance

- (a) In the event that performance of this Agreement, in the reasonable opinion of either Party, is made impossible by reason of an Uncontrollable Circumstance, on which a Party seeks to rely as grounds for not performing its obligations under this Agreement, then the Party relying on such Uncontrollable Circumstance shall (i) provide prompt notice to the other Party of the occurrence of the Uncontrollable Circumstance as soon as reasonably practicable after the Party first knew of such occurrence and give an estimation of its expected duration and the probable impact on the performance of its obligations under this Agreement; (ii) exercise all reasonable efforts to continue to perform its obligations under this Agreement; (iii) in accordance with this Agreement, as expeditiously as reasonably practicable, take action to correct or cure the effect of the Uncontrollable Circumstance which is preventing its performance; (iv) exercise all reasonable efforts to mitigate or limit damages; and (v) provide prompt notice to the other Party of the cessation of the Uncontrollable Circumstance giving rise to its inability to perform.
- (b) In the event that performance of this Agreement continues to be made impossible by reason of an Uncontrollable Circumstance for more than ninety (90) days, either Party may notify the other in writing and the City shall, in its sole and absolute discretion, either:
 - (i) Terminate this Agreement in accordance with Articles 28.3 and 28.4 and make such payment to the Operator as required in Schedule 17; or
 - (ii) Authorize the Operator to continue the performance of this Agreement with such increase or decrease to the Commercial Operations Fee as may be required by the Uncontrollable Circumstance, and as are agreed upon by both Parties. In the event the Parties cannot agree on the appropriate adjustment to the Commercial Operations Fee, the City in the first instance will determine the adjustment to the Commercial Operations Fee, subject to final resolution in accordance with the dispute resolution process in Article 18 of this Agreement, and the Operator shall, pending such resolution, continue the performance under this Agreement.
- (c) Except as expressly provided under the terms of this Agreement, neither Party to this Agreement shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance, other than those that are recoverable under Insurance or Financial Security pursuant to Article 15. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance.

ARTICLE 21 ASSIGNMENT AND CHANGE OF CONTROL

21.1 Assignment

The Operator shall not assign, charge, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Agreement without the prior written consent of the City, acting reasonably.

21.2 Change in Control

During the Term of this Agreement, the Operator shall notify the City within five (5) days following public disclosure of any proposed transfer of control, directly or indirectly of the Operator to a third party including an Affiliated Company.

**ARTICLE 22
CONFLICT OF INTEREST**

22.1 No Conflict of Interest

Throughout the Term of this Agreement, the Operator shall not engage in any activity or enter into any agreement, relationship or situation which causes or potentially causes a conflict of interest with the City or with the provision of the services pursuant to this Agreement, without the prior written consent of the City.

22.2 Meaning of Conflict of Interest

Conflict of interest means any situation where the Operator's own interests are incompatible or in conflict with its obligations under this Agreement. Conflict of interest situations include the Operator engaging in any activity, relationship or contract, which renders the Operator unable, or potentially unable to perform its duties and obligations under this Agreement or which impair the Operator's judgment in performing its duties and obligations under this Agreement.

22.3 Disclosure of Conflict of Interest

The Operator shall disclose to the City without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.

**ARTICLE 23
NO CLAIM FOR LACK OF CAPACITY**

23.1 No Claims

Neither Party shall call into question, directly or indirectly, in any proceeding whatsoever, the right of the other Party to enter into this Agreement or to enforce each and every term, covenant and condition herein contained and this Agreement shall be pleaded as an estoppel against the other Party in any such proceedings.

**ARTICLE 24
GUARANTEE BY GUARANTOR**

24.1 Guarantee Agreement

As inducement to the City to enter into this Agreement with the Operator, the Guarantor has executed and delivered to the City the Guarantee Agreement attached hereto as Schedule 15.

24.2 Delivery of Legal Opinion

The Operator shall deliver on the Execution Date a legal opinion in the form of Schedule 16, addressed to the City confirming:

- (a) The due incorporation of the Operator and the Guarantor;
- (b) The due authorization, execution and delivery of this Agreement by the Operator; and
- (c) The due authorization, execution and delivery of the Guarantee Agreement by the Guarantor, and the validity, binding effect and enforceability of the Guarantee Agreement in accordance with its terms of this Agreement.

ARTICLE 25 GENERAL PROVISIONS

25.1 Notices

Any notice, request, demand, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall only be effectively given and made if either (i) delivered personally to the Party for whom it is intended, (ii) sent by prepaid registered mail, return receipt requested or (iii) sent by prepaid nationally recognized courier or delivery service and by facsimile, in each case to the applicable address set forth below:

If to the City, to: City of Toronto

General Manager of Toronto Water

[insert]

and to

City Contract Manager

[insert]

If to the Operator, to: Veolia Water Canada, Inc.

[insert]

If to the Guarantor, to: Veolia Water North America Operating Services LLC

[insert]

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery provided that such day is a business day and the communication is so delivered before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have

been given and made and to have been received on the next following business day. Any such communication sent by registered mail shall be deemed to have been given and made and to have been received on the fifth business day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

Any Party may from time to time change its address under this Article by giving five (5) days prior written notice of such change to the other Party given in the manner provided by this Article.

25.2 Relationship of the Parties

It is hereby agreed by the Parties that neither the City nor the Operator is an agent or employee of the other, and neither Party will represent itself as such. No contract entered into by the Operator or the City with any other person will create a contractual relationship between the other Party hereto and the said person, except as otherwise specifically agreed to by the Parties. The Parties shall cooperate with each other in the performance of this Agreement. This Agreement is solely between the Parties hereto and shall not be construed to give any rights to any third party.

25.3 No Personal Liability

This Agreement is not intended to create any personal liability for any public, elected or appointed official employee or agent of either the Operator or the City, nor shall this Agreement be construed to create such liability.

25.4 Further Assurances

Each Party shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like which shall cause a performance of such acts and will cause the execution of such further documents as are within its power as the Parties may, in writing at any time, and, from time to time, raise in order to give full effect to the provisions of this Agreement.

25.5 Waiver

No covenant or condition of this Agreement may be waived except by the written consent of the Party waiving same and the failure on the part of any Party to insist on compliance with any covenant or condition shall not be deemed a waiver of same or a waiver of any right to subsequently insist upon compliance or fulfilment of same or condonation of continuing or subsequent default or breach.

25.6 Publicity and Communications

The City shall have sole control over all publicity and publication relating to this Agreement. The Operator shall not release or disclose to the public any documents, press releases or other information or make any public announcement or ceremony in connection with this Agreement without the prior written consent of the City. This Article 25.6 shall not prohibit disclosure by the Operator of the existence and terms of this Agreement. However, any such disclosure by the Operator shall require the prior written approval of the City in its sole discretion.

25.7 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario and shall be treated in all respects as an Ontario contract. For the purposes of this Agreement, each of the Parties irrevocably and unconditionally submits and attorns to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals from them. Any action or legal proceeding arising under this

Agreement shall be commenced in the Ontario Superior Court of Justice or its successor Court sitting in Toronto, Ontario. However, the foregoing shall not restrict the City from taking any action or proceeding in any other jurisdiction in order to enforce any judgment or arbitral award rendered in the Province of Ontario.

25.8 Enurement

This Agreement shall enure to the benefit of the Parties and be binding upon their respective successors and assigns, provided that the Operator shall not be permitted to assign or transfer, whether absolutely, by way of security or otherwise, all or any part of their rights and obligations under this Agreement without the prior written consent of the City.

25.9 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

25.10 Time of Essence

Time is of the essence of every provision of this Agreement. Extension, waiver or variation of any provision of this Agreement shall not be deemed to affect this provision and there shall be no implied waiver of this provision.

25.11 Covenants

The Parties hereto agree that all obligation or agreements contained in this Agreement shall be deemed to be covenants.

25.12 Forbearance

The Parties agree that forbearance by any Party in the enforcement of any obligations, rights or remedies pursuant to this Agreement including, but not limited to, the assessment of liquidated damages or the withholding of payment, or the forbearance in the identification of breach of this Agreement, a Default or an Event of Default shall not affect the entitlement of the Party under this Agreement to later seek enforcement of any such obligations, rights or remedies pursuant to this Agreement or arising from such breach of this Agreement, Default or Event of Default.

25.13 Rights Cumulative

All rights and remedies of the Parties granted or recognized in this Agreement are cumulative and not in lieu of each other and may be exercised at any time, from time to time, independently of each other or in combination.

25.14 Security Verification

The Operator shall obtain written consent from its and any of its subcontractors' directors, officers, employees or agents, and such other information as the City may require, for any security or background check of that individual that the City may, in its sole discretion, deem necessary, either upon commencement of this Agreement or at any time during the Term. No individual who refuses to provide such consent will be permitted to work on City property. Within two (2) days of the City's request, the Operator shall remove or have removed, anyone who is found unacceptable by the City as a result of such initial security review or any security review conducted at any time thereafter during the Term, and shall, within five (5) days, substitute an individual of suitable qualifications, skills and experience.

25.15 Survival

The obligations contained in, Article 1.7, Article 2, Article 12 and Article 17 and Article 28 shall survive and continue in full force and effect without time limit any termination or expiry of this Agreement until the discharge of the obligation or until the Parties mutually agree to a release of the obligation. In addition, wherever this Agreement contains an express obligation by the Parties to indemnify the other Party, such obligation to indemnify shall survive the expiry or termination of this Agreement and continue in full force and effect without time limit.

25.16 Counterparts

This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute but one and the same Agreement.

25.17 Limitation on Damages

- (a) Subject to, and save and except, any claims of the City against the Operator to recover from Operator payment of any amount under any Insurance pursuant to Article 15 and Schedule 12 of this Agreement, the aggregate liability of the Operator to City in relation to this Agreement shall not exceed ten million (\$10,000,000.00), regardless of whether such liability arises out of breach of contract, guarantee or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal or equitable theory.
- (b) Neither the Operator nor the City shall be liable to the other for any incidental, special, indirect or other consequential damages, regardless of whether such damages arise under any indemnification obligation, breach of contract, tort, strict liability, or other theory of law.

ARTICLE 26 CHANGES

26.1 Change Orders and Change Requests

The City or the Operator may, without invalidating this Agreement, at any time or times, during the Term of this Agreement, submit a Change Request to the other Party. No Change Request shall be implemented or incorporated unless and until such Change Request has been approved by the City and the City has issued a Change Order to the Operator for the approved Change Request.

In the event that the Operator submits a Change Request to the City or the City submits a Change Request to the Operator, the Operator will deliver to the City a report (a "Change Report") within ten (10) business days (or such greater period as shall be mutually agreed between the Parties, each acting reasonably, having regard to the complexity of the relevant matter). The Change Report shall contain the following information:

- (a) All additional direct costs plus 10% for work or materials which the Operator reasonably expects to incur;
- (b) Any proposed increase or decrease to the Commercial Operations Fee;
- (c) Details of any physical modifications to the Pelletizer Facility;
- (d) Any additional consents or approvals required including amendments, if any, of any Permits and Licences;

- (e) Any impact on the obligations of the Operator under this Agreement;
- (f) The extent, if any, to which the implementation of Change Request will interfere with the Operator's ability to comply with any of its obligations under this Agreement;
- (g) The identity of other contractors, if any which the Operator intends to engage for the purposes of implementing the Change Request;
- (h) Any recommendations to the City on how to comply with the Change of Laws, if applicable.
- (i) Any requirements of the City reasonably required to implement the Change Request; and
- (j) Any other information requested by the City to review and evaluate the Change Request.

26.2 Determination

- (a) The Operator shall provide the City with the Direct Cost plus 10%, savings, delay and/or impact including the extent to which its ability to meet its obligations under the Agreement is impaired or impeded, as the case may be, attributable to such Change Request, together with all information necessary for the City to evaluate such Change Request. If the Change Request is approved by the City, then the City shall issue a Change Order for the change including the appropriate change to be made to the Commercial Operations Fee and/or any other relevant provisions of this Agreement, as the case may be.
- (b) If the Parties cannot agree on the appropriate change to the Commercial Operations Fee and/or any other relevant portions of this Agreement, as the case may be, such issue shall be resolved in accordance with the dispute resolution process set forth in Article 18.
- (c) If the change in the Commercial Operations Fee and/or other relevant provisions of this Agreement, as the case may be, arising as a result of the Change Request cannot within thirty (30) days be agreed upon by the Parties and the work under the Change Request is required to be proceeded with, the City in the first instance, will determine the impact attributable to such Change Request, subject to final resolution in accordance with the dispute resolution process in Article 18 and the Operator shall, if the City so directs, pending such resolution, proceed to perform the work under this Agreement required pursuant to such Change Request. The City shall pay the Operator's Direct Cost plus 10% of such Change Request work.
- (d) Notwithstanding anything in this Agreement, the City reserves the right to have any work contemplated by a Change Order or Change Request, or any other work at the Pelletizer Facility, (except work related to maintenance with a total value less than the R&R Cap) performed by a third party. The Operator agrees to reasonably cooperate with any such third party to complete any such work.

ARTICLE 27 DEFAULT BY THE OPERATOR

27.1 Default by the Operator

Subject to any other provision of this Agreement, the occurrence of any one or more of the following events shall constitute a Default by the Operator under this Agreement but shall not be considered an Event of Default if such Default is remedied prior to the expiry of the relevant notice period (if any) and the relevant cure period (if any) applicable to such Default as hereinafter set forth, provided that if such

Default is not able to be cured within the relevant cure period, and the Operator is acting diligently to cure such default, so long as the Operator is acting diligently to effect a cure, such Default shall not be an Event of Default:

- (a) If the Operator defaults in the payment of any amount under this Agreement to the City or otherwise and such default shall continue unremedied for thirty (30) days following notice thereof from the City to the Operator.
- (b) If the Operator fails to perform or observe any of its obligations under this Agreement, and such failure to perform or observe shall continue unremedied for a period of thirty (30) days and such failure to perform or observe shall continue unremedied for a period of thirty (30) days, or such longer period as the City may reasonably determine to be necessary to cure such failure, provided that the Operator has demonstrated to the satisfaction of the City in its sole discretion, acting reasonably, that:
 - (i) The Operator is proceeding with all due diligence to cure or cause to be cured such failure;
 - (ii) The Operator can be reasonably expected to cure or cause to be cured such failure within a reasonable time frame acceptable to the City in its sole discretion, acting reasonably; and
 - (iii) The Operator shall thereafter cure such failure with all due diligence and within the time frame acceptable to the City, acting reasonably;
- (c) If the Operator fails to perform or observe any of its material obligations under this Agreement, in the City's discretion, acting reasonably, for a period of seven (7) day following notice thereof from the City to the Operator;
- (d) If any representation or warranty made by the Operator in this Agreement or in any document or certificate required to be given pursuant to this Agreement shall prove to have been incorrect in any material respect when made and such incorrect representation or warranty if capable of being remedied by the Operator, has not been remedied within thirty (30) days following notice thereof (giving particulars of the incorrect representation or warranty in reasonable detail) from the City to the Operator;
- (e) If any proceedings are commenced or taken for the dissolution, liquidation or winding-up of the Operator or the Guarantor or for the suspension of operations of the Operator or the Guarantor, whether by extra-judicial means or under any statute of any applicable jurisdiction or otherwise, unless such proceedings have been stayed within thirty (30) days of commencement or have been withdrawn or dismissed within thirty (30) days of commencement; and
- (f) If there is a conflict of interest as defined in Article 21 which is not resolved to the satisfaction of the City, in its sole discretion, within thirty (30) days.

27.2 Event of Default

The occurrence of any one or more of the following events shall constitute an Event of Default:

- (a) If the Operator fails to perform, observe and/or comply with or fails to cause to be performed, observed and/or complied with the terms, provisions and conditions of any Financial Security or Insurance set forth in Article 15, which failure has an adverse effect

on the availability or the amount of coverage of, or the amount of the proceeds paid under the Performance Bond, Irrevocable Standby Letter of Credit or Insurance set forth in Article 15, or any rights and remedies of the City with respect thereto;

- (b) If the Operator operates or maintains, or fails to properly operate or maintain the Pelletizer Facility, thereby creating a situation which poses a real and serious threat to the health and public welfare of the residents served by the Pelletizer Facility or which would jeopardize the operational capacity or integrity of the Pelletizer Facility;
- (c) If there is a bona fide proceeding pending or threatened against the Operator, which would, if successful, materially adversely affect the ability of the Operator to fulfil its obligations under this Agreement;
- (d) If the Operator fails to comply with the Laws and such failure has a material adverse affect on the operation or maintenance of the Pelletizer Facility or the marketing, handling or distribution of Pellets;
- (e) If the Operator uses or sells Biosolids or Pellets in any process, including a thermal process, as fuel or to make fuel, without the prior written consent of the City;
- (f) If the Operator fails to deliver any report required by this Agreement within six (6) months of its delivery date on the Report Delivery Schedule at Schedule 8; or fails to deliver a Compliance Report as required by Article 3.7(j).
- (g) If the Operator or the Guarantor becomes insolvent, admits its inability to or fails to pay its debts generally as they become due, or otherwise acknowledges its insolvency, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act*, R.S. 1985, c.B.3, (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act*, R.S. 1985, c.36, (Canada), the *Winding-up and Restructuring Act*, R.S. 1985, c.W.11, (Canada) or any other bankruptcy, insolvency or analogous law or is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator, agent for a person with similar powers, in respect of the Operator or the Guarantor or in respect of all or a substantial portion of its property or assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, compromise, composition, compounding, scheme, arrangement, extension of time, moratorium or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such petition or the commencement of such proceeding;
- (h) If there is a change in the financial condition, business or affairs of the Operator or the Guarantor which has a material and adverse effect on the ability of the Operator or the Guarantor to meet its obligations under this Agreement or the Guarantee Agreement;
- (i) If there is an abandonment of the work being performed under this Agreement;
- (j) If the Operator or the Guarantor ceases to carry on all or substantially all of its business or makes a sale in bulk or except as permitted hereunder, transfers all or substantially all of its undertaking and assets;
- (k) If there is any change in the control of shareholders of the Operator, any reorganization of the Operator or any sale, consolidation, merger or amalgamation of the Operator with or to any other company or companies, or if the Operator enters into any agreement

contemplating same, in any case, without the prior written approval of the City, acting reasonably;

- (l) If there is a Shutdown of the Pelletizer Facility as defined in Article 3.2(i) for thirty (30) consecutive days without the prior written approval of the City; and
- (m) If the Bank issuing the Irrevocable Standby Letter of Credit set forth in Article 15 delivers notice to the City of its election not to renew the Irrevocable Standby Letter of Credit.

ARTICLE 28

REMEDIES AND OTHER RIGHTS OF THE CITY

28.1 Remedies of the City

Upon the occurrence of an Event of Default by the Operator under this Agreement, the City may do any or all of the following as the City, in its sole and absolute discretion, shall determine:

- (a) The City may terminate this Agreement;
- (b) If the Operator is in default under this Agreement by reason of its failure to pay any monies, the City may (without obligation to do so) make payment on behalf of the Operator of such monies. Any amount so paid by the City shall be repayable on demand by the Operator, or the City may deduct any such amount so paid by the City and its expenses from the Commercial Operations Fee;
- (c) The City may, without termination of this Agreement, cure the Default (but this shall not obligate the City to cure or attempt to cure the Default or, after having commenced to cure or attempted to cure such Default, to continue to do so) and all costs and expenses incurred by the City in curing or attempting to cure the Default shall be payable by the Operator to the City on demand, or the City may deduct all costs and expenses from the Commercial Operations Fee. No such action by the City shall be deemed to be a termination of this Agreement. The City shall not incur any liability to the Operator for any act or omission of the City in the course of remedying or attempting to remedy any such Default and shall not relieve, reduce or release the Operator from any of its rights, obligations or liabilities under this Agreement;
- (d) The City may bring any proceedings in the nature of specific performance, injunction, or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for a Default by or with respect to the Operator under this Agreement;
- (e) The City may bring any action at law as may be necessary or advisable in order to recover any Claim, damages and costs;
- (f) The City may make demand on the Guarantor;
- (g) The City may retain, draw upon or otherwise claim under the Irrevocable Standby Letter of Credit or Guarantee Agreement; and/or
- (h) The City may exercise any of its other rights and remedies provided under this Agreement or otherwise available to it.

28.2 Emergencies

Notwithstanding anything to the contrary contained in this Agreement, if in the reasonable judgment of the City there is an emergency or danger to persons or property arising out of or in connection with any

matter, state, condition or thing relating to the Pelletizer Facility whether as a result of a breach by the Operator of this Agreement or otherwise, and if the Operator is not then diligently taking all necessary steps to rectify or deal with such emergency or danger, the City may, in addition and without prejudice to other remedies, (but without obligation to do so) rectify any such matter, state, condition or thing, in which event the provisions of Article 28.1(c) shall apply, or stop the progress of the work under this Agreement, in which event the provisions of Article 11 shall apply. Any cost and expenses incurred by the City in such Circumstance shall be repayable on demand by the Operator or the City may deduct all costs and expenses from the Commercial Operations Fee.

28.3 Other Termination Rights

In addition to the other provisions set forth in this Article, if this Agreement shall be terminated for any reason whatsoever (including, expiry of the Term of this Agreement), then, save and except for the provisions of Article 29 all rights of the Operator hereunder shall cease and terminate and the City shall be under no further obligation or liability whatsoever to the Operator with respect thereto; provided that the City shall, notwithstanding such termination, have the right and option to require the Operator to complete or cause to be completed any or all of the work under this Agreement as the City may designate in writing to the Operator or any such other work agreed upon between the Operator and the City, each acting reasonably at the cost of the City. Without limiting the foregoing, if this Agreement is terminated, the City, shall be entitled, without hindrance or interference, to enter into such contracts, agreements and instruments with such person(s) (other than the Operator), as the City shall in their sole discretion, determine with respect to the work under this Agreement or any part or parts thereof, and the Operator shall have no right or basis to make any claim or pursue, initiate or take any action against the City for so doing.

28.4 Termination Transition Provisions

In the event of a termination of this Agreement before the expiry of the Term of this Agreement, the Operator shall, at no cost to the City (except as hereinafter expressly set forth), do or cause to be done the following:

- (a) Forthwith submit to the City detailed information relating to each and every subcontractor of and vendor to the Operator under this Agreement or otherwise relating to the Pelletizer Facility. This information will be in sufficient detail so that the City may immediately contact each such subcontractor and vendor and easily determine the role or function of each such subcontractor and vendor in regard to the operation and maintenance of the Pelletizer Facility and marketing, handling and distribution of Pellets; and that the City, if it so elects, may seek to engage each subcontractor or vendor;
- (b) Assign to the City all of the Operator's right, title and interest in and to any subcontract or vending commitment, as directed by the City, whether such subcontract or commitment is cancelled or not;
- (c) Co-operate fully with the City to ensure an orderly transition of the Pelletizer Facility and to avoid any unreasonable interruptions in the operation of the Pelletizer Facility;
- (d) Provide to the City a detailed list of all tangible and intangible property relating in any way to the Pelletizer Facility, including all equipment, vehicles, facilities, machinery, fixtures, designs, concepts, plans, drawings, specifications, schedules, models, samples, spare parts, and other assets (collectively, the "Pelletizer Assets") and, at the option of the City, assign and transfer to the City those Pelletizer Assets as directed by the City;
- (e) Exercise all reasonable efforts to have such Permits and Licences relating to the Pelletizer Facility to the extent transferable, transferred to the City, and to the extent non-

transferable, to assist in having such Permits and Licences issued to the City so that the City shall be in a position to operate the Pelletizer Facility without interruption;

- (f) Surrender possession, control and operation of the Pelletizer Facility and all facilities, appurtenances and fixtures contained or attached to the Pelletizer Facility and deliver to the City, the Pelletizer Facility and all facilities, appurtenances and fixtures contained or attached to the Pelletizer Facility free and clear of all encumbrances. For the purposes of this Article, the Operator hereby irrevocably constitutes and appoints the City as its true and lawful agent, such appointment coupled with an interest, to execute, acknowledge and deliver any instruments and perform any action in the name and on behalf of the Operator to effect the foregoing; and
- (g) Deliver or cause to be delivered to the City all documentation (not already in the possession of the City), including electronic information, electronic back-up files, documents, work-in-progress, instruments and agreements relating to this Agreement which the Operator has covenanted to deliver, cause to be delivered or otherwise make available to the City pursuant to this Agreement and which are in the possession or control of the Operator or otherwise. At the reasonable cost of the City, the Operator shall provide a reasonable explanation of and instruction and training relating to such documentation. In addition, at the request of the City, the Operator shall provide the City, and for reasonable consideration, such training, consulting, assistance and support as may be requested by the City, so as to permit an orderly and efficient continuation of the work under this Agreement by the City.

28.5 Set-Off

In addition to any other remedies the City may have under this Agreement, the City may set-off, withhold, retain or deduct from amounts due or owing by the City to the Operator under this Agreement, an amount sufficient to cover any monetary Claims or portions thereof by the City against the Operator, Remedies Cumulative and Waiver.

28.6 Remedies Cumulative and Waiver

For greater certainty, it is expressly understood and agreed that subject to the express provisions of this Agreement, the respective rights and remedies of the City hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies otherwise available at law or in equity and any such rights or remedies may be exercised by the City from time to time concurrently or independently and as often and in such order as the City may deem expedient in its sole and absolute discretion. The City may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Operator and with other persons and security as the City may see fit without prejudice to the liability of the Operator hereunder or the rights and remedies of the City. Any single or partial exercise by the City of any right or remedy in respect of a default of any term, covenant or condition contained herein shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the City may be lawfully entitled for such default. Any failure or delay of the City in the exercise of any right or remedy or any abandonment or discontinuance of steps or proceedings to enforce the same shall not operate as a waiver thereof or affect or prejudice the right of the City to exercise any right or remedy available to it, except as provided in this Agreement. No waiver or indulgence by the City of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained shall be effective unless made in writing and then only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the City hereunder as a result of any other default hereunder.

ARTICLE 29
TERMINATION PAYMENTS

29.1 Termination for other than Default

If this Agreement is terminated by the City pursuant to Article 11 or by the Operator pursuant to Article 31, then the City will pay to the Operator the amount stipulated in the Termination Payment Schedule at Schedule 17, provided the Operator is in compliance with its obligations under Article 28.

29.2 Release and Discharge

The Operator acknowledges and agrees that the payment by the City to the Operator of the amounts required under this Article 29 shall constitute full and final settlement of any and all Claims the Operator may have against the City for and in respect of the termination of this Agreement and upon such payment. As a precondition to payment of any amount required under this Article 29.2, the Operator shall execute and deliver a full and final release and discharge in a form satisfactory to the City to give effect to the foregoing.

ARTICLE 30
DEFAULT BY THE CITY

30.1 Default by the City

Subject to any other provision of this Agreement, the occurrence of any one or more of the following events shall constitute a Default by the City under this Agreement but shall not be considered an Event of Default unless such Default is not remedied prior to the expiry of the relevant notice period (if any) and the relevant cure period (if any) applicable to such Default provided that if such Default is not able to be cured within the relevant cure period and the City is acting diligently to cure such Default, so long as the City is acting diligently to effect a cure, there shall not be an Event of Default as hereinafter set forth:

- (a) If the City defaults in the payment of any amount due to the Operator under this Agreement and such Default shall continue unremedied for sixty (60) days following notice thereof from the Operator to the City. Any amount not paid by the City shall be repayable on demand together with accrued interest from the date the invoice is otherwise due thereon at two percent (2%) above the prime rate published from time to time by the Royal Bank of Canada;
- (b) If the City fails to perform or observe any of its material obligations under this Agreement, or continually fails to perform or observe any of its other obligations under this Agreement, and such failure to observe or perform shall continue unremedied for a consecutive period of ninety (90) days following notice thereof (giving particulars of the Default in reasonable detail) from the Operator to the City, or such longer period as the Operator may reasonably determine to be necessary to cure such failure; provided that the City has demonstrated to the satisfaction of the Operator, acting reasonably, that:
 - (i) The City is proceeding with all due diligence to cure or cause to be cured such failure;
 - (ii) The City can be reasonably expected to cure or cause to be cured such failure within a time frame acceptable to the Operator, acting reasonably; and

- (iii) The City shall thereafter cure such failure with all due diligence and within the time frame acceptable to the Operator, acting reasonably.

ARTICLE 31
REMEDIES OF THE OPERATOR

31.1 Remedies of the Operator

Upon the occurrence of an Event of Default by the City under this Agreement, the Operator may, do any or all of the following as the Operator, in its sole and absolute discretion, shall determine:

- (a) The Operator may terminate this Agreement and be entitled to receive the Termination Payment in accordance with Schedule 17;
- (b) The Operator may bring any action at law as may be necessary or advisable in order to recover any Claim, damages and costs; and/or
- (c) The Operator may exercise any other of its rights and remedies provided for under this Agreement.

31.2 Remedies Cumulative and Waiver

For greater certainty, it is expressly understood and agreed that the respective rights and remedies of the Operator hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided hereunder or otherwise at law or in equity and any such rights or remedies may be exercised by the Operator from time to time concurrently or independently and as often and in such order as the Operator may deem expedient in its sole and absolute discretion. The Operator may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the City and with other persons and security as the Operator may see fit without prejudice to the liability of the City hereunder or the rights and remedies of the Operator. Any single or partial exercise by the Operator of any right or remedy in respect of a Default of any term, covenant or condition contained herein shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Operator may be lawfully entitled for such Default. Any failure or delay of the Operator in the exercise of any right or remedy or any abandonment or discontinuance of steps or proceedings to enforce the same shall not operate as a waiver thereof or affect or prejudice the right of the Operator to exercise any right or remedy available to it, except as provided for in this Agreement. No waiver or indulgence by the Operator of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained shall be effective unless made in writing and then only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Operator hereunder as a result of any other Default hereunder.

IN WITNESS WHEREOF, the City and the Operator have hereunto affixed their respective corporate seals attested to by the hands of their respective proper officers in that regard duly authorized and have executed this Agreement as of the date first above written.

SIGNED, SEALED AND DELIVERED:

CITY OF TORONTO

By:
Name:
Title:

VEOLIA WATER CANADA, INC.

By:
Name:
Title:

By:
Name:
Title:

I/We have the authority to bind the Corporation

SCHEDULES

SCHEDULE 1

OPERATOR'S AND GUARANTOR'S CORPORATE RESOLUTIONS

[DOCUMENTS TO BE INSERTED]

SCHEDULE 2

CITY PELLETIZER FACILITY AND BATTERY LIMITS

[DOCUMENTS TO BE INSERTED]

SCHEDULE 3
ENHANCEMENTS

Exhibit G-1 of the Amendment

Description of Enhancement.	Enhancement Estimates
Reduce Building Temperatures: a. relocate combustion intakes b. larger exhaust fans c. more insulation on stack	CN\$
Additional or Revised Instrumentation: a. eliminate SIC meter b. more temperature monitors @ silos c. CTs in MCC buckets d. Proper ranges on pressure gauges e. Revise data collection f. Record effluent water flow g. Programming support	CN\$
Maintenance Revisions: a. Upper level access & hoist b. Heat exchanger modifications c. Platforms for maintenance access d. Isolation valves as required e. Water & air take off points f. Modify dust line to dosing hoppers g. Increase flow from sump pit or more capacity h. Provide for burner removal on 'A' TOH i. Standardize motors j. Add MCC at top level	CN\$
Engineering and Construction Management Services	CN\$
Quality Additions a. crushers/screens with new bucket elevators b. silo receiving boxes	CN\$
Facility Additions a. locker room/office b. Utilities a.	CN\$
Safety Improvements a. building sprinkler system b. foam suppression at oil pumps	CN\$
Total Enhancement Estimates	CN\$

SCHEDULE 4

DRAFT REPORT

Toronto Pellet - Market Analysis & Plan

EXECUTIVE SUMMARY

The Public-Private Partnership between the **City of Toronto, Ontario**, and **Veolia Water Canada, Inc.** (Veolia Water Canada) is one that dates back to 1999, and the initial design and construction of the wastewater biosolids management facility at the City of Toronto's 216-MGD Ashbridges Bay Wastewater Treatment Plant.

Our firm's engineering and construction affiliate, **N.A. Water Systems, LLC** (NAWS), a subsidiary of Veolia Water Solutions and Technologies (VWS), provided design/build services for this biosolids dryer-pelletizer system, which was designed to produce approximately 25,000 tonnes per year of all-natural, low-nitrogen content fertilizer pellets suitable for a variety of beneficial use applications.

The design included two SEGHOdryerPELLETIZER indirect, vertical multi-tray dryer units with 17 horizontal trays, each approximately 5.2 metres in diameter (approximately 20 feet including the dryer shell and insulation), which were designed to be heated in a closed loop system with thermal oil.

The units were designed to receive biosolids cake at approximately 26% dry solids from which the dried, organic fertilizer product was to be manufactured.

This system was designed to produce dust free pellets dried to a moisture content of less than 10%.

In 2003, during the startup and commissioning phase of the pelletizer facility construction, a fire heavily damaged this facility. As a result, the facility was shutdown and the City of Toronto and Veolia Water Canada worked together to develop a recovery/reconstruction plan. These efforts resulted in a design/build contract to rebuild the facility, and this work is soon to be completed, and the pelletizer facility will once again ready to begin the process of producing product.

The purpose of this document is to provide the City of Toronto with a plan and approach for the marketing of the product that will be produced by this facility. This plan is based on our firm's more than 34 years of work with municipal clients throughout North America in the operations, maintenance and management of wastewater treatment facilities, and specifically on our experience in working with these clients in the area of biosolids management and beneficial reuse.

The key elements of the plan and approach that follow include:

- Sales Strategies

- Value Chain Enhancement



Mission Statement

In this public-private partnership with the **City of Toronto, Ontario, Veolia Water Canada** seeks to develop and maintain a widely recognized, emulation-worthy, sustainable marketing program through educated alignment of product manufacturing with identified diverse market forces.

In the pages that follow we provide a detailed discussion of each of these elements of the in-depth Marketing Plan that will be put into place for the pelletizer product from the Ashbridges Bay Wastewater Treatment Plant.

Background and Analysis

(a) Background

In Canada, approximately 388,700 dry tonnes of biosolids are produced each year, with about 43% of these land-applied, 47% incinerated and 4% sent to landfill, with the remainder used for land reclamation and other uses. The 25,000 dry tonnes per year of biosolids to be pelletized at the ABTP account for approximately 6.4% of the total for all biosolids produced in Canada.

By contrast, Ontario fertilizer consumption in the year ending June 2002 (the most recent available data) was approximately 740,597 tonnes. That includes approximately 165,238 tonnes of nitrogen and approximately 74,664 tonnes of phosphate (source: The Fertilizer Institute of Ontario/Ontario Agri Business Association).

To put this into market perspective, the pelletizing facility at the Ashbridges Bay Plant will produce about 25,000 tonnes of biosolids, at 92% solids (average) on an annual basis. At a guaranteed analysis of 5% nitrogen, the facility will produce 1,150 tons of nitrogen, or approximately 0.16% of annual, total market demand for nitrogen. A guaranteed analysis of 3% phosphorus also yields approximately 0.42% of current market demand in Ontario. This suggests there is ample market opportunity for product sales in the unsegmented, broadly-defined agricultural market place.

The indirect drying process which will be used in the pelletizer facility at the Ashbridges Bay Plant will be especially suited for the marketability of these pellets and will result in a number of very specific finished product (pellet) attributes, as follows:

1. **Hardness** – The product pellets are hard, formed layer-by-layer, in a process which is similar to what is found naturally in the formation of pearls. Tests indicate that the average pellet hardness is in the order of 50 to 60 Newtons (N), slightly higher than that of chemical fertilizers (which average approximately 50 N). As a result, handling and spreading of the product is relatively easy and dust-free.
2. **Low Dust Production** - Dust production, resulting from friction during transport and handling, will be very low with the biosolids pellet product. This is a highly desirable attribute for fertilizer manufacturers, blenders, farmers and consumer customers. It is also environmentally and health beneficial.
3. **High Specific Density** - Because of high specific density the pellets will tend not to readily absorb moisture. This will result in a longer residence time in the soil, enhancing their soil improving qualities. Due to the lower affinity for water, the pellets will also be easier to store and transport than comparable mechanically pelletized products.
4. **Low Odour** - The product pellets will have a low odour, and whatever odour may be present in this product will be non-offensive.
5. **Shape** - The biosolids product pellets will be round in shape; because of the method by which these pellets are formed, the granules are nominally, spherical. Pellet size will be managed the

through operational process and selected pellet size distribution will be consistent with targeted end markets.

The biosolids product characteristics discussed above will qualify the pellets for multiple, diverse uses, including, but not limited to, agricultural usage, fertilizer blending, sod production, golf course management, etc.

Because of the high organic matter content, the pellets also offer the potential for use as a thermal fuel source. This end-use for pellets would only be considered as a contingency use, and the opportunity does exist for the temporary use of pellets as a renewable resource fuel, should more desirable, beneficial end use markets encounter insurmountable resistance. This type of an approach would be used only as an interim, cost-mitigating type of management practice for the pellet product.

Veolia Water Canada recognizes the significance of this opportunity to produce a high quality product suitable for generating high market demand. We are committed to ensuring that this high quality product goes to the highest value markets and reflects the highest possible image for the City of Toronto and our company.

(b) Situation Analysis

Market receptiveness to the use of Class A biosolids, in general terms, continues to experience strong ambivalence. A moderate percentage of the general population supports recycling and the safe reuse of the nutrients and resources contained in biosolids. A smaller, more vocal and organized population, aggressively advocates the banning of the beneficial use of biosolids in any form or manner. It is the conviction and goal of Veolia Water Canada that by providing continued and sufficient resources directed toward public education, outreach and product, understanding and reason within the marketplace will prevail.

Dr. David McKeown, Medical Officer of Health with City of Toronto, in a report titled, "Health and Ecological Risk Associated with Toronto Biosolids Pellets" (dated November 4, 2004), reported that the Federal Minister of Agriculture and Agri-Food will undertake studies to determine the maximum permissible levels of chromium and copper in all fertilizers, for inclusion in the federal Fertilizers Act. These studies will include laboratory-based research to address the potential bioavailability, phytotoxicity and/or ecotoxicity from chromium and copper with long-term use of biosolids pellets on urban parks and residential properties.

The Medical Officer of Health was requested to commission and oversee these studies, and the three studies commissioned include: (1) Biosolids Pellet Review Study: Human Health and Ecological Risk Assessment; (2) Health Status Study for the South Riverdale and Beaches Communities; and (3) an Air Modeling Study for the Ashbridges Bay Plant.

The first of these studies has been completed and is the subject of this report. In general terms, this study found that:

"Biosolids pellets are products of the sewage treatment process and further heat-based processing in a pelletizer plant to create small solid granules with low moisture content. They have potential value as a fertilizer, and as a soil amendment that can improve the structure of soils. Biosolids pellets have greatly reduced or eliminated pathogen content compared with biosolids cake. A comprehensive study was undertaken through Toronto Public Health to assess the health and ecological risk associated with long-term pellet use for 25 years on City-owned property (such as landfill cover seeded to establish a vegetative cover), on park land (such as City-owned parks and golf courses), and on residential property (such as lawns and urban food gardens). Regarding microbiological risk, there is less certainty than with the assessment of chemical risk; however,

overall, microbiological risk is likely very low. Pelletization appears to provide the conditions for effective destruction of micro-organisms. However, to ensure safety, several recommendations are directed at providing confirmatory monitoring for process temperature, process duration, humidity levels and indicator biological agents to verify that microbiological risks are negligible. The study also suggests that the use of pellets on grass with extensive bare patches should be avoided until such time that microbiological monitoring results can demonstrate negligible risk from accidental ingestion of pellets visible and readily accessible to young children. Use of pellets on turf free of bare patches is not likely to be of concern."

The Market

(c) Market Overview

A new product entry, like any start-up, must overcome inertia as well as the entry barriers resulting from real or perceived issues. After the inherent bumps and starts of a new product roll-out, the relation between a maturing product life cycle and increased revenue is highly dynamic.

Veolia Water Canada will maintain a proactive and flexible in our marketing approach in order to protect and strengthen the product value, by closely monitoring, promoting and directing the product to its highest value markets –from start-up through a fully-matured Product Life Cycle.

Our Marketing Objectives will be to optimize revenue potential balanced with minimizing storage potential by creating all-season, year-round market demand. This is a process that will evolve through maturation of the product life cycle. In the first three years, emphasis will focus on product distribution (thereby minimizing storage)

Throughout the product life cycle, emphasis will be placed on ensuring market sustainability through product loyalty.

Veolia Water Canada may use the biosolids pellets as a blending agent to supplement other fertilizer and soil products. In addition, we may blend materials with the pellets to fortify pellet quality.

(d) Local Market Issues

The conclusion of the Toronto Board of Health (BOH) study was that:

"Based on the biosolids review study, there is no evidence to date that microbiological or chemical concerns are sufficiently significant to preclude the beneficial use of pellets for agricultural or horticultural purposes."

While these findings are encouraging and parallel similar findings by Veolia Water Canada, the marketing group recognizes that public sentiment and opinion will need to be addressed in other than scientific or clinical terms. As such, we feel, as the BOH has recommended, that there is a benefit in developing a phased-in approach to the marketing of pellets from the Ashbridges Bay Plant; one that addresses public concern regarding pellet use for food crops. The initial marketing of pellets would then focus on demonstrating the successful use of pellets for horticulture, forestry and land reclamation applications prior to making pellets available for the home retail market in Toronto.

A near-term, secondary phase of this process would target the non-food, agricultural use of the pellets for the production of bio-based fuels. The market segment targets producers of crops such as corn and straw for the production of ethanol and crops such as canola, soybeans and rapeseed for the production of bio-

diesel. This is an emerging sector of the agricultural market, and one that provides significant opportunity for high volume, enhanced margin and sustainable future growth.

(e) Market Approach

Product development and marketing efforts will be directed toward major existing markets, as well as towards exploiting and satisfying increasing market demands for environmentally friendly/non-chemical/natural products. Veolia Water Canada intends to work with fertilizer blenders, distributors and cooperatives to supply custom fertilizer markets such as for use on lawn turf, sod farms, tree farms, commercial nurseries, golf courses, public flower gardens and public green space. These products will be custom processed to suit specific market requirements. Pellets will also be sold into agricultural markets for application in accordance with the Canada Fertilizers Act.

Veolia Water Canada has identified a diverse range of markets, thus ensuring sales throughout all seasons of the year. This will be critical for maintaining product value within each of the market segments – with each segment having complementing seasonal peak demand periods. Additionally, the projected volume of pellet sales allocated to each of these markets will shift during the evolution of the Product Life Cycle.

A generalized listing of each of the major potential markets for the pellet product includes the following:

Target Markets

Agricultural/Agronomic

Professional Horticultural Uses/Specialty Horticultural Markets

- Landscape
- Planting Bed Amendment
- Turf Establishment, Renovation and Maintenance
- Planting Backfill Mix Amendment
- Nursery Plant Production
- Field Grown/Balled and Burlapped
- Container Grown
- Sod Production
- Athletic Turf
- Soccer
- Football
- Baseball
- Golf
- Silviculture

Fertilizer Blending for diversified uses

Soil Production/Blending

Topsoil Mix

Potting Mix Amendment

Marginal Soil Rehabilitation/ Land Reclamation

(i) Agricultural/Agronomic Market (including subsegments)

The Canadian agriculture market is a growing sector, and as the second-largest country in the world, Canada has the necessary ingredients for leading the world's agriculture trade, specifically by maintaining: a clean environment, temperate climate, plentiful natural resources, a strong economy and high standards

for food inspection and regulation. Canada's agriculture and food sector is a robust industry that contributes to the economy and quality of life of all Canadians. It is the Country's third-largest employer and one of its top five industries, accounting for more than 8% of the Canadian Gross Domestic Product.

The agricultural application for the pellet product would include the use of pellets as a field-incorporated, surface-applied, hydroponic or root (or foliar) nutrient source for the production and growth of any vegetative plant form. The basis for such uses would be the 2002 North American Industry Classification System (NAICS) codes, specifically: 11 (Agriculture, Forestry, Fishing and Hunting) through 111998 (All Other Miscellaneous Crop Farming) and 113 (Forestry and Logging) through 113210 (Forest Nurseries and Gathering of Forest Products), as well as 115 (Support Activities for Agriculture and Forestry) through 115310 (Support Activities for Forestry).

A significant portion of the agricultural market, and the strategic positioning of biosolids pellets, may be directed toward their use for the production of agricultural crops grown as a source of fuel. This would include crops such as corn, grains and switch grass for ethanol production, as well as soybeans and jojoba for biodiesel. The approach of biosolids fertilizer intended for agricultural crops not intended for animal or human consumption meets the objectives of biosolids proponents, as well as those of biosolids detractors.

Table 1, which follows, provides a detailed breakdown of field crops planted in Canada during 2004.

Table 1. Area Grown to Field Crops in Canada - 2004		
Item	Units	Province of Ontario
Hay	Hectares	947,000
Soybeans	Hectares	940,900
Grain Corn	Hectares	688,000
Winter Wheat	Hectares	303,500
Silage Corn	Hectares	121,400
Barley	Hectares	103,200
Mixed Grain	Hectares	62,700
Spring Wheat	Hectares	48,600
Oats	Hectares	42,500
Fall Rye	Hectares	26,300
Dry White Beans	Hectares	24,300
Canola	Hectares	22,300
Tobacco	Hectares	14,800

In 2002, ethanol production in Canada consumed over 17 million bushels of corn, and ethanol is third largest market for Ontario corn. A total of 3,322,300 hectares of corn was planted in agricultural field crops in 2004.

(ii) Biobased Fuel Market

Petroleum production is expected to peak sometime before the year 2020. On a global basis, plant-derived biofuels are increasingly in demand as a more sustainable and cleaner source of power, which someday may be "grown" wherever crops are cultivated. That is the case in the country of Brazil, where nearly 4

million vehicles run on ethanol alone, and 25% of the regular fuel supply is plant-derived. In the City of Montreal, municipal buses are powered by biodiesel fuel which is created from farm-grown oils.

Farmers who plant biotech crops produce more on the same amount of land than they can with conventional or organic crops. Those higher yields make it more cost-effective to grow the raw materials necessary to produce biofuels, while at the same time ensuring that existing farmland can meet both our food and fuel requirements.

Biofuels are derived primarily from corn, soybeans and, in Brazil, from sugarcane. As research into other biomass alternatives continues, producers of smaller-scale crops and farmers in the developing regions of the world may see the same economic benefits of growing renewable fuels as their counterparts do in the Americas. For example, in 2004, the biofuels industry in the U.S. contributed more than \$800 million in tax revenue to state and local governments for spending on economic development, infrastructure and other rural development initiatives; according to the National Corn Growers Association.

Using the U.S. as a potential emerging market growth indicator, ethanol will soon pass exports as the second-leading market for American-grown corn, trailing only animal feed.

Fuel ethanol is a high-octane alcohol produced from the fermentation of sugar or converted starch, usually from a grain feedstock such as corn or wheat. Ethanol may also be derived from cellulosic materials such as forestry waste (e.g. wood waste) and agricultural crop residues; or derived chemically from ethylene or ethane.

Fuel ethanol is typically used as an additive to gasoline, blended at a 5% concentration with gasoline (E5) or at a 10% concentration (E10). Pure ethanol, or high ethanol concentrations such as 85% ethanol blended with 15% gasoline (E85), require modifications to most conventional automobile engines.

The Ethanol Market

In November 2004, the Province of Ontario announced its commitment to a Renewable Fuels Standard, requiring than an average of 5% ethanol in all gasoline sold in the Province by January 1, 2007.

On June 17, 2005, the Ontario government announced the establishment of the Ontario Ethanol Growth Fund to support the production of ethanol fuel in the Province. The development of ethanol plants in Ontario will also bring new investment, jobs and opportunities to rural communities.

Ethanol is currently exempt from the Provincial gasoline tax of 14.7¢ per litre, as well as from the Federal excise tax of 10¢ per litre, and ethanol-blended gasoline is currently available at numerous gasoline retailers in Ontario.

In Ontario, Commercial Alcohols Inc. produces approximately 150 million litres of ethanol in the Province each year, using roughly 15 million bushels of corn. Veolia Water Canada will endeavour to work with this company, and their suppliers, to provide a cost beneficial source of fertilizer to corn producers for ethanol production.

Ontario's target for ethanol is that all gasoline sold in the Province will contain an average of 5% ethanol by January 1, 2007. The Government's policy includes some \$6 billion in farm support for ethanol, biodiesel, grain and oil seed development, as well as renewal of farm support programs, like the Canadian Agriculture Income Support (CAIS) program. Capital assistance, in the form of capital grants or loan guarantees, will also be made available for eligible new or expanding ethanol plants being built in Ontario. The purpose of this component of the program will be to assist manufacturers in addressing the financing challenges encountered when building new, or expanding existing, ethanol plants

The requirements that fuel contain 5% ethanol, or be ethanol-based, by 2007 is of significant interest to the agricultural community in Ontario. In May, Goldman Sachs invested some \$30 million in Iogen Corp., an Ottawa-based company that makes ethanol from agricultural material like corn stalks and straw. Iogen Corp. is a world leader in the manufacture of so-called "cellulosic ethanol" from waste residues of agriculture, rather than from edible wheat and corn. Volkswagen announced it would participate in a feasibility study on building a plant based on the Iogen process in Germany. Iogen's Vice President, Mr. Jeff Passmore, said that this was the first time to his knowledge that a vehicle manufacturer has considered becoming involved in fuel production.

These related circumstances indicate that not only do additional market segments within the agricultural sector (beyond grains and beans) currently exist but also strongly suggest that opportunities exist for significant segment expansion, going forward for biosolids pellets.

(f) Market Opportunities

As a pioneer and front-runner in this business, Veolia Water Canada can direct the development of the Canadian pelletized biosolids market.

Increased fuel costs and the associated impact on fertilizer production costs are driving agricultural and horticultural markets towards alternative fertilizer sources, and the 5% ethanol in fuel requirement strengthens agricultural market opportunity. This particular market presents significant opportunity, going forward.

The Canadian population is aging, shifting and is spending more money, and these facts will have a significant impact on the fertilizer industry. Mr. David Foot, a Professor of Economics at the University of Toronto and author of the Boom, Bust and Echo books, has pointed out that demographic shifts, notably an aging population with rising income and increased home ownership, is partly behind the increase in garden-related spending. A significant additional driver for growth is the consumers' passion to reconnect with the natural world. Ever-increasing consumer spending will be directed toward enhancing the "garden experience," and so these garden businesses need to align themselves with the priorities and passions of the consumer.

According to Toronto's City Planning Division (Urban Development Services), the population in the greater Toronto area (GTA) is projected to grow by more than 2.6 million people over the next 30 years, reaching a level of 7.45 million people by 2031. In the near term, up through the year 2011, current growth patterns are expected to continue throughout the region.

The Greater Golden Horseshoe is the fastest-growing urban region in Canada, and the third fastest-growing region in North America. It is the economic engine of Ontario's economy, accounting for 70% of the Province's - and 30% of Canada's - Gross Domestic Product. By 2031, the area is expected to grow by some 3.7 million people, and the outer regions of the GTA will maintain their relatively high rates of growth, with York doubling in size by 2021 and Durham and Halton reaching the same point by 2031.

The consumer trends of the "baby boomer" market will create strong demand for products and services, and this will clearly drive the growth of the horticultural market and nursery production industry. The growth of this market is further discussed below.

Veolia Water Canada, at present, does not have plans to sell any significant quantity of pellets to the consumer market, either directly or through distributors. However, it is our intent to sell to the diversified industries that use fertilizer in their production process, including: turf producers, ornamental plant nurseries, greenhouses, golf courses, landscapers, etc.

Consumer spending drives the horticultural business, as well as the golf industry and all related products. With increased discretionary income, the “baby boomer” market is at the peak of its earning potential, and with gardening as the “number one” leisure activity for this age group, the horticultural market is expanding.

(g) Market Growth
(Information Source: OMFRA, 2002 Profile of the Ontario Nursery Industry)

The nursery industry in the Province of Ontario is a diverse one, which produces a wide range of woody and herbaceous plants for the landscape. In 2001, the farm gate value of the industry was \$229,926,000. At present, there are about 1,443 producers of nursery stock in Ontario, and about 25% of these growers have greater than five acres under production. The market for nursery stock consists of other growers, garden centres, mass merchandisers, landscapers, fruit trees and brokers. Additionally, the export market to the U.S. has seen significant increase over the past few years.

Nursery sales in Ontario for 2001 totalled \$229,926,000, or approximately 47% of the total farm gate sales (\$489,204,255) in Canada. This amount represents an 82.6% increase in total sales from 1996, and is detailed in Table 2, below.

Table 2 – Summary Market Data Statistics Canada: Survey of Canadian Nursery Trades Industry Ontario Nursery Statistics from 1995 to Present			
Year	Farm Gate \$ (Nursery only)	Land Use (HA) (Nursery and Sod)	Land Use (AC) (Nursery and Sod)
1995	141,170,000	19,830	49,000
1996	125,929,000	19,870	49,100
1997	123,049,000	20,679	51,100
1998	136,303,000	19,546	48,300
1999	194,350,000	21,125	52,200
2000	229,205,000	21,234	52,470
2001	229,926,000	17,867	44,150

As the data in Table 2 shows:

In 2001, the number of nursery stock producers in Ontario was 1,443.

32% of all nurseries in Canada are located in Ontario.

45% of the total production area in Canada is found in Ontario.

The distributions of nurseries in Ontario is as follows:

34% of the nurseries are located in the Southern region (Brant, Elgin, Essex, Haldimand-Norfolk, Hamilton-Wentworth, Kent, Lambton, Middlesex, Niagara and Oxford)

28% are located in the Western region (Bruce, Dufferin, Grey, Halton, Huron, Peel, Perth, Simcoe, Waterloo and Wellington)

22% are located in the Central region (Durham, Haliburton, Hastings, Muskoka, Northumberland, Parry Sound, Peterborough, Prince Edward, Victoria and York)

12% are located in the Eastern region (Frontenac, Lanark, Leeds-Grenville, Lennox-Addington, Ottawa-Carleton, Prescott-Russell, Renfrew and Stormont-Dundas-Glengarry)

4% are located in the Northern region (Algoma, Cochrane, Kenora, Nipissing, Rainy River, Sudbury, Sudbury Regional Municipality, Thunderbay and Timiskaming).

The distribution of nurseries throughout Ontario has remained relatively unchanged from 1996 to 2001.

The trends with regard to the nursery industry, which are germane to this discussion, include the following:

According to market forecasts and population demographics, gardening and landscaping will continue (and increase as a percentage of discretionary spending) as the "number one" leisure activity in the future.

While interest in the environment may have waned slightly, nursery products are "environmentally friendly" in that they contribute to enhancing the environment.

The strength of the Canadian dollar, an excellent product quality and geographically close proximity to the large U.S. market should continue to encourage and support the greenhouse and nursery product export market.

The industry has strong association leadership.

The nursery industry, like other agricultural commodities, requires high inputs. Future trends include less impact on the environment through better water and nutrient management. In the future, nurseries will be striving to become closer to a closed system.

Container production of nursery stock is expected to continue and increase. Containers allow for planting throughout the growing season, ease of handling in the garden centre, at landscape sites and for the consumer, better use of land which may be marginal for field production, and increased control over the plants' growing conditions.

Alternate methods of field growing plants, including new systems such as "pot-in-pot", the Ohio System and CelluGro™.

(i) Turf Production/Agronomic

Sod Production

Sod is grown throughout Canada, except in the more Northern regions where cold temperatures, long winters and late ground freeze delay or inhibit its growth. In the Province of Ontario, about 4,411 hectares of sod are grown each year. Growers are generally within 50 miles of their consumers, in order to avoid higher freight costs and sod heating during shipment. Sod grown in Ontario is sold within the Province, and the sod industry is the largest in the provinces of Ontario and Quebec.

The demand for sod is largely dependent on the housing market. After 1991, the sod sales in Ontario dropped 41% because there was little new housing. Given strategic projections based on Provincial commitment to development of the Golden Horseshoe, this trend should experience a dramatic reversal.

Fertilization recommendations vary with different soil and sod varieties. Nitrogen is the main maintenance fertilizer applied, except in areas where nutrients are found to be limiting. The application of nitrogen is important to ensure rapid growth and proper sod formation. Most nitrogen is applied in spring and fall, depending on the time of seeding. Light rates are applied throughout the summer as needed for maintenance and to enhance colour before harvest.

Table 3, below, summarizes the nitrogen requirements for Nursery sod, and from this data we can deduce that an average of 205 kg of Nitrogen/ha/yr for a one-year crop, or an average of 103 kg N/ha/yr for a two-year crop.

Table 3 - Nitrogen Requirements for Nursery Sod	
Time of Year	Nitrogen Amount
Prior to Seeding	50-90 (kg N / ha) (50 on fine textured and up to 90 on coarse textured)
Spring after Seeding	70 (kg N / ha) if <85% cover 35 (kg N / ha) if > 85% cover
Mid-late June	50 (kg N / ha)
3 weeks prior to harvest	35 (kg N / ha)
If held over for 2 nd year - September	35 (kg N / ha)
If held over for 2 nd year - November	35(kg N / ha)
If held over for 2 nd year - Late May	35(kg N / ha)

(ii) Fertilizer Blenders

Targeted Higher Value Market Trends

Fertilizer blending is a process of combining multiple, various nutrients necessary for plant growth. Blenders can produce and market products for packaged or bulk availability. Additionally, fertilizer blenders typically produce blends specifically for identified, targeted markets, i.e., for the agricultural, turf and/or consumer markets, as well as for specialty markets such as golf courses. Blends and packaging are specific for each market segment, for instance, agricultural markets use large volumes of fertilizer, so it is normally supplied in bulk. Consumer packaging requires significant handling and storage so it is packaged in smaller, manageable sized plastic bags, whereas fertilizer blended for the professional market is typically

handled in pallet quantities, so packages are larger and are made out of paper, because it is cheaper and unadorned with fancy, eye-catching labels.

Veolia Water Canada has conducted meetings with numerous fertilizer blenders catering to the spectrum of horticultural markets within both Canada and the U.S.

(h) Obstacles

The markets for biosolids pellets in Canada are largely undeveloped at this point in time. Normally there is a steep learning curve associated with a new product. Additionally, consumer studies indicate that buyers are reluctant to change purchasing practices unless there is some compelling reason to do so. It is the challenge of the marketer to discover and provide this empowering incentive.

The single greatest challenge and potential threat to the program will be human resistance based on emotional fear. Groups opposed to the use of biosolids are primarily concerned about two things: the sources of sewage discharged to municipal sewage treatment plants, as well as the presence of pathogens in sewage biosolids. Some of these groups have argued that biosolids should be first sterilized and then disposed of in a sanitary landfill. Their concerns stem from the fact that many municipal sewage treatment plants receive treatable industrial sewage and, in some cases, landfill leachate in addition to domestic sewage.

According to the report from the Toronto Minister of Health, the issue of biosolids safety is not clear-cut, as there are known risks associated with biosolids that must be managed responsibly. It is however, important to evaluate the risks of biosolids land application in light of other common, widespread agricultural practices, such as the land application of animal wastes. When put into this context, the risk of infectious disease to rural residents specifically from biosolids land application appears to be relatively small. There is, however pressure from citizen groups to increase regulation and restrict beneficial reuse opportunities. Critics of the biosolids programs say regulations don't go far enough to protect the health of Canadians, and that the rules can be confusing and difficult to enforce.

From public resistance arise the costs associated with addressing market turmoil and public uncertainty predicated by the claims of these groups.

(i) Competition

The City of Toronto's Biosolids and Residuals Master Plan, dated January 25, 2004, reported that thermal drying technology has been installed in several larger cities in Quebec, including Montreal, Quebec City, Outaouais (including Hull) and Laval. In Ontario, Windsor and Toronto have installed thermal drying facilities. In 2000, Windsor reported that approximately 80% of pellets produced were sold for direct application to agricultural land, with 20% being sold to the higher value horticultural market where it is blended with other fertilizer products.

Fertilizer blending is only one of the market segments that Veolia Water Canada will target for development and exploitation.

The Little River and Lou Romano Water Reclamation Plants, respectively, produce 3,300 and 7,000 dry tons of solids each year. These solids are removed from the plant process in liquid form, and then dewatered by centrifuges at both plants. The dewatered biosolids (at approximately 30% dry solids content) are heat-dried and pelletized at a plant on Sandwich Street, operated by Prism Berlie Windsor Ltd. The finished pellets are used as a fertilizer and soil conditioner. (For more information on this process, contact Prism Berlie Windsor Ltd. at 519-966-1061.)

The Halifax Regional Municipality has obtained approval under the Canadian Environmental Assessment Act to process the biosolids into a soil amendment/fertilizer product, using a lime stabilization process. The

final product must meet U.S. Environmental Protection Agency (USEPA) Class A standards for biosolids products, as well as Canadian Food Inspection Agency requirements, under the Canadian Fertilizer Act, for labelling as a fertilizer product for sale in Canada.

A facility to manufacture this biosolids product will be built at Aerotech Park, near the existing Aerotech Sewage Treatment Plant. This facility will be owned by the Halifax Regional Municipality, and the process and product storage areas will be entirely enclosed within the building, with full odour control provided. The product will be marketed for appropriate uses under all applicable federal and provincial regulations.

(j) Keys to Success

The keys to success in the marketing of biosolids product, as Veolia Water Canada sees them, include:

- Public Education/Outreach
- Product Manufacturing Paradigm
- Commitment to product quality
- Commitment to Customer Service
- Dedication to Educate for Features and Demonstrate Benefits

This assumes a cautious market acceptance and Product Life Cycle curve consistent with new introduction in similar product category. Additionally this assumes:

- Consistent production/supply
- Minimal dust in the end-product
- Size(s) that are consistent and appropriate for the identified market(s)
- Acceptable pellet hardness (2.0 to 4.5 kg/granule)
- Biologically available nutrient
- Non-odorous end-product
- Environmentally compliant end-product.

Marketing Strategy

Veolia Water Canada will direct its marketing efforts towards fertilizer manufacturers, fertilizer blenders, soil blenders and fertilizer distributors. We will employ a "push-pull" type of marketing strategy directed towards the end user.

In implementing this strategy, Veolia Water Canada will promote/advertise to the end-customer, to create "pull" for the product, and we will sell, or "push," to the dealer/wholesaler/distributor. This is the same type of strategy that is used by many manufacturers to sell a national product, such as Coca-Cola, Ford Motors, Molson Beer, etc. This promotional strategy will be used across the board and for the entire term of product sales.

Veolia Water Canada will develop technical and promotional collaterals, either single-handedly or in cooperative agreement with dealers/distributors, etc.

Our marketing personnel will directly participate in:

- Industry Trade Shows
- Consumer Home, Flower and Garden Shows

Landscape Shows
Home and Garden Shows
Educational Lectures
Public Speaking

We will also aggressively pursue public outreach and promote product education, sales and distribution through:

Electronic Media

Radio
Television

Print Media

Brochures
Direct Mail
Trade Journals
Consumer Magazines
"Canadian Gardening"

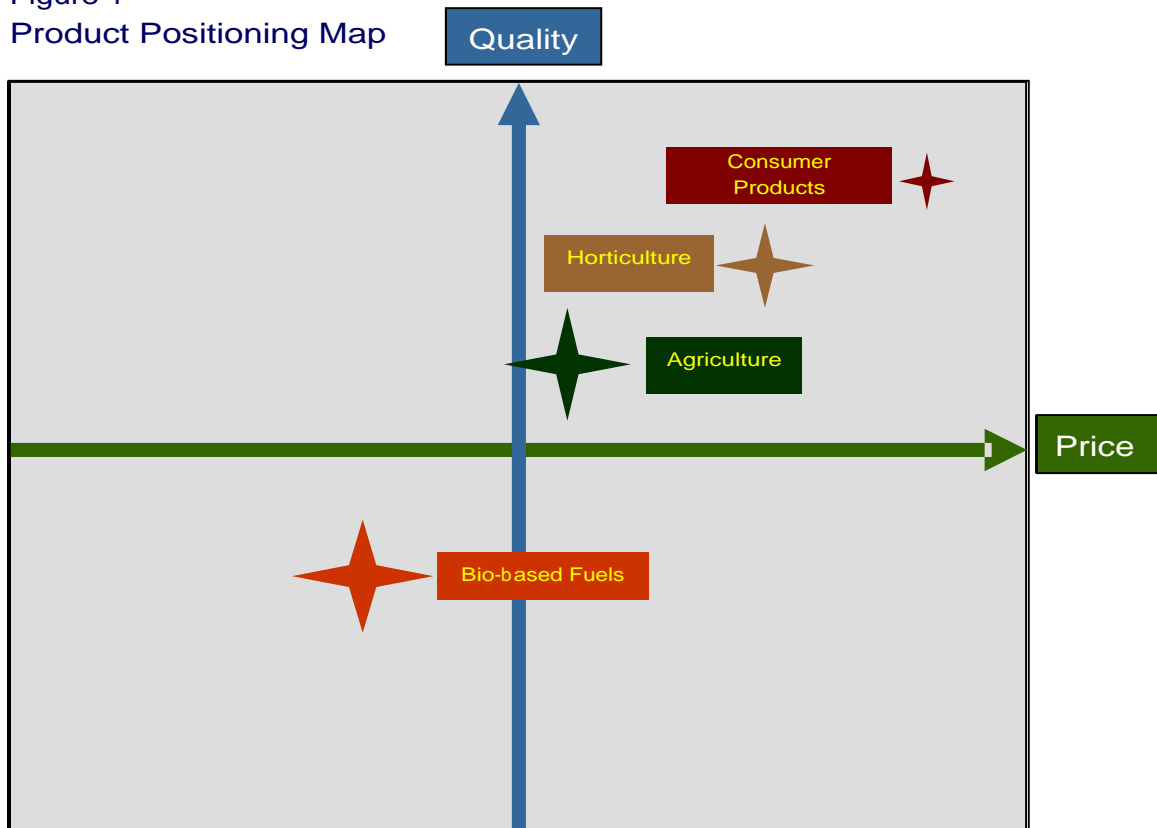
Strategic Relationships

Landscape Ontario
University of Guelph
Ontario Turfgrass Symposium
Canadian Botanical Conservation Network (CBCN)
Biodiversity Action Plan for Botanical Gardens and Arboreta in Canada
Canadian Composting Council
Website
Marquis Customer Approach
Trade Show Participation
Ontario Turfgrass Symposium
Ontario Garden Congress
Demonstration Plots/Gardens
Public Planting Areas
Highway Median and Rights of Way Plantings
Partner with Landscape contractor(s)
Naturalized/Perennial/Wildflower Display Gardens
University and Allied Test and Display Areas

Veolia Water Canada will also monitor the effectiveness of the program in the following areas:

Customer Satisfaction/Retention (through analysis)
Product Efficacy

Figure 1
Product Positioning Map



- Delivery
- Complaint Response/Follow-up
- Traffic Issues
- Product Quality Issues
- Pricing Evaluation/Refinement

Finally, we will develop diversified markets through maximized segmentation and penetration strategies.

(k) Positioning

Figure 1, at the top of the next page, provides a Product Positioning Map. As shown on this four-square matrix, products are positioned to identify desired product quality relative to pricing limitations within the market place. The size of the star indicates the forecasted relative size of total production allocated to each. This is a forward looking estimate of the market distribution at approximately Year 7.

(l) Sales Forecast

Using "Agriculture", "Soil Blenders" and "Fertilizer Blenders/Packagers/ Resellers" as broad market categories, Veolia Water Canada has forecasted sales over the course of the first 10 years of the Product Life Cycle by category. The paragraphs that follow discuss each category, and it should be noted that the pellet use/market is not necessarily limited to the markets defined here.

(i) Agriculture

The Agriculture market includes use of pellets as a field-incorporated, surface applied, hydroponic or root (or foliar) supply of nutrient source for the production and growth of any vegetative plant form. Using the 2002 North American Industry Classification System (NAICS) codes, vegetative plant forms specifically

include those classified as: 11 (Agriculture, Forestry, Fishing and Hunting) through 111998 (All Other Miscellaneous Crop Farming) and 113 (Forestry and Logging) through 113210 (Forest Nurseries and Gathering of Forest Products), as well as 115 (Support Activities for Agriculture and Forestry) through 115310 (Support Activities for Forestry).

A significant portion of the agricultural market and strategic positioning for biosolids pellets will be directed toward their use for the production of agricultural crops grown as a source of fuel, such as corn, grains and switch grass for ethanol production, as well as soybeans and jojoba for biodiesel. The approach with regard to biosolids fertilizer intended for agricultural crops not intended for animal or human consumption meets the objectives of biosolids proponents, as well as those of biosolids opponents.

(ii) Soil Blender

The Soil Blender market is defined as the nutrient amended, manufactured soil or soil-less planting media including bark mixes, "California mixes," soil-less mineral mixes, compost manufacturing, potting soil manufacturing, etc.

(iii) Fertilizer Producers, Blenders and Distributors

Fertilizers are made from naturally-occurring sources of plant nutrients, and the three major plant nutrients are nitrogen, phosphorus and potassium. Producers, blenders and distributors include Farm Supplies Merchant Wholesalers (32,531), Fertilizer and Fertilizer Materials Merchant Wholesalers (42,491), Soil Preparation, Planting and Cultivating Services (115,112), Fertilizer Manufacturing (32,531), Fertilizer Blenders (3,252,314), Fertilizers Producers using natural organic sources (except compost), animal waste and/or sewage origin (325,311).

The anticipated product distribution, by market segment, to these classes of users over the first five years of production is summarized on Table 4, which follows.

Table 4 - Anticipated Product Distribution By Market Segment - Years 1-10	
Market Segment	% of Market
Year 1	
Agriculture	85%
Soil Blenders	10%
Fertilizer Blender/Packager/Reseller	5%
Tonnes 25,000	100%
Year 2	
Agriculture	75%
Soil Blenders	15%
Fertilizer Blender/Packager/Reseller	10%
Tonnes 25,000	100%
Year 3	
Agriculture	75%
Soil Blenders	12%
Fertilizer Blender/Packager/Reseller	13%
Tonnes 25,000	100%

Table 4 - Anticipated Product Distribution By Market Segment - Years 1-10	
Market Segment	% of Market
Year 4	
Agriculture	75%
Soil Blenders	10%
Fertilizer Blender/Packager/Reseller	15%
Tonnes 25,000	100%
Year 5	
Agriculture	72%
Soil Blenders	10%
Fertilizer Blender/Packager/Reseller	18%
Tonnes 25,000	100%
Year 6	
Agriculture	70%
Soil Blenders	10%
Fertilizer Blender/Packager/Reseller	20%
Tonnes 25,000	100%
Year 7	
Agriculture	70%
Soil Blenders	9%
Fertilizer Blender/Packager/Reseller	21%
Tonnes 25,000	100%
Year 8	
Agriculture	70%
Soil Blenders	8%
Fertilizer Blender/Packager/Reseller	22%
Tonnes 25,000	100%
Year 9	
Agriculture	70%
Soil Blenders	5%
Fertilizer Blender/Packager/Reseller	25%
Tonnes 25,000	100%
Year 10	
Agriculture	70%
Soil Blenders	5%
Fertilizer Blender/Packager/Reseller	25%
Tonnes 25,000	100%

(m) Critical Issues

Changes in law regarding the handling and use of pelletized biosolids product may serve to benefit or may cripple market opportunities. Many of the laws regulating biosolids, including those dealing with pelletized products, are still emerging. Other issues include environmental and health concerns, which include:

Avoidance of the repeat of any catastrophic event, such as that experienced at Walkerton

Organized opposition and resistance to pellet production and distribution.

(n) Commitment

Veolia Water North America Operating Services, LLC and specifically, Veolia Water Canada, is committed to providing a pellet marketing program that allows for the beneficial use of the pellets produced at the Ashbridges Bay Plant's Pelletizer Facility. Based on our extensive experience in managing and marketing biosolids based products, we are confident that we can achieve the goals detailed in this plan.

Conclusion

In this Draft Market Analysis and Plan, Veolia Water Canada has sought to summarize the work that we have completed to date in terms of identifying and analyzing the potential markets for the biosolids pellet product that will be produced by the pelletizer facility at the City of Toronto's Ashbridges Bay Wastewater Treatment Facility; once this facility it is put into operation.

The key elements of the plan and approach that we have developed include:

Sales Strategies

Value Chain Enhancement

Commitment

As we move forward in the review and finalization of this Plan, it is our intent to further develop our approach in each of these key areas, and to better refine the marketing data that has been presented in this Draft Plan.

As discussed at the start of this document, our plan and approach has been based on our firm's more than 34 years of work with municipal clients throughout North America in the operations, maintenance and management of wastewater treatment facilities, and specifically on our experience in working with these clients in the area of biosolids management and beneficial reuse. In the pages that follow, we provide an overview of this expertise and experience to enable to City of Toronto, and the other Stakeholders that read this report, to better understand the base of qualifications that we bring in this area.

(o) Veolia Water
Biosolids Management Qualifications and Experience

Veolia Water Canada is a part of Veolia Water North America Operating Services, LLC (Veolia Water), and our firm provides a comprehensive range of services for water and wastewater facilities to our municipal and industrial customers. Together, our firms comprise North America's premier supplier of water and wastewater treatment services and technology. In 1972, the company pioneered private municipal contract operations in North America with the first agreement for the O&M of the wastewater treatment plant for the City of Burlingame, California. As a result of the quality of service, dependability of operations, and economic value brought to this client, Burlingame has continuously renewed its contract with our company for over three decades. Our company is now responsible for the O&M of more than 400 water and wastewater facilities throughout North America, providing water and wastewater services to over 15 million people on a daily basis.

Veolia Water Canada, formerly USFCanada, Wheelabrator EOS Canada Inc., and Rupke & Associates, is a respected water/wastewater firm that has operated throughout Canada for over 27 years, providing a range of O&M, management, engineering, and consulting services to industry and government. Here in the Province of Ontario, Veolia Water Canada operates and maintains facilities for the Town of Goderich, the City of Owen Sound, the Township of Georgian Bluffs, the County of Haldimand and Norfolk, the Township of Huron, Huron-Kinloss and the Township of Ashfield-Colborne-Wawanosh, along with several other smaller projects. North

Veolia Water Canada is part of a large family of companies under Veolia Water and Veolia Environnement, which also includes Veolia Waste, Veolia Transportation and Dalkia Energy Services. These firms are primarily providing public works services, such as sanitation collection, transportation management and building services.

Veolia Water, S.A., the ultimate parent company of Veolia Water Canada, and Veolia Water North America Operating Services, LLC, is a corporation that traces its history in the O&M of water and wastewater systems back more than 150 years. The firm is today the leading global provider of water and wastewater services for government and industrial clients throughout the world, providing water and wastewater services to over 110 million people, under 7,000+ contracts with governmental and industrial clients in 65 countries across the globe.

- **Veolia Waste** is one of the largest solid waste companies in the U.S. and the second largest hazardous waste company. that
- **Veolia Transportation** is the largest private managers of transportation services in the U.S., providing taxi, bus and subway services. The major contract is for the subways system in Boston, Massachusetts. The and
- **Dalkia Energy Services** provides building services, such as that for

In the area of biosolids management, Veolia Water is the leading provider of wastewater treatment and biosolids handling in North America, supplying biosolids management services to over 140 municipal clients. Under these contracts, our firm manages more than 295,000 dry tons per year (dtpy) of biosolids--the combined Veolia Water total daily biosolids process level is nearly 900 dry tons.

Veolia Water companies are committed to beneficial use of biosolids and have a strong history of helping develop and implement beneficial programs for our clients. Whether the chosen approach is land application to farmlands or creating compost and then marketing and distributing the finished product, Veolia Water handles all aspects of program development, including site acquisition, permitting, marketing and public relations, ensuring that every facet complies with environmental regulations. We have even helped clients take advantage of excess processing capacity and developed merchant programs that accept solids from neighboring communities, thus generating a revenue stream for the client.



Figure 2
VEOLIA WATER CANADA, INC.
PROJECTS AND RESOURCES
Ontario and Country-wide

- 28+ Years of O&M Experience in Canada
- 27+ Years of O&M Experience in the Province of Ontario
- 25 Municipal and Industrial Projects in Canada
 - 23 Projects in Ontario
 - O&M of Water & Wastewater Systems
 - Design/Build, Design/Build/Operate Projects
 - Long-Term Projects
- Canada Regional Headquarters in Ontario
 - Disciplines Representing O&M, Engineering, Construction, R&D

Veolia Water operates and maintains several stand-alone, dedicated mechanized biosolids management facilities. Three of these projects are large, in-vessel composting facilities that use high technology systems to manufacture USEPA Excellent Quality (EQ) and Class A compost products for bulk market sales and distribution. Two of these in-vessel composting projects are regional facilities and merchant operations where we manufacture and market (sell and distribute to beneficial end uses) more than 130,000 cubic yards per year of bulk product as USEPA EQ/Class A compost.

A key part of Veolia Water’s biosolids management work involves developing, implementing and operating Class A solutions that provide for beneficial use of the processed biosolids product. Currently, we operate a number of Class A biosolids facilities, using alkaline stabilization, enclosed composting and thermal drying technology solutions. Veolia Water currently has six long-term biosolids partnerships that are design/build and design/build/operate projects, which include high-solids centrifuge dewatering, enclosed composting, heat drying/pelletization and thermal combustion.

One of Veolia Water’s longest-running and most successful biosolids projects is the **Baltimore City Composting Facility (BCCF)** in Maryland. This facility financed, designed, built and started up by a Veolia Water predecessor company in 1984, and today it remains in successful operation. Veolia Water continues to operate manage this facility under a long-term contract O&M agreement, which includes responsibility for product marketing and capital improvements.

Sold under the name ORGRO High Organic Compost, compost produced at the BCCF is used on virtually every golf course within a 50-mile radius and some as far as 100 miles away. ORGRO also helps maintain the lush lawn of the Official Residence of the Vice-President on the estate of the U.S. Naval Observatory and is a component in the Pennsylvania Avenue Restoration and Beautification Project at the north lawn of the White House.

was
and

The BCCF is a 45 dtpd in-vessel biosolids composting facility, which processes anaerobically digested, dewatered biosolids (sludge) from the Baltimore’s Back River Wastewater Treatment Plant.

The end product from the compost process, marketed as ORGRO High Organic Compost, is purchased by both public and private users.

The composting facility was financed with a loan to the company from the proceeds of 20-year, fixed-rate, tax-exempt bonds issued by our client, the Northeast Maryland Waste Disposal Authority. The City guaranteed the delivery and payment for processing a maximum of 54,750 wet tons of biosolids a year, with a tipping fee that is used to cover debt service, a cash return on equity and the O&M fees.

Everything that goes into the BCCF leaves as compost. Each year since 1997, the facility has sold out of ORGRO. As part of a revenue sharing program established by Baltimore and Veolia Water, the City's revenue portion has increased more than 2,500 percent since 1999.

Over the years, the performance of this Veolia Water managed facility has been recognized with a number of awards, including, the 2004 Silver Excellence Award from the Solid Waste Association of North America (SWANA).

Another example of our firm's related O&M experience is at a wastewater facility jointly owned by the communities of **Bristol, Tennessee and Bristol, Virginia**. Under this long-term contract, Veolia Water is responsible for transporting yard waste, tree trimmings and other wood amendment material to a 14.3-dtpd in-vessel composting facility at the Bristol Wastewater Treatment Plant. There the materials are then cocomposted with biosolids from the wastewater plant.

Veolia Water has operated the Bristol facility since 1984, and we began producing compost at these facilities in 1991. Under this O&M contract, our firm markets both the finished compost and a wood mulch product. The finished product received the first Clean Sludge determination for compost from the Tennessee Department of Environment and Conservation, allowing the material to be distributed without application site approval. Our Bristol operation has also received the USEPA's Region IV Biosolids Beneficial Use Award.

Veolia Water is also in the process of implementing the design/build of a new biosolids pelletizer facility in Chicago, Illinois. This facility is similar to that that at Toronto's Ashbridges Bay Plant and utilizes a pelletizer system that will provide a similar product.

As the majority principal of the Metropolitan Biosolids Management LLC (MBM), Veolia Water was awarded a 20-year contract by the Metropolitan Water Reclamation District of Great Chicago (MWRD) to design, build, finance, own, operate and maintain a 150-dtpd biosolids drying/pelletizer at the Stickney Wastewater Treatment Plant. The Stickney Plant is one of the world's largest wastewater facilities, with a treatment capacity of 1.4 billion gallons per day. MBM's long-term services contract also includes marketing and distribution for beneficial uses of the final product.

Veolia Water's engineering and construction affiliate, VWS/NAWS, is currently providing design/build services for this new facility, which will recycle approximately one-third of the biosolids generated at the Stickney Plant. The four SEGHOdryerPELLETIZER trains will have the capacity to process 220 dtpd of biosolids and are planned to process 150 dtpd. Each pelletizer train will have 55 dtpd of processing capacity. The dryer units are indirect, vertical, multi-tray pelletizers and will be 6.2 meters (20 feet) in diameter. The cake solids will be indirectly dried from the transfer of heat circulating inside the plates of each tray. The thermal oil heaters will be fired by reclaimed oil – a cost-efficient means to heat the dryers

Table 6 – Veolia Water Long-Running/Large Biosolids Projects

Client	Dry Tons per Day (DTPD)	Contract Length
Baltimore, MD	45	1985 - 2007
Bristol, TN/VA	14.3	1984 - 2007
Brockton, MA	10.6	1988 - 2020
Chicago, IL	150	2001 – 2020 (under const)
Cranston, RI	49	1989 - 2027
Fall River, MA	13.5	1994 - 2004
Hickory, NC	20	1995 - 2016
Lynn, MA	13.5	1991 - 2021
Naugatuck, RI	72	2002 - 2022
New Bedford, MA	17.8	1990 - 2018
New Orleans, LA	28.1	1992 - Ongoing
Oklahoma City, OK	65.6	1984 - 2015
Schenectady, NY	15	1991 - 2012
Vancouver, WA	15.4	1978 - 2005
Wilmington, DE	32.9	1984 - 2017

while recycling another waste product. A comprehensive air emissions and odour control system will be installed. Foul process air will be exhausted directly through condensers and thermal oxidizers. Full redundancy for the air emissions and odour-destruction equipment will ensure continuous and complete performance. Foul air from the pellet silos and enclosed product load-out facilities will be exhausted to particulate-matter bag houses and the thermal oil heater burners. The thermal oil heaters will be ultra-low NOx burners. Exhaust from the building air and oil heaters will be treated for sulphur removal through packed-bed scrubbers.

The biosolids drying/pelletization facility is located near the centre of the Stickney Plant, occupying a very small footprint, on a site that uses less than three acres of the plant's 560 acre complex.

On an average annual basis, this new facility in Chicago will produce approximately 60,000 tons of USEPA EQ/Class A pelletized biosolids. This bulk product will be marketed and distributed as an all-natural and organic fertilizer, safe and suitable for agricultural and commercial beneficial end uses. The facility will accept biosolids only from the Stickney plant and will not process any hazardous materials. The proven indirect drying technology, working much like a clothes dryer, converts biosolids into organic fertilizer pellets and soil conditioner by drying the biosolids and destroying potentially harmful biological organisms.

SCHEDULE 5

PERMITS AND LICENCES SCHEDULE

[DOCUMENT TO BE INSERTED]

SCHEDULE 6**SECONDARY TESTING****Schedule "H" of the Amendment**

Conditions, Requirements and Responsibilities for Completion of Secondary Test

The Start Date for the Completion of Secondary test shall be determined by Contractor.

1. During the test, Contractor shall demonstrate that the Facility has met the following conditions:
 - (a) The Facility has produced 4,490 dry tonnes of pellets over a 66-day period.
 - (b) The Facility does not violate any laws, rules, regulations, or other permit conditions in effect at the time of the execution of the original Contract.
 - (c) The Facility is in compliance with the Contract.
 - (d) The pellets produced during the test period meet the finished pellet quality required for marketing the pellets.
 - (e) In order to demonstrate reliability, the Facility must attain the following criteria:
 - The production capacity during the 66-day period shall be not less than 4,490 dry tonnes. The basis for calculating production capacity will be the weight of pellets trucked from the Facility adjusted for moisture content of cake and moisture content of pellets.
 - Any downtime due to malfunctions attributable to Contractor shall require that the test be run for whatever number of additional days that are necessary to achieve the specified production quantity of 4,490 dry tonnes.
 - Downtime due to interruptions, which are beyond the control of Contractor shall not be assessed against Contractor. The situations and occurrences described below are considered beyond the reasonable control of Contractor. Contractor will make all reasonable efforts to mitigate and/or overcome any of the listed items should they occur during the testing program. Downtime not attributable to Contractor would include:
 - Interruptions in sludge cake supply.
 - Moisture content below 25%, which causes a shutdown of the dryers.
 - Interruption of utilities.
 - The interruption and the recovery period to return to normal operation shall not be assessed against Contractor.
 - In respect to low moisture content cake supply, which does not result in an interruption, the production quantity of pellets shall be adjusted accordingly, to compensate for the low moisture content, as negotiated by both parties acting reasonably.

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- In respect to hair the following routine maintenance activities will be carried out by the operations staff:
 - Observe hair build-up on the dryer rakes through the observation ports on a daily basis.
 - Monitor the pressure differential at the bag filter.
 - Monitor the pneumatic transfer system for pressure variations and listen to pellet conveyance for unusual sounds.
 - During dryer maintenance shutdowns, remove at least one access door to observe hair build-up on the rakes. Note: dryer must be cooled down for this to occur.
 - During dryer outages, visually inspect the dosing hopper and bag filters for hair build-up and/or crusting. If either is noted, clean with vacuum truck.
 - Should a hair plug block the pneumatic piping, prior to ordering a vacuum truck, check to see if the blockage is at a bolted connection and the line can be manually cleared.
 - During extended outages, several days, the pellet cooler should be inspected for hair accumulation, particularly at the water -cooled plates.
 - 2. The amount of \$799,932 as referenced in Schedule F-1 (Secondary Testing Performance Retention – Special Condition #8(a) of the Service Agreement dated April 30, 1999) shall not be paid to Contractor until the 66-day test has been successfully completed as per the conditions and requirements outlined herein and Schedule F-5. If testing fails, the amount of \$799,932 shall not be paid to the Contractor.
 - 3. The terms and conditions of the Contract remain in force unless specifically revised by the contents of this Schedule.

Toronto agrees to work with Contractor's staff to ensure that the test is conducted with the cooperation necessary for the smooth running of the Pelletizer Facility.

SCHEDULE 7

SPARE PARTS LIST

[DOCUMENT TO BE INSERTED]

SCHEDULE 8

REPORT DELIVERY SCHEDULE

[DOCUMENT TO BE INSERTED]

SCHEDULE 9
CITY POLICIES

<u>Number</u>	<u>Policy</u>
1.	Tree Protection Policy
2.	Purchase of Products Manufactured in Factories where Children are used as Slave Labour
3.	Conflict of Interest Policy
4.	Declaration of Non-Discrimination Policy
5.	Environmentally Responsible Procurement Policy
6.	Fair Wage Policy
7.	Municipal Freedom of Information and Protection of Privacy Act
8.	Collusion and Price Fixing Statement
9.	Inter-Provincial Fairness Legislation
10.	Labour Trades Contractual Obligations in the Construction Industry
11.	Lobbying Disclosure Policy
12.	Policy to Exclude Bids from External Parties Involved in the Preparation or Development of a Specific Call/Request
13.	Restriction on the Hiring and Use of Former City of Toronto Management Employees for City Contracts
14.	Right to Reject Debtors and Set Off Policy
15.	Toronto Licensing Requirements

SCHEDULE 10

REVERSION DATE CERTIFICATE

[to be typed on Veolia Water Canada, Inc. Letterhead]

[Insert Date]

CITY OF TORONTO
General Manager of Water
East Tower, City Hall
100 Queen Street West, 5th Floor,
Toronto, Ontario
M5H 2N2

CITY OF TORONTO
City Contract Manager
East Tower, City Hall
100 Queen Street West, 5th Floor,
Toronto, Ontario
M5H 2N2

Attn: _____

Attn: _____

Pursuant to the Operation, Maintenance and Pellet Marketing Services Agreement (the "Agreement"), dated _____ between the Veolia Water Canada, Inc. (the Operator") and the City of Toronto (the "City") and pursuant to Article 10.3 of the Agreement, we hereby confirm as follows:

- i. The Pelletizer Facility is in the Required Condition as defined in the Agreement;
- ii. The Pelletizer Facility does not contain any Deficiencies as defined in the Agreement;
- iii. The Operator has delivered to the City current record drawings of the Pelletizer Facility in a size and format reasonably required by the City;
- iv. The Operator has delivered all Reports required to be delivered pursuant to the Agreement including those set forth in the Report Delivery Schedule - Schedule 8; and
- v. The Operator has delivered updated copies of the as-built drawing, specifications and operations and maintenance manuals related to the Pelletizer Facility.

Yours truly

SCHEDULE 11**FINAL TRANSITION PLAN**

The Final Transition Plan to be provided by the Operator to the City shall contain the following information:

- (a) Employee communications:
 - (i) A communication plan to advise employees of the expiry of this Agreement and information requirements of the City associated with the expiry of this Agreement; and
 - (ii) An undertaking to permit the new operator to conduct employee briefing sessions of interviews with the employees at the Pelletizer Facility at the start of the transition.
- (b) Human resources:
 - (i) Organization chart for Pelletizer Facility;
 - (ii) Job descriptions for all management personnel at Pelletizer Facility;
 - (iii) Job descriptions for all unionized personnel at Pelletizer Facility;
 - (iv) Number of employees at Pelletizer Facility broken down by location, status, full time non-union, full time union, part time non-union, part time union, casual, seasonal and co-op students; and
 - (v) Summary of certification of operators, with expiry dates.
- (c) Personnel policies:
 - (i) Copies of all employee handbooks and/or manuals;
 - (ii) Workplace rules or policies including a full copy of all postings of company rules;
 - (iii) Discipline policy and procedure;
 - (iv) Details of any termination / severance policies and practices;
 - (v) Details of any retention or job security programs; and
 - (vi) Hiring policies and practices.

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- (d) General practices and policies for employees relating to vacations/holidays, accrual/payment process, sick leave and/or personal days; overtime payment; shift premiums; clothing/safety shoes/protective equipment allowances; and housing/relocation arrangements;
 - (e) A complete copy of all current collective agreements and identification of all union bargaining rights at the Pelletizer Facility;
 - (f) A list all outstanding grievances and arbitrations;
 - (g) Information with respect to the status of labour negotiations including all relevant documents;
 - (h) Workplace safety and insurance:
 - (i) All WSIB registrations affecting the Pelletizer Facility;
 - (ii) Name of account holder;
 - (iii) Account numbers;
 - (iv) WSIB assessments over the last three years for the Pelletizer Facility;
 - (v) Identification of any continuing accident costs claims by employees based on accidents;
 - (vi) Identification of whether all assessments have been paid up to date and whether a clearance certificate under the WSIB legislation in all instances of subcontract has been obtained; and
 - (vii) Identification of whether an experience rating or WSIB and/or OHS/A audit has ever been performed on the Pelletizer Facility.
 - (i) Business systems:
 - (i) Inventory of computer systems/hardware and software;
 - (ii) Identification of any contracts extending beyond the Term of this Agreement (including all relevant details);
 - (iii) Inventory of all relevant purchasing accounts and procedures for transfer of accounts upon expiry of this Agreement; and
 - (iv) Listing of materials purchasing procedures.
 - (j) Operations and maintenance:
 - (i) Details on the transfer of the Computerized Maintenance Management System to the new operator;
 - (ii) Program, including schedule for inventory of all historical operations and maintenance records, and the transfer of those records to the new operator. The Final Transition Plan shall include details of the transfer of both a hard copy and electronic records for the Pelletizer Facility;

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- (iii) Plan for the transfer of the SCADA system to the new operator;
 - (iv) Procedures for providing the new operator reasonable access to the Pelletizer Facility, mechanical and electrical equipment, instrumentation and SCADA System as well as all laboratory and maintenance records;
 - (v) Protocol for conducting an inventory of Consumables, Spare Parts and Attractables to be transferred to the new operator, and the plan for the transfer of these items upon expiry of this Agreement;
 - (vi) Timing and content of the Final Condition Survey of Civil and Structural assets, including identification of any Deficiencies, and a plan for rectification of identified Deficiencies;
 - (vii) Protocol for Final Inventory and Survey of Mechanical and Electrical Equipment and plan for rectification of Deficiencies prior to or upon expiry of this Agreement;
 - (viii) Final Condition Survey of reservoirs, tanks and vessels, including procedure for identification of Deficiencies and procedure for rectification of Deficiencies prior to or upon expiry of this Agreement;
 - (ix) Transition plan for predictive maintenance;
 - (x) Transition plan for Preventative Maintenance;
 - (xi) Transition plan for transfer of Permits and Licences;
 - (xii) Plan for maintenance of security during transition;
 - (xiii) Transition plan for reporting requirements under this Agreement, and pursuant to obligations as set forth in the Certificates of Approval;
 - (xiv) Final utility meter readings;
 - (xv) Updating and transfer of operations and maintenance manuals;
 - (xvi) Health and safety plan for transition;
 - (xvii) Plan for identification of maintenance in progress at time of expiry of this Agreement;
 - (xviii) Plan for general site clean-up;
 - (xix) Plan for transfer of vehicles, including proposal for appraisals; and
 - (xx) Identification of any other liabilities to be assumed by a new operator.

SCHEDULE 12**INSURANCE****Insurance**

Without restricting the generality of Article 17 – Indemnification, the Operator shall, at its cost, effect, maintain and keep in full force for the Term of the Agreement, the insurance coverages, including terms, conditions, limitations, exclusions and deductibles acceptable to the City, specified in this Schedule 12. Any capitalized term used in this Schedule 12 but not defined herein shall have the meaning given to it in the Agreement.

1. All-Risk Property Insurance

All-Risk Property Insurance coverage, following the completion of construction under the Services Agreement and Amendment and prior to the construction insurance expiring, lapsing or being cancelled, for the Pelletizer Facility including the building and all other insurable property belonging to the Operator and the City contained in the Pelletizer Facility and from time to time located on the property, including furniture, fixtures, improvements and machinery and equipment for not less than the replacement cost thereof. The All-Risk Property Insurance policy shall include the City as an additional named insured and a joint loss payee.

2. Boiler and Machinery Insurance

Boiler and Machinery Insurance coverage on a repair and replacement basis, in an amount of not less than the replacement cost of the Pelletizer Facility and the contents and equipment located on the premises. The Boiler and Machinery Insurance policy shall include the City as an additional named insured and a joint loss payee.

The All-Risk Property Insurance and the Boiler and Machinery Insurance policies shall also include a Joint Loss Agreement between insurers.

3. Business Interruption and Extra Expense Insurance

Business Interruption and Extra Expense Insurance coverage against the Operator's direct or indirect loss of income and expenses attributable to all insured perils pursuant to the above noted All-Risk Property Insurance, in an amount providing coverage for the Operator's necessary continuing expense, extra expense and loss of pre-tax profits for a period of 12 months from the date of loss.

4. Commercial General Liability Insurance

Commercial General Liability coverage against personal and bodily injury (including death), property damage, broad form contractual liability and products liability caused by or related to the operations of the Operator in, on or about the Pelletizer Facility in an amount of not less than \$10,000,000 per occurrence / \$20,000,000 general aggregate. The Commercial General Liability Insurance will also include a cross-liability and severability of interest clause. The Commercial General Liability Insurance policy shall include the City as an additional insured.

5. Pollution and Environmental Liability Insurance

Pollution and Environmental Liability Insurance coverage for the Operator's operations related to the Agreement in an amount of not less than \$5,000,000 per claim / \$20,000,000 general aggregate. The Pollution and Environmental Liability Insurance policy shall also include a cross-liability and severability of interest clause and shall include the City as an additional insured.

6. Automobile Insurance

Automobile Insurance coverage for all licensed motorized vehicles owned, non-owned or leased by the Operator in connection with this Agreement in an amount of not less than \$5,000,000 per accident. The Automobile Insurance policy shall include the City as an additional insured.

7. General

The Operator shall provide sixty (60) days' prior written notice to the City in the event of the cancellation, non-renewal or material adverse change to any of the policies of insurance provided pursuant to this Schedule 12. All of the policies of insurance provided pursuant to this Schedule 12 shall include a clause that the Insurer provide the City receive with (60) day's prior written notice in the event of cancellation or non-renewal of any of the policies of insurance.

The Operator will not do or permit anything to be done that results in the cancellation or threatened cancellation or the reduction of coverage or threatened reduction of coverage under any of the policies of insurance provided pursuant to this Schedule 12.

The insurance policies required pursuant to this Schedule 12 shall be primary and shall not call into contribution any insurance available to the City.

The Operator waives and shall cause its insurers to waive their rights of subrogation against the City, including for Claims and demands of every nature whatsoever for damage, loss or physical injury to the buildings, improvements and equipment of the Pelletizer Facility and to the property of the Operator in, upon or about the Pelletizer Facility which are caused by or result from fire or other perils, events or happenings which are required to be insured hereunder to the extent so required whether or not such Claim or demand is covered by insurance.

The insurance policies required pursuant to this Schedule 12 shall provide that, in the case of loss or damage, payment under the above policies of insurance, including payment by the Operator of any self retained portion or deductible portion, shall be made to the City and the Operator.

The Operator will pay or cause to be paid all of the premiums under the policies of insurance required pursuant to this Schedule 12 as they become due and payable. The cancellation, non-renewal or material adverse change to any of the policies of insurance shall be an Event of Default under the Agreement.

In the event that the Operator fails to make payment of the premiums for the All-Risk Property Insurance coverage, the City may, at its sole discretion, pay all premiums for the All-Risk Property Insurance and the Operator shall either promptly reimburse the City on demand or the City may deduct such premium payment from the Commercial Operations Fee.

8. Copies of Insurance Policies

Upon execution of this Agreement, the Operator shall deliver to the City evidence of the insurance required under this Schedule 12 in the form of Certificates of Insurance, in form and detail satisfactory to the City, signed by an authorized representative of the insurer. Certificates of insurance evidencing renewal or replacement of policies shall be delivered to the City fifteen (15) days of the expiration of then current policies, without demand having to be made therefore by the City. The insurers under the policies provide pursuant to this Schedule 13 shall be licensed in the Province of Ontario. The Operator will make available the complete original certified copies of all applicable policies if requested by the City.

9. Additional Insurance

In addition to any of the foregoing, the City and the Operator may mutually agree to obtain and maintain additional insurance coverage(s) at the cost of the City, which are related to this Agreement and which would customarily be obtained by a prudent operator engaged in an undertaking similar in scope to this Agreement.

SCHEDULE 13

RENEWABLE PERFORMANCE BOND

Bond No. _____

Amount _____

KNOW ALL MEN BY THESE PRESENTS, that we

Veolia Water Canada, Inc.

hereinafter called "the Principal"

– and –

hereinafter called "the Surety"

are jointly and severally held and firmly bound unto the City of Toronto and its successors, hereinafter called "the Oblige" as Trustee, in the sum of ten million dollars (**\$10,000,000.00 Dollars**) of lawful money of Canada, to be paid unto the Oblige, for which payment well and truly to be made, we, the Principal and Surety jointly and severally bind ourselves, and each of our respective heirs, executors, administrators, successors and assigns by these presents.

SIGNED AND SEALED with our respective seals and dated the ____ day of _____, 2007 (the "Effective Date").

AND WHEREAS by an agreement in writing, dated the ____ day of _____, 2007, the Principal has entered into a contract with the Oblige, hereinafter called "the Contract", for **Operation, Maintenance and Pellet Marketing Agreement for the Pelletizer Facility at Ashbridges Bay Water Treatment Plant**, which Contract is by reference herein made a part hereof as fully to all intents and purposes as though recited in full herein.

NOW THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall at all times duly perform and observe the Contract or as the same be changed, altered or varied as hereinafter provided, to the satisfaction of the Oblige, and shall at all times fully indemnify and keep indemnified the Oblige from and against all any and manner of loss, damage, expense, suits, actions, claims, liens, proceedings, demands, awards, payments and liabilities arising out of or in any manner based upon or attributable to the Contract, and shall fully reimburse and repay the Oblige for all outlay, expenses, liabilities, or payments incurred or undertaken to be made by the Oblige pursuant to the Contract, then this obligation shall be void, but otherwise it shall be and remain in full force and effect.

Provided further and it is hereby agreed and declared that there shall be no liability under this instrument of the Principal and Surety for payment of any claims for labour, material and services used or reasonably required for use in the performance of the Contract.

Provided always, and it is hereby agreed and declared, that the Oblige and Principal have the right to change, alter and vary the terms of the Contract and that the Oblige may in its discretion at any time or times take and receive from the Principal any security whatsoever and grant any extension of time thereon or on any liability of the Principal to the Oblige.

Provided further and it is hereby agreed and declared that the Principal and the Surety shall not be discharged and released from liability hereunder and that such liability shall not be in any way affected by such changes, alterations, or variations, taking or receiving of security, or extension of time, as aforesaid, or by the exercise by the Obligee of any of the rights or powers reserved to it under the Contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the Work to be constructed, altered, repaired or maintained under the Contract, or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Obligee.

And it is hereby declared and agreed that the Surety shall be liable as Principal, and that nothing of any kind or matter whatsoever that will not discharge the Principal shall operate as a discharge or release of liability to the Surety, any law or usage relating to the liability of sureties to the contrary notwithstanding.

This Bond shall expire three (3) years from the Effective Date but may be renewed by the Principal and Surety for three successive three (3) year terms (except for the last year of the third successive term in which case it may be renewed for a one (1) year term). However, should the Surety exercise its option not to renew, it must notify the City of Toronto c/o General Manager of Toronto Water [Insert Contact Information] in writing of its intention not less than one (1) year prior to the expiration of any three year term, otherwise this Bond shall be deemed to be automatically renewed for a further three year term.

Provided further and it is hereby agreed and declared that the Surety shall not be liable for a greater sum than that specified in this Bond.

IN WITNESS WHEREOF the Principal and the Surety have executed these presents.

SIGNED, SEALED AND DELIVERED:) Veolia Water Canada Inc.
)
)
) _____
) Name and Title
)
) [Insert Surety]
)
) _____
) Name and Title

SCHEDULE 14

LETTER OF CREDIT

Letter of Credit No. _____ Amount: \$4,000,000.00

Issued subject to the Uniform Initial Expiry Date: _____
Customs and Practice for
Documentary Credits (1993 Revision)
ICC Publication No. 500 (UPC 500)

Beneficiary: City of Toronto
2. City Hall, 100 Queen Street West
5th Floor, East Tower
Toronto, Ontario M5H 2N2
(the "City")

WE HEREBY AUTHORIZE THE CITY TO DRAW ON THE _____
(Name of Bank)
_____ (the "Bank", "we" or "us")
_____ (Address of Bank)

for the account of _____ (the "Customer")
(Name and Address of Customer)

UP TO AN AGGREGATE AMOUNT OF Four Million Dollars
(Amount written in full)

DOLLARS (\$4,000,000.00) available on demand (the "Aggregate Amount").

PURSUANT TO THE REQUEST OF the Customer, we hereby establish and give the City an Irrevocable Letter of Credit (this "Letter of Credit") in its favour in the Aggregate Amount which may be drawn on in whole or in part by the City at any time and from time to time, upon written demand for payment, made by the City upon us at the address of the Bank set forth above, which demand we shall honour promptly without enquiring whether the City has the right as between itself and the Customer to make such demand, and without recognizing any claim of the Customer, or objection by the Customer to payment by us. Without limiting the foregoing, all payments hereunder shall be made free and clear of, and without deduction for, any future taxes, restrictions or conditions of any nature whatsoever, and without set-off or counter claim for any reason whatsoever.

THIS LETTER OF CREDIT we understand relates to those municipal services or financial obligations, or both, set out in an agreement between the Customer and the City that is referred to as the Operation, Maintenance and Marketing Agreement dated [insert] related to the Pelletizer Facility at the Ashbridges Bay Treatment Plant in Toronto, Ontario.

THE AGGREGATE AMOUNT of this Letter of Credit may be reduced from time to time as advised by notice in writing to the undersigned by the City of Toronto.

PARTIAL AND MULTIPLE DRAWINGS of this Letter of Credit are permitted.

THIS LETTER OF CREDIT will continue in force for a period of one year from the date hereof; but shall be subject to the condition hereinafter set forth.

IT IS A CONDITION of this Letter of Credit that it shall be automatically extended without amendment or any action by the City or by us for a period of one year from the present or any future expiration date hereof, unless at least ninety (90) days prior to the present or any future expiration date we advise the City by written notice, delivered by prepaid registered mail to the City of Toronto, City Treasurer, City Hall, 5th Floor, East Tower, Toronto, ON M5H 2N2, that we elect not to consider this Letter of Credit to be renewable for any additional one year period beyond the then-current expiration date. Upon receipt by the City of such notice, the City may demand payment of the full amount outstanding under this Irrevocable Letter of Credit and we shall honour such demand upon the terms set out in this Irrevocable Letter of Credit.

Dated at Toronto, Ontario, this [insert] day of _____, 2007.

Countersigned by:

(Name of Bank)

Per:

Title:

SCHEDULE 15**GUARANTEE AGREEMENT****Guarantee**

In consideration of the sum of two dollars (\$2.00) and for such other good and valuable consideration from the City of Toronto (the "City"), the receipt and sufficiency of which is hereby acknowledged by Veolia Water North America Operating Services, LLC. (the "Guarantor"), the Guarantor hereby absolutely, unconditionally and irrevocably guarantees performance, observance and payment, as the case maybe, of all of the obligations of Veolia Water Canada, Inc. (the "Operator") as set out in the Operation, Maintenance and Pellet Marketing Agreement between the City and the Operator dated _____ (the "Agreement") and, without limitation of the foregoing, guarantees that the Operator will observe and perform any and all of its obligations under the Agreement whether to the City or otherwise. The Guarantor hereby further agrees with the City to effect prompt and complete performance of the obligations undertaken by the Operator in the Agreement in the event of the failure of the Operator to observe or perform such obligations. No modification of this Guarantee Agreement shall be effective unless it is in writing and is executed by both the Guarantor and the City.

City's Recourse

In the event of a default under this Guarantee Agreement by the Guarantor or by the Operator under the Agreement, the Guarantor waives any right to require the City to:

- i. proceed against the Operator or any other person or pursue any rights or remedies against the Operator with respect to the Agreement;
- ii. proceed against or exhaust any insurance or financial security of the Operator or any other person held by the City;
- iii. pursue any other remedy whatsoever in the City's power; or
- iv. subrogate the Guarantor to any rights of the City whatsoever.

The City has the right to enforce this Guarantee Agreement regardless of the acceptance of additional security from the Operator or any person and regardless of any release or discharge of the Operator by the City or by others or by operation of any Laws (as defined in the Agreement).

Guarantee Is Absolute and Unconditional

This Guarantee Agreement is continuing, absolute, unconditional and irrevocable and shall remain in full force and effect until each and every obligation of the Operator in the Agreement has been satisfied in full in accordance with the terms and conditions of the Agreement.

Except as otherwise provided for herein, the liability or the obligations of the Guarantor shall not be released, discharged, mitigated, impaired or affected by:

- i. any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) held in connection with, the Agreement; or
- ii. any failure, neglect or omission on the part of the City to give the Guarantor notice of the occurrence of any default or non-performance by the Operator under the Agreement, or to realize upon any obligations or liabilities of the Operator; or

-
- iii. any amalgamation, merger or consolidation of the Operator or the Guarantor (or any of them) or any sale, lease or transfer of any of the assets of the Operator or any of the Guarantor; or
 - iv. any change in the ownership of any shares of the capital stock of the Operator or the Guarantor (or any of them); or
 - v. any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing and any other circumstance that might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against the Guarantor; or
 - vi. any release or discharge of the Operator in any receivership, bankruptcy, winding up or other creditor's proceedings; or
 - vii. any rejection, disaffirmance or disclaimer of the authority, corporate or otherwise, of the Operator or the Guarantor to enter into the Agreement or to perform its obligations hereunder, or both, in any proceeding; or
 - viii. any lack of enforceability of the Agreement or any part thereof; or
 - ix. any assignment of the Agreement by the Operator or by any trustee, receiver or liquidator, whether with or without the consent of the City; or
 - x. any amendment to the Agreement or any waiver by the Operator of any of its rights under the Agreement without Notice to the Guarantor; or
 - xi. any set-off, defence or counterclaim that the Operator or the Guarantor may have or claim to have at any time; or
 - xii. any renewal or extension of the Term (as defined in the Agreement) of the Agreement; or
 - xiii. any loss of or in respect of any security received or intended to be received by the City from the Operator or from any other person, firm or corporation, whether or not occasioned or contributed to by or through the act, omission, default or neglect of the City;
 - xiv. the expiry of the Term of the Agreement; or
 - xv. any termination of the Agreement by operation of Law or otherwise.

Notice

The City shall provide the Guarantor with notice of non-performance on the part of the Operator of its obligations in the Agreement. For purposes of this Guarantee Agreement, notice given by the City to the Operator under the Agreement shall be deemed to be notice to the Guarantor. The Guarantor agrees that it shall be bound by any account settled between the City and the Operator with respect to the Agreement.

Any notice, demand, or other communication required under this Guarantee Agreement shall be given by the City in writing and shall be effective if (i) delivered personally to the Guarantor; or (ii) sent by prepaid registered mail, return receipt requested or (iii) sent by prepaid nationally recognized courier or delivery service and by facsimile, in each case to the applicable address set forth below:

If to the Guarantor, to: Veolia Water North America Operating Services LLC

[insert Address]

Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery provided that such day is a business day and the communication is so delivered before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following business day. Any such communication sent by registered mail shall be deemed to have been given and made and to have been received on the fifth business day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

No Bar or Defence

No action brought under this Guarantee Agreement and no recovery in pursuance thereof shall be a bar or defence to any further action which may be brought by reason of any further default under this Guarantee Agreement or in the observance of the terms of the Agreement, provided the City shall not be entitled to recover beyond the extent of the exposure of the Operator, as reduced by any remedy performed by the Guarantor.

Separate Agreement

In the event that the Agreement is disclaimed or terminated, the provision of this Guarantee Agreement shall remain in full force and effect in accordance with its terms to the same extent as if this Guarantee Agreement is a separate agreement entered into between the City and the Guarantor for due consideration and under seal.

Postponement

All debts, obligations and liabilities of the Operator to the Guarantor, present and future, are hereby postponed to all of the obligations of the Operator to the City. Upon the Guarantor being given notice by the City of any outstanding obligations of the Operator to the City. The Operator agrees that all debts, obligations and liability of the Operator to the Guarantor, then present and future, will be immediately assigned to the City. Further all money, property and other benefits received by the Guarantor from the Operator after said notice has been given by the City shall be received in trust for the City and, forthwith upon receipt, the Guarantor shall pay the same to the City on account of any outstanding obligations of the Operator to the City.

Fulfilment of Terms by Guarantor

The City and the Operator acknowledge and agree that the Guarantor shall be entitled to assume the rights and benefits of the Operator provided for in the Agreement provided that the Guarantor agrees to assume all obligations and liabilities of the Operator hereunder and comply with all requirements and obligations in the Agreement and shall have delivered not less than thirty (30) days prior, written notice to the City and the Operator of the Guarantor's intention to do so .

Ongoing Assistance to the Operator

The Guarantor is committed to the success of the Operator under the Agreement and shall without being called upon by the City pursuant to this Guarantee Agreement assist the Operator financially and otherwise, in the fulfilment of all of the Operator's obligations under the Agreement.

Defence of Guarantor

It is the intent and purpose hereof that the Guarantor shall not be entitled to and does hereby waive any and all defences available to guarantors, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, the Guarantor hereby waives notice of acceptance of the Agreement and of the non-performance by the Operator, diligence, presentment, protest, dishonour, demand for payment from the Operator and notice of non-payment or failure to perform on the part of the Operator and all other notices whatsoever. The guarantee hereunder is a guarantee of payment, performance, observance and compliance. In order to hold the Guarantor liable hereunder, there shall be no obligation on the part of the City at any time to demand or resort for payment or performance to the Operator, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that the Operator be joined as a party to any proceeding for the enforcement of any provision of this Guarantee Agreement and the City shall have the right to enforce the provisions of this Guarantee Agreement irrespective of whether or not legal proceedings or other enforcement efforts against the Operator are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, the Operator shall be in default under the Agreement and that, notwithstanding recovery hereunder for or in respect of any such default, the guarantee herein shall remain in force and effect and shall apply to each and every subsequent default.

Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of the Guarantor under this Guarantee Agreement and without in any way requiring the consent of or giving notice to the Guarantor, the City may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with the Operator and/or the Guarantor or others, including any other guarantors, as the City may see fit and the City may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as the City may see fit.

The guarantee hereunder shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the obligations hereunder is rescinded or must otherwise be restored or returned by the City upon the insolvency, bankruptcy or reorganization of the Operator, or otherwise, all as though such payment had not been made.

Demand by the City

The liability of the Guarantor under the Guarantee herein shall arise forthwith after demand has been made by the City in writing on the Guarantor at the address listed above and the liability of the Guarantor shall bear interest from the date of such demand at the monthly average prime rate at Royal Bank of Canada, plus three (2%) percent.

The Guarantor agrees to pay to the City any and all of its costs and expenses, including legal fees, incurred by the City in connection with enforcing any of its rights hereunder.

A waiver by the City of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the City would otherwise have had on any future occasion with regard to any subsequent breach. No failure to exercise nor any delay in exercising on the part of the City any right, power or privilege hereunder shall operate as a 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 may be exercised singly or concurrently, and are not exclusive of any other rights and remedies provided under the Agreement or otherwise by law.

Capitalized Terms

Any capitalized term used in this Guarantee Agreement - Schedule 16 but not defined herein shall have the meaning given to it in the Agreement.

IN WITNESS WHEREOF, the Guarantor has hereunto affixed its corporate seal attested to by the hands of its proper officers in that regard duly authorized and have executed this Guarantee Agreement this [insert] day of [insert], 2007.

SIGNED, SEALED AND DELIVERED:

**VEOLIA WATER NORTH AMERICA
OPERATING SERVICES LLC.**

Name:
Title:
Address:

SCHEDULE 16**LEGAL OPINION**

[To be typed on the Letterhead of a Solicitor licensed to practice in the Province of Ontario]

[Insert Date]

CITY OF TORONTO

General Manager of Water
East Tower, City Hall
100 Queen Street West, 5th Floor,
Toronto, Ontario
M5H 2N2

Attn: _____

CITY OF TORONTO

City Contract Manager
East Tower, City Hall
100 Queen Street West, 5th Floor,
Toronto, Ontario
M5H 2N2

Attn: _____

We act for Veolia Water Canada, Inc (the "Operator") and its parent company, Veolia Water North America Operating Services, LLC. (the "Guarantor") in connection with the Operation, Maintenance and Pellet Marketing Services Agreement (the "Agreement"), dated _____ between the Operator and the City of Toronto (the "City") and in connection with the Guarantee Agreement dated _____ executed by the Guarantor in favour of the City attached as Schedule 17 to the Agreement.

This opinion letter is being provided pursuant to Article 24 of the Agreement.

We are of the opinion that:

1. With respect to the Operator:

- (a) The Operator has been duly incorporated, amalgamated or continued, as the case may be, under the laws of the Province of Ontario and the Operator has filed its annual returns and financial statements under the *Ontario Business Corporations Act*,
- (b) The Operator has all necessary corporate power and authority to execute and deliver, and to perform all of its obligations under the Agreement; and
- (c) The execution, delivery and performance by the Operator of the Agreement has been duly authorized by all necessary corporate action and the Operator has duly executed the Agreement and the Agreement is a valid, binding and legal obligation of the Operator enforceable against the Operator in the Province of Ontario in accordance with its terms.

2. With respect to the Guarantor:

- (d) The Guarantor has been duly incorporated, amalgamated or continued, as the case may be, under the laws of the [?] and the Guarantor is in good standing with respect to the filing of annual reports with [NTD – Insert corporate registry].
- (e) The Guarantor has all necessary corporate power and authority to execute and deliver, and to perform all of its obligations under the Guarantee Agreement; and
- (f) The execution, delivery and performance by the Guarantor of the Guarantee Agreement has been duly authorized by all necessary corporate action and the Guarantor has duly executed and delivered the Guarantee Agreement and the Guarantee Agreement is a

valid, binding and legal obligation of the Guarantor enforceable against the Guarantor in the Province of Ontario in accordance with its terms.

Yours truly

SCHEDULE 17**TERMINATION PAYMENT SCHEDULE****1. Introduction and Definitions**

1.1 Introduction

This Schedule applies to amounts payable in the event of termination of the Agreement.

1.2 Definitions

“Earned Commissioning Fee” means the Commissioning Fee earned by the Operator, up to and including the Termination Date, but not paid by the City calculated pursuant to Article 8 of the Agreement.

“Earned Commercial Operation Fee” means the Commercial Operation Fee earned by the Operator, up to and including the Termination Date, but not paid by the City calculated pursuant to Article 8 of the Agreement.

“Earned Secondary Testing Fee” means the Secondary Testing Fee earned by the Operator, up to and including the Termination Date, but not paid by the City calculated pursuant to Article 8 of the Agreement.

“Operator Cost” means the reasonable actual net cost of the Operator directly related to an event or object under consideration. Operator Cost may include but is not limited to expenses, fees, disbursements, salaries, wages, products, payments to subcontractors and suppliers and rentals.

“Operator Profit Amount” means the aggregate profit amount that would have been earned by the Operator from the Commercial Operation Fee under the Agreement, if the Agreement was not terminated but which will not be earned by reason of the termination of the Agreement. The Operator Profit Amount shall be calculated as the present value of the difference between the Commercial Operation Fee which the Operator would have earned but for the termination less, without duplication, all of the Operator Cost the Operator would have expended to earn such Commercial Operation Fee. The Operator Profit Amount shall be verified through audit by the City as described in Section 4 below.

“Operator Transition Cost” means the Operator Cost to complete the transition of the Pelletizer Facility to the City as described in Article 10 after the Termination Date.

“Post-Termination Cost” means the actual cost incurred by the Operator directly related to the termination of the Agreement which would not have been incurred by the Operator except for the termination and which were pre-existing obligations of the Operator prior to the termination. For greater certainty, Post-Termination Cost shall exclude damages.

“Termination Payment” means the total amount the Operator is entitled to receive pursuant to this Schedule in the event of a termination of the Agreement subject to Operator complying with all of its obligations under the Agreement.

“Unpaid Mobilization Fee” means the portion of the Mobilization Fee which remains unpaid as of the Termination Date.

“Unrecovered Capital Improvement Cost” means any undepreciated Capital Improvement cost (including, if applicable, related to the Enhancements and the Employee Facilities) of the Operator (up to and including the Termination Date) to the extent that the Operator has not recovered such cost from the City. For the purpose of this Schedule, all Capital Improvements (including the Enhancements and the Employee Facilities) are to be depreciated on a straight line 25% per year basis.

1.3 Capitalized Terms

Any capitalized term used in this Schedule 18 but not defined herein shall have the meaning given to it in the Agreement.

2. Termination Payment

2.1 Termination of Agreement prior to Effective Date pursuant to Article 2 due to Default by the Operator.

If the City terminates the Agreement pursuant to Article 2.2, then the Operator shall, subject to complying with the terms of the Agreement including Article 2.2(d), be entitled to receive the Earned Secondary Testing Fee.

2.2 Termination of Agreement Prior to Effective Date pursuant to Article 29 due to Default by the City

If the Operator terminates the Agreement prior to the Effective Date pursuant to Article 29, then the Operator shall be entitled to receive the following amounts:

- (i) Earned Secondary Testing Fee;
- (ii) Unpaid Mobilization Fee;
- (iii) Operator Transition Cost;
- (iv) Post-Termination Cost;
- (v) Unrecovered Capital Improvement Cost;
- (vi) Earned Commissioning Fee; and
- (vii) Ten per cent (10%) of the total Operator Profit Amount.

2.3 Termination of Agreement by the City after the Effective Date pursuant to Article 11 – Suspension or Termination for other than Default or by the Operator pursuant to Article 30 – Default by the City

If the City terminates the Agreement after the Effective Date pursuant to Article 11 or the Operator terminates the Agreement after the Effective Date pursuant to Article 30, then the Operator shall be entitled to receive the following amounts:

- (i) Earned Commercial Operation Fee;
- (ii) Operator Transition Cost;
- (iii) Post-Termination Cost;
- (iv) Fifty percent (50%) of the remaining Operator Profit Amount; and
- (v) Unrecovered Capital Improvement Cost.

2.4 Termination of Agreement by the City after the Effective Date pursuant to Article 27 – Default by the Operator

If the City terminates the Agreement after the Effective Date pursuant to Article 26, then the Operator shall not be entitled to any further amounts under the Agreement.

2.5 Termination of Agreement by the City pursuant to Article 20 - Uncontrollable Circumstances

If the City or the Operator terminates the Agreement pursuant to Article 20 as a result of an Uncontrollable Circumstance, then the Operator shall be entitled to receive the following:

- (i) Earned Commercial Operation Fee;
- (ii) Operator Transition Cost;

- (iii) Unrecovered Capital Improvement Cost; and
- (iv) Post-Termination Cost.

3. Disputes

In the event there is a dispute related to the entitlement or amount of Termination Payment, such dispute shall be resolved in accordance with the dispute resolution mechanism in Article 18 of the Agreement.

4. Invoicing

If a Termination Payment is payable by the City pursuant to this Schedule, then no more than 60 days after the Termination Date, the Operator will deliver to the City an invoice, including a breakdown of each of the individual elements of the Termination Payment ("Termination Invoice"), together with all supporting back up documentation necessary for the City's review of the Termination Invoice. Notwithstanding anything else in this Agreement, the City shall be entitled to audit all of the books and records of the Operator in accordance with Article 9.2 of the Agreement to verify the accuracy of the Termination Invoice or the Operator's entitlement to or the amount of the Termination Payment.

5. Payment

The City will pay the Termination Payment to the Operator sixty (60) days after the approval by the City of the Termination Invoice or thirty (30) days after the determination of the Termination Payment pursuant to the audit, if applicable in section 4 above, or if there is a dispute regarding the Termination Invoice, the final resolution of the dispute under the dispute resolution mechanism in Article 18 of this Agreement.

6. Obligation to Act Reasonably

The Parties hereto agree to act reasonably and in good faith to calculate any Termination Payment herein to facilitate the termination of the Agreement.