

vSaaS™ SERVICES AGREEMENT

Parties and Contacts	
Browns Hill Engineering & Controls, LLC 8130 Shaffer Parkway, Suite A Littleton, CO 80127 Attn: Matt Ballard E-mail: mdballard @BrownsHillEng.com Referred to herein as "Browns Hill"	City of Fruita 325 E. Aspen Ave. Fruita, CO 81521 Attn: Kimberly Bullen, Public Works Dir. E-mail: kbullen@fruita.org Referred to herein as "FRUITA"

Whereas Browns Hill and FRUITA desire to enter into an agreement beneficial to both parties and to establish a framework for an ongoing relationship, this vSaaS™ Services Agreement ("vSaaS™ Services Agreement") is entered into between Browns Hill and FRUITA, effective on the date that it is signed by both parties ("Effective Date").

1. **Agreement.** Effective on the Effective Date, Browns Hill shall provide to FRUITA the capabilities, features and functions of Human Machine Interface/Supervisory Control and Data Acquisition ("HMI/SCADA") as a service, to manage and control the functions provided by FRUITA to its customers (collectively the "Services"). The Services will be provided through the system described in Exhibit A ("System") at the FRUITA locations determined by FRUITA and Browns Hill and set forth on Exhibit A ("Locations"). The Services will be provided beginning on a date determined jointly by Browns Hill and FRUITA to be the date that the functions provided by FRUITA to its customers will be transitioned from FRUITA's existing system, if any, to the System ("System Implementation Date"). During the Term of this vSaaS™ Services Agreement, Browns Hill shall provide the Services at the rates and terms set forth on Exhibit B to this vSaaS™ Services Agreement.

2. **Initial Setup.** After the Effective Date, Browns Hill will install, configure, and otherwise prepare the equipment described on Exhibit A, and configure the System to prepare it for implementation. Browns Hill shall notify FRUITA once the System is ready for implementation, and the parties shall jointly determine the System Implementation Date. Implementation will be conducted by Browns Hill in cooperation with FRUITA, and FRUITA shall ensure that the necessary FRUITA staff are available to assist with implementation as determined necessary by Browns Hill.

3. **Browns Hill Obligations after Implementation.** Starting on the System Implementation Date, Browns Hill commits to providing the following as part of the Services:
 - a. *System Management.* Browns Hill will provide overall management of the System to allow it to function as appropriate for FRUITA. This includes:
 - i. Interfacing with the broadband service provider to resolve issues related to

internet outages and other issues concerning internet services to the Location(s) for the System Equipment if the internet service is provided by Browns Hill.

ii. troubleshooting and monitoring of all items listed in Exhibit A.

b. *System Equipment Maintenance.* Browns Hill will maintain the System Equipment. This includes:

i. Maintenance and replacement of the devices described on Exhibit A.

ii. Hardware and software updates, configuration, and reconfiguration as necessary, and

iii. Any licensing required to use and operate the System Equipment.

c. *Backup.* Browns Hill will provide backup services and will maintain and troubleshoot the backup services.

d. *Monitoring.* As set forth in Exhibit C, Browns Hill will provide active monitoring of network quality and status of the System Equipment.

e. *Damage from Causes Outside of Browns Hill's Control.* Browns Hill will provide maintenance, service, installation, repair, replacement, and testing of System Equipment at the Location(s) for damage resulting from the causes listed in this Subsection (3)(d). Any damage resulting from any or all of the causes listed in this Subsection (3)(d) and which must be repaired/replaced and tested, must be repaired/replaced and tested by Browns Hill, at the rates set forth in Exhibit B - "Extracurricular Service" plus actual costs (travel to and from the Location(s), lodging near the Location(s), car rental, and any other related out of pocket costs). The costs of any equipment or software determined necessary or advisable by Browns Hill to replace the equipment or software which is part of the System shall be borne by FRUITA and shall be purchased by Browns Hill and provided at Browns Hill's actual cost. The causes listed in this Subsection (3)(d) are:

i. Force Majeure, i.e., factors outside the control of Browns Hill and/or FRUITA, including, but not limited to natural disasters, extreme weather events, war, acts of terrorism, criminal acts, riots, strikes or other labor disturbance, government action or Acts of God;

ii. Utility failures (regardless of the cause of the utility failure), including telecommunications failures;

iii. Failure of FRUITA (or any person or entity acting on behalf of FRUITA): (a) to observe directions in the user's manual, instructions, or the like for any System Equipment, (b) to observe instructions from Browns Hill, or (c) any other incorrect use or inappropriate operation by FRUITA (or any person or entity acting on behalf of FRUITA);

- iv. Modifications to devices, repairs, or attempted repairs to devices without written authorization by Browns Hill (including any considered by FRUIT to be required because of emergency, unless the emergency is caused by Browns Hill), or repairs or replacements or attempted repairs or replacements to System Equipment which are not performed in accordance with written authorization by Browns Hill;
 - f. Work Required Outside This Services Agreement. In the event one or more components of the System Equipment are damaged by work performed by another party not commissioned by Browns Hill, Browns Hill will maintain, service, install, repair, replace and test the affected System Equipment. This includes, but is not limited to, warranty maintenance, service, installation, repair, replacement and/or testing, if the relevant manufacturer's warranty requires an authorized company to perform the same to the devices and Browns Hill is not an authorized company. If Browns Hill is required to participate in any such maintenance, service, installation, repair, replacement or testing, such work will be done at Browns Hill's current service rates at the time the work is performed, plus costs (travel to and from the Location(s), lodging near the Location(s), car rental, and any other related out-of-pocket costs).
4. Exceptions to Browns Hill's Obligations. Notwithstanding any provision of this vSaaS™ Services Agreement to the contrary, Browns Hill shall not be obligated to provide any of the following services to FRUITA:
- a. *Application Software.* Licensing, updating, developing, and monitoring of application software which is not included in the System.
 - b. *Web Servers.* Setup of web servers, web server development, and web server verification with respect to such equipment or software which is not included in the System.
 - c. *Video.* Video monitoring and recovery with respect to equipment or software which is not included in the System.
 - d. *VoIP.* Configuration, troubleshooting, and monitoring with respect to such equipment or software which is not included in the System.
 - e. *Cosmetic Work.* Any maintenance, service, installation, repair, replacement and/or testing of solely cosmetic defects which do not affect the operation of devices included in the System Equipment.
 - f. *Equipment which is Not part of the System.* Repair, replace and test damage requiring maintenance, service, installation, repair, replacement and/or testing of equipment which is not included in the System.
5. Service Level Agreement. Attached hereto as Exhibit C is a Service Level Agreement executed of even date herewith, the terms of which are incorporated by this reference into this vSaaS™ Services Agreement.

6. Reports. Browns Hill shall provide the reports described in this Section to FRUITA from time to time during the term of this vSaaS™ Services Agreement. Such reports shall be provided in the format and by the method determined jointly by Browns Hill and FRUITA.
 - a. *Standard Reports.* The cost of producing these reports is included in the compensation set forth on Exhibit B.
 - i. Operational - Hourly, Daily and Monthly, Itemized and Summary of major operational parameters, e.g., Flow/Volume, Level, Pressure, etc. These reports shall be produced and delivered electronically as required.
 - ii. Regulatory - Hourly, Daily and Monthly, Itemized and Summary of measured parameters as required by relevant regulation and suitable for official submission to regulatory agency. These reports shall be produced and delivered electronically as required.
 - iii. Alarm Summary - Hourly, Daily and Monthly. These reports shall be produced and delivered electronically as required.
7. Repairs/Claims. Browns Hill shall notify FRUITA immediately of any and all damage caused by Browns Hill to FRUITA property and that of third parties. Browns Hill will promptly repair or, at FRUITA's option, reimburse FRUITA for the repair of any damage to property caused by Browns Hill or its employees, agents, or equipment. Browns Hill agrees that it has and will continue to comply with all Laws while providing Services under this Agreement. "Laws" means: (i) federal, state, county and local or municipal body or agency laws, statutes, ordinances and regulations; (ii) any licensing bonding, and permit requirements; (iii) any laws relating to storage, use or disposal of hazardous wastes, substances or materials; (iv) rules, regulations, ordinances and/or similar directives regarding business permits, certificates and licenses; (v) regulations and orders affecting safety and health, including but not limited to the Occupational Safety and Health Act of 1970; (vi) Wage and Hour laws, Worker Compensation laws, and immigration laws.
8. Ownership of FRUITA Data. As used in this Section, the term "FRUITA Data" shall include data: (i) which describes the operations of FRUITA , (ii) electronic records which FRUITA maintains or is required to maintain to provide services to its customers, (iii) its business or statistical information created or maintained by or on behalf of FRUITA , and any measurement, transaction, or determination related to the services provided by FRUITA to its customers. FRUITA Data shall include any of the above which are generated by the System or which Browns Hill may have access to in the course of providing the Services. FRUITA shall be the "Asset Owner" and shall own all FRUITA Data.
 - a. FRUITA hereby grants to Browns Hill a nonexclusive, nontransferable, worldwide:

- i. license to use the FRUITA Data for the sole purpose of providing the Service and maintaining the System, including the internal distribution of FRUITA Data;
 - ii. license to reproduce, display or distribute FRUITA Data as required to produce the Reports required by Section 6 above.
 - b. All FRUITA Data shall be maintained as confidential by Browns Hill and shall be used only for the purposes described herein. Browns Hill agrees that none of the FRUITA Data may be disclosed in any fashion to any other person or entity, regardless of their relationship, until written approval of such disclosure has been obtained from FRUITA. In the event Browns Hill receives a subpoena or other court order to divulge FRUITA Data to a third party, Browns Hill shall notify FRUITA as soon as possible in order to provide FRUITA an opportunity to address such subpoena or court order. FRUITA is subject to the Colorado Open Records Act (CORA) and disclosure of information pursuant thereto or otherwise required by law shall not be a violation of any confidentiality provisions contained herein.
9. Conflicts
Prior to the execution of, and during the performance of this Agreement and prior to the execution of future agreements with FRUITA Browns Hill agrees to notify FRUITA of conflicts known to Browns Hill that impact Browns Hill's provision of Services to FRUITA.
10. Compensation. FRUITA shall pay to Browns Hill for all services rendered hereunder and all equipment, hardware and software purchased for FRUITA as provided herein during the Term, the amounts determined according to the rates and terms set forth on Exhibit B. Browns Hill will supply invoices to the address listed herein. Invoices are due the first day of the month of the lease period identified on the face of the invoice. The parties agree that the Client's payment of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.
11. Term of Agreement. The Term of this vSaaS™ Services Agreement ("Term") shall commence on the System Implementation Date. The Minimum Agreement Term shall be sixty (60) months. Thereafter, a new vSaaS™ Services Agreement shall be executed, except either party may, after the Minimum Agreement Term, terminate this Agreement, providing sixty (60) days written notice is supplied, subject to annual appropriations by FRUITA in compliance with TABOR. Nothing herein shall be construed as creating a multi-year fiscal obligation.
12. Buy-Out. Browns Hill stands behind the System, the Services and believes FRUITA will be satisfied with both. Notwithstanding, the following provisions are given to ensure FRUITA's satisfaction:

- a. After the first twelve (12) months of the Term of the vSaaS™ Service Agreement, FRUITA may elect to purchase some components used to provide the Service. This right is limited to equipment used locally to provide the Service, e.g., radios, modems, enclosures, etc. The internet-based components are specifically excluded. Nevertheless, comparable components to the internet-based components can be purchased from Browns Hill. The purchase price of said components will be via quote from Browns Hill to FRUITA upon request by FRUITA.

13. Liability: Insurance: Indemnification.

- a. To the fullest extent permitted by law, Browns Hill shall indemnify, defend and hold harmless City, its members, affiliates, officers, directors, partners, employees, and agents from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of the performance of the Services, provided that any such claim, damage, loss or expense is caused by any negligent act or omission of Browns Hill, anyone directly or indirectly employed by Browns Hill or anyone for whose acts Browns Hill may be liable, except to the extent any portion is caused in part by a party indemnified hereunder.
- b. Nothing herein shall constitute a waiver by FRUITA of any provisions of the Colorado Governmental Immunity Act (CGIA), C.R.S. §§ 24-10-101 *et seq.* as exists or may be amended.
- c. At all times while the Browns Hill is rendering Services, Browns Hill, or any agent thereof, shall maintain Comprehensive General Liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and of Two Million Dollars (\$2,000,000.00) aggregate. The policy shall be applicable to all premises and all operations of the Contractor. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interest's provision. Coverage shall be provided on an "occurrence" basis as opposed to a "claims made" basis. Such insurance shall be endorsed to name FRUITA as Certificate Holder and name FRUITA, and its elected officials, officers, employees and agents as additional insured parties. Such insurance shall provide that it may not be cancelled without thirty (30) days' prior written notice to FRUITA.
- d. Each party entitled to indemnification hereunder shall serve written notice of the claim for indemnification, along with supporting documentation, on the party from whom the indemnification is sought hereunder. The indemnifying party shall have the right to defend any litigation, action, suit, demand, or claim for which indemnification may be sought unless the indemnified party elects to defend any such litigation. If the indemnifying party defends the litigation, action, suit, demand or claim, the indemnified party shall extend reasonable cooperation in connection with such defense, which shall be at the indemnifying party's sole expense. If the indemnifying party fails to defend the same within a reasonable period of time, the indemnified party shall be entitled to assume the defense thereof, and the indemnifying party shall be liable

to repay the indemnified party for all expenses reasonably incurred in connection with said defense (including reasonable attorneys' fees and settlement payments) if it is determined that such request for indemnification was proper. If the indemnifying party shall not have the right to assume the defense of any litigation, action, suit, demand, or claim in accordance with either of the two preceding sentences, the indemnified parties shall have the absolute right to control the defense of such litigation, action, suit, demand, or claim; provided, however, that litigation, action, suit, demand, or claim shall not be compromised or settled without the written consent of the indemnifying party, which consent shall not be unreasonably withheld. In the event the indemnified party assumes the defense of any such litigation, action, suit, demand, or claim, the indemnified party shall keep the indemnifying party reasonably informed of the progress of any such defense (including any proposed compromise or settlement).

14. Assignment and Subcontractors. Browns Hill shall not assign this vSaaS™ Services Agreement or parts thereof for its respective duties, without the express written consent of FRUITA. Notwithstanding the foregoing, FRUITA acknowledges and agrees that Browns Hill may use subcontractors to perform the Services, in Browns Hill's discretion. Browns Hill is solely and fully responsible to FRUITA for the performance of all Services in accordance with the terms set forth in this Agreement, whether performed by the Contractor or a subcontractor engaged by the Contractor.
15. Open Records. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S. Prior to producing copies of this vSaaS™ Services Agreement or any documents reflecting Browns Hill's pricing for the services provided hereunder, FRUITA shall provide Browns Hill with the reasonable right to direct a denial of the right of inspection for any document or portion of a document for which inspection may be denied under the provisions of the Colorado Open Records Act, including, but not limited to, any document or portion of a document which contains trade secrets, privileged information, and confidential commercial or financial data under § 24-72- 204(3)(a)(IV) or any other provision of the Colorado Open Records Act.
16. Tax Exempt Status. FRUITA is exempt from Colorado state sales and use taxes. Accordingly, taxes from which FRUITA is exempt shall not be included in any invoices submitted to FRUITA. FRUITA shall, upon request, furnish Contractor with a copy of its certificate of tax exemption.
17. Miscellaneous.
 - a. Anti-discrimination. Browns Hill is an equal opportunity employer, and agrees not to discriminate against any employee, contractor or applicant for employment or contract labor because of race, creed, color, national origin, sex, sexual orientation, age, physical defect or disability, or any other class of person legally protected in Colorado with regard to but not limited to employment upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination, or selection for training. This Agreement is subject to all applicable laws and executive orders relating to equal opportunity and non-discrimination in employment and Browns Hill represents and

warrants that it will not discriminate in its employment practices in violation of any such applicable law or executive order.

18. Force Majeure. Browns Hill shall not be responsible for delays in the performance of the Services caused by factors beyond its reasonable control including delays caused by Act of God, accidents, failure of any governmental or other regulatory authority to act in a timely manner or failure of FRUITA to furnish timely information or to approve or disapprove of Browns Hill's Services in a timely manner.
19. Prior Agreements; Amendments. This Agreement and any Addenda hereto contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this vSaaS™ Services Agreement, and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose. All such documents shall be considered one integrated agreement. This agreement can be amended by mutual agreement of both parties. However, no provision of this vSaaS™ Services Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. In addition, both parties agree that from time to time this agreement will be reviewed by both parties to assure it continues to perform to the mutual satisfaction of both parties. This vSaaS™ Services Agreement shall not be effective or binding on any party until fully executed by all parties hereto.
20. Independent Contractor Status. Browns Hill is an independent contractor and nothing in this Agreement shall constitute or designate Browns Hill or any of its employees or agents as employees or agents of FRUITA. Browns Hill shall have full power and authority to select the means, manner, and method of performing its duties under this Agreement, without detailed control or direction from FRUITA and shall be responsible for supervising its own employees or subcontractors. **Browns Hill shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement, or any other document attached or referenced herein, to have entered into any partnership, joint venture, employer-employee or other relationship with FRUITA other than as a contracting party and independent contractor. FRUITA shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for Browns Hill or its employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.**
21. Attorney Fees, Costs and Expenses. In the event any action, proceeding or litigation, judicial or non-judicial, arises out of the subject matter of this vSaaS™ Services Agreement, the prevailing party, as determined by the Court, shall be entitled to payment of all costs, expenses and attorney fees incurred, including those incurred on appeal and for collection of a judgment.
22. Authority. FRUITA represents and warrants that it has the power to enter into this vSaaS™ Services Agreement; that all procedures required for the authorization and execution of this vSaaS™ Services Agreement, including competitive bidding, if applicable, have been taken or complied with; that all payments made hereunder will be paid out of funds which are

legally available for such purposes subject to appropriation.

23. Authority to Execute. The individual executing this vSaaS™ Services Agreement warrants to Browns Hill that such person has sufficient authority to bind FRUITA. Such individual represents and warrants that he or she has the power and authority to execute and deliver this vSaaS™ Services Agreement on behalf of FRUITA.

Browns Hill Engineering & Controls, LLC:

City of Fruita

By: _____

By: _____

Matt Ballard
Chief Operating Officer

Michael P. Bennett
City Manager

Date: _____

Date: _____

EXHIBIT A
TO
vSaaS™ SERVICES AGREEMENT
Between
BROWNS HILL ENGINEERING & CONTROLS, LLC
and
CITY OF FRUITA

DESCRIPTION OF SYSTEM

This Exhibit is incorporated into the vSaaS™ Services Agreement referenced above. The Services will be provided through a " cloud -based" platform, hosted by a third-party provider determined in the sole discretion of Browns Hill.

This platform will be accessed with broadband ethernet-based communications to process control locations using devices and equipment determined by Browns Hill. Such devices and equipment used to access the platform may be owned by either Browns Hill or FRUITA. Collectively the devices and equipment used in the System shall be referred to as "System Equipment". The devices and equipment listed below on this Exhibit are provided for use by FRUITA to allow Browns Hill to provide the Services. This equipment is owned by Browns Hill, and title to such equipment shall not pass to FRUITA unless purchased by FRUITA using the Buy-Out right.

Any non-substantial adjustments to the System within sixty (60) days after the System Implementation Date will be done at no cost; after sixty (60) days any adjustments to the System will be performed at the rates set forth on Exhibit B.

The System provides the Service at the location(s) specified below. The following lists the equipment comprising the System. Any equipment added by Browns Hill, or which replaces the equipment described below will be owned by Browns Hill as well.

DISTRICT OFFICE

QTY.	HMI/SCADA DESCRIPTION
2	BHEC vSaaS™ Edge IIoT Gateway w/cellular data service
1	Fortigate Firewall

In addition, Browns Hill provides unlimited access to the vSaaS™ platform for FRUITA personnel with capabilities for real time monitoring and control, visualization, historical data storage and trending, reports, and alarms/notifications.

FRUITA shall provide electrical power and a secure location for Browns Hill equipment.

Browns Hill Engineering & Controls, LLC

City of Fruita

By: _____

By: _____

Matt Ballard
Chief Operating Officer

Michael P. Bennett
City Manager

Date: _____

EXHIBIT B
TO
vSaaS™ SERVICES AGREEMENT
Between
BROWNS HILL ENGINEERING & CONTROLS, LLC
and
FRUITA WASTEWATER TREATMENT FACILITY

VSAAS™ SERVICES AGREEMENT TERMS SCHEDULE

This Exhibit is executed pursuant to that vSaaS™ Services Agreement (the "vSaaS™ Services Agreement") referenced above. Capitalized terms defined in the vSaaS™ Services Agreement shall have the same meaning in this Exhibit. The terms set forth below are incorporated into the vSaaS™ Services Agreement by this reference.

One-Time Mobilization Fee: Waived (due to 100% down payment)

Minimum Term of vSaaS™ Services Agreement: Sixty (60) months.

Down Payment: \$194,718.00 Due upon contract execution

Monthly Service Fee: \$0.00 (due to full lease amount being paid upfront)

Payment Method: _____ [check, credit card, EFT, etc.]

System Modifications: If substantive changes to the system are requested by FRUITA after sixty (60) days from the Implementation Date, Browns Hill will quote the price for said changes to FRUITA using then current Browns Hill Standard Labor Rates, plus equipment and supplies. FRUITA may elect to pay for these changes via a one-time fee or an increase in the Monthly Service Fee at FRUITA's discretion.

Extracurricular Service: Browns Hill will provide maintenance, service, installation, repair, replacement, and testing of System Equipment at the Location(s) for damage resulting from causes outside of Browns Hill's control (see Subsection (3)(d)) at Browns Hill's labor cost, plus incurred actual costs for material, travel, and supplies. These costs will be borne by FRUITA.

Browns Hill Engineering & Controls, LLC

City of Fruita

By: _____

By: _____

Matt Ballard
Chief Operating Officer

Michael P. Bennett
City Manager

Date: _____

Date: _____

EXHIBIT C
TO
vSaaS™ SERVICES AGREEMENT
Between
BROWNS HILL ENGINEERING & CONTROLS, LLC
and
FRUITA WASTEWATER TREATMENT FACILITY

SERVICE LEVEL AGREEMENT
vSaaS™ Services Agreement

This agreement is entered into between Browns Hill and FRUITA in conjunction with a "vSaaS™ Services Agreement" of even date herewith ("vSaaS™ Services Agreement") whereby FRUITA engages Browns Hill Engineering & Controls, LLC ("Browns Hill") to maintain certain equipment defined as the "System Equipment" in the vSaaS™ Services Agreement. This Service Level Agreement ("SLA") is an integral part of the vSaaS™ Services Agreement and the terms of this SLA are incorporated into the vSaaS™ Services Agreement; all capitalized terms defined in the vSaaS™ Services Agreement (including its exhibits) shall have the same meaning in this SLA as in the vSaaS™ Services Agreement. This SLA is effective on the Effective Date, continuing until the last day of the Term of the vSaaS™ Services Agreement.

1. Service. Browns Hill provides financial backing to its commitment to achieve and maintain the Service Levels described herein for the System Equipment. The terms of this SLA will not be modified during the vSaaS™ Services Agreement Term unless by mutual agreement.

2. Definitions.

a. "Available" means the overall system that is comprised in part by the System Equipment is able to perform all of the functions necessary to fulfill the Intended Use. If this system is not able to perform all of such functions due to any reason described in Section 8 below, the system that is comprised in part by the System Equipment shall still be considered Available. If the System is not able to provide such functions because of (i) an Incident which commenced with one of the causes set forth in Subsections 4.c to 4.k (inclusive) below, and which cause was subsequently cured, but (ii) which triggered a period of Downtime because the System is not Available for reasons not set forth in Subsections 4.c to 4.k (inclusive) below, the System shall be considered Available during the entire period even though the Intended Use may not be fulfilled during such period.

b. "Downtime" means a period during which the overall system that is comprised in part by the System Equipment is not Available, and a backup system or components of a backup system cannot be employed to operate the overall system to make the overall system Available to authorized users of the System Equipment. A period of Downtime begins upon FRUITA's notification to Browns Hill, preferably a Trouble Ticket. Downtime ends when Browns Hill has determined that the System Equipment is once again Available to all authorized users. Browns Hill will provide a copy of the Trouble Ticket, including a calculation of the System Downtime with respect to the Incident reported on the Trouble Ticket, within a reasonable period of time after the System Equipment becomes Available. All Downtime shall be classified as set forth in Section 5 below.

c. "Incident" means (i) any single event, or (ii) any set or series of events, which result in Downtime for which notification is made to Browns Hill. An incident may also simply be the discovery by FRUITA that a function of the System Equipment is not working properly.

d. "Intended Use" means the reasonable performance of the physical functions which the System Equipment, as an integrated system, is providing as of the System Equipment Acceptance Date. Performance hereunder shall be determined on a system wide basis, not on an individual component basis. Performance hereunder shall also be determined without reference to the Property described in Exhibit A to the Lease.

e. "Scheduled Downtime" means periods when any or all of the functions of the System Equipment necessary to fulfill the Intended Use cannot be used by FRUITA, because of repairs, maintenance or replacements being performed by Browns Hill as set forth in Section 4.j below.

f. "Trouble Ticket" shall mean either an electronic or physical document which contains the information described in Section 4 below. Electronic tickets may either be submitted electronically (i.e., through Browns Hill's website, Ignition , or as specified by Browns Hill) or verbally (either by telephone or in person). If an electronic Trouble Ticket is submitted to Browns Hill, it will be considered received by Browns Hill upon completion of its submission by FRUITA. If FRUITA submits the information required by Section 4 below verbally (either by telephone or in person), the Trouble Ticket will be considered received by Browns Hill upon completion of the physical Trouble Ticket by a representative of Browns Hill after the information described in Section 4 below is provided to such representative.

3. **Trouble Ticket.** In the event of an Incident, FRUITA must submit a "Trouble Ticket" to Browns Hill. The Trouble Ticket must include the following information:

- a. A detailed description of the Incident;
- b. Detailed descriptions of FRUITA's attempts to resolve the Incident at the time of occurrence (subject to the provisions of Section 3(a) of the vSaaS™ Services Agreement.
- c. The Trouble Ticket must be submitted electronically (i.e., through Browns Hill's website, <https://vsaas.vmscada.com:58043/data/perspective/client/Support>), unless FRUITA determines that the Incident requires emergency resolution. In that event, the Trouble Ticket may be submitted verbally (either by telephone or in person) to Browns Hill at the telephone number provided to FRUITA.

4. **Limitations.** If the System Equipment is unable to fulfill the Intended Use solely for any of the reasons set forth in this Section (either a single reason or a combination of such reasons), the System Equipment shall still be considered Available. The reasons set forth in this Section are:

- a. During all Scheduled Downtime described in Section j below.
- b. Any issues discovered by Browns Hill through its monitoring, maintaining, or repairing of the System Equipment, which are resolved by Browns Hill through Scheduled Downtime or otherwise without a loss of function.

- c. Any Incident caused by factors outside the control of Browns Hill and/or FRUITA, including, but not limited to, natural disasters, extreme weather events, war, acts of terrorism, criminal acts, riots, strikes or other labor disturbance, government action or Acts of God.
 - d. Any Incident caused by utility failures (regardless of the cause of the utility failure), including telecommunications failures;
 - e. Any Incident caused by modifications to System Equipment, repairs, or attempted repairs to System Equipment without written authorization by Browns Hill (including any considered by FRUITA to be required because of emergency, unless the emergency is caused by Browns Hill), or repairs or replacements or attempted repairs or replacements to System Equipment which are not performed in accordance with written authorization by Browns Hill;
 - f. Any Incident which results from a failure of FRUITA (or any person or entity acting on behalf of FRUITA) to observe applicable safety regulations or guidelines which result in or contribute to the need for such repairs or replacement; or
 - g. Any Incident which results from FRUITA's use of the System Equipment in a manner not consistent with any written or verbal instructions from Browns Hill to FRUITA.
 - h. Any Incident which results from FRUITA's unauthorized action or lack of action when required, or from FRUITA's employees, agents, contractors, or vendors, or anyone gaining access to the System Equipment.
 - i. Any Incident which results from FRUITA's failure to adhere to any required configurations, use supported platforms, and follow any policies for acceptable use which are communicated from Browns Hill to FRUITA.
 - j. Any Incident which results from the failure, malfunction, unavailability or inadequacy of components or services otherwise necessary for the System Equipment to function properly, but which components or services are not provided by Browns Hill and are not part of the System Equipment. This includes, but is not limited to, valves, switches, gates, communications, internet service, telephone service, transport facilities, utility power, HVAC, security, and the like.
 - k. Any Incident which results, directly or indirectly, solely or in conjunction with any other cause, from the interaction (directly or indirectly) between System Equipment and equipment on FRUITA's Location which is not System Equipment.
5. Scheduled Downtime. During the Term, Scheduled Downtime will be necessary for Browns Hill to repair, maintain or replace the System Equipment, perform required or advisable maintenance to the System Equipment or to correct situations which may affect Availability of the System Equipment.
6. Regular Scheduled Downtime. Browns Hill will notify FRUITA at least ten (10) business days prior to the commencement of Scheduled Downtime. Such notification will advise FRUITA of the exact date and time the Scheduled Downtime will commence, and the expected duration of the Scheduled Downtime. Browns Hill will endeavor to provide notification by telephone that the Scheduled Downtime is about to commence and confirm completion of all prerequisites to the work to be accomplished during the Scheduled Downtime. Browns Hill will also notify FRUITA by telephone or e-mail when the Scheduled Downtime has ended.

7. FRUITA Requested Downtime. If FRUITA requires the System Equipment to be down for its own purposes, FRUITA shall notify Browns Hill via email or telephone with as much notice as possible.

8. Monitoring the System Equipment. Browns Hill is not obligated to monitor the System Equipment, but Browns Hill may monitor the System Equipment in its sole discretion. In addition, Browns Hill may physically visit the Location at which the System Equipment is located at any time in its sole discretion. In the event that Browns Hill elects to monitor the System Equipment, it shall provide remote monitoring of the System Equipment and its operations, using the methods determined at the discretion of Browns Hill. Any knowledge gained through such monitoring which affects the operations of the System Equipment (as determined in the sole discretion of Browns Hill) shall be shared with FRUITA. Browns Hill shall not be responsible for monitoring the local control operations of FRUITA (e.g., opening and closing valves and breakers, monitoring the local environment for alarm conditions, responding to alarms). Browns Hill shall have no liability for the effects of any local control actions, failures, or alarms.

9. Response Time. Browns Hill commits to the following response times to Trouble Tickets submitted by FRUITA to Browns Hill:

- a. Browns Hill shall respond by email to FRUITA within sixty (60) minutes of receipt of a Trouble Ticket, to acknowledge receipt of the Trouble Ticket and advise FRUITA that the Trouble Ticket has been assigned to a technician for resolution.
- b. Browns Hill shall determine the steps necessary to resolve the Trouble Ticket within twenty-four (24) hours of receipt of the Trouble Ticket. This determination may be made either remotely, or by on-site support. If installation of equipment or software is needed, Browns Hill will schedule such installation within 1-2 business days of the equipment’s delivery, unless such equipment is already in stock.

Browns Hill Engineering & Controls, LLC

City of Fruita

By: _____

By: _____

Matt Ballard
Chief Operating Officer

Michael P. Bennett
City Manager

Date: _____

Date: _____