

DRINKING WATER & WASTEWATER SYSTEMS
OPERATIONAL SUPPORT SERVICES AGREEMENT

This Drinking Water & Wastewater Systems Operational Support Services Agreement ("Agreement") is made effective the 1st day of October, 2023 ("Effective Date"), between THE CITY OF NEW MEADOWS, IDAHO ("Owner"), and DRAKE DIVERSIFIED, LLC, an Idaho limited liability company ("Operator"). Owner and Operator are sometimes referred to below as the "Parties."

AGREEMENT

For and in consideration for the mutual rights and duties of the Parties, the Parties enter into this Agreement on the following terms and conditions:

SCOPE OF AGREEMENT - This Agreement is limited exclusively to Owner's facilities for drinking water production, drinking water treatment, drinking water distribution, wastewater collection, wastewater treatment, and wastewater land application/reuse located at the City of New Meadows, Idaho (collectively, "Systems").

DUTIES OF OPERATOR - Subject to Operator's rates and limitations set forth in this Agreement, Operator shall provide SUBSTITUTE RESPONSIBLE CHARGE OPERATOR services for operation of Owners Systems as follows, provided that the Operator's responsibilities under this Agreement, unless otherwise expressly stated in this Agreement, shall be limited to the following:

Drinking Water Operations - Production, treatment, distribution

- a) Advise and assist City of New Meadows staff in production, treatment, and distribution of drinking water.
- b) Advise and assist City of New Meadows staff in completion of sampling and recordkeeping relating directly to operation of the System as required by DEQ;
- c) Advise and assist City of New Meadows staff in fire hydrant flushing annually or as required;

Wastewater Operations -

Collection

- a. Advise and assist City of New Meadows staff in monitoring the lift station(s) and associated equipment to ensure proper operation as required.
- b. Advise and assist City of New Meadows staff in inspecting manholes periodically for condition and evidence of inflow and infiltration; and
- c. Advise and assist City of New Meadows staff in the performance of general maintenance on, and completion of minor repairs of system components as required

Treatment

- a. Advise and assist City of New Meadows Staff in operation and maintenance of headworks, blowers, and lagoons, as needed.
- b. Advise and assist City of New Meadows Staff in the inspection of Control Structures and Exercising of Valves as needed.
- c. Advise and assist City of New Meadows Staff in performing general light maintenance on the Wastewater Treatment Plant facility and equipment.
- d. Advise and assist City of New Meadows Staff to complete sampling and recordkeeping relating directly to operation of the System as required by DEQ

Wastewater Discharge/Reuse - Land Application

- a. Advise and assist City of New Meadows Staff regarding seasonal discharge of treated effluent into receiving waters.
- b. Advise and assist City of New Meadows Staff to maintain Reuse Pumps and Equipment.
- c. Advise and assist City of New Meadows staff to perform Application of Reuse Water to specified Land Application area per DEQ permit.
- d. Advise and assist City of New Meadows staff to Maintain Land Application Irrigation System and components.
- e. Advise and assist City of New Meadows staff to complete sampling and recordkeeping relating directly to operation of the System as required by DEQ.
- f. Advise and assist City of New Meadows staff to perform maintenance on and complete minor repairs of system components as required.

DEFINITIONS - As used in this Agreement, the following terms are defined below:

Minor repairs and maintenance: Work that does not require the services of a professional tradesman such as a plumber, carpenter, electrician, excavator, controls technician, mechanical contractor, landscaper, painter, diesel mechanic, generator technician, welder, heavy equipment operator, etc. Also includes maintenance and repair tasks related to the day-to-day operations of Systems.

Advise and Assist: Provide advice and assistance to City of New Meadows staff related to the operation of System and related components. City of New Meadows staff or assigned Responsible Charge Operator to be considered primarily responsible for all work, labor, and all other operational concerns. Drake Diversified to be held harmless for omissions or errors by City of New Meadows Staff or failure to follow advice or instructions given to City of New Meadows Staff by Drake Diversified.

Wastewater sampling required by DEQ: Weekly coliform during reuse water application period, monthly wastewater chemistry sampling during reuse water application period, annual lagoon composite samples, annual monitoring, soil sampling, and any additional sampling as required by DEQ.

DEQ required and best practices for recordkeeping: Inflow, outflow, chlorine residuals, reuse gallons applied, and operator's log.

SAFETY - All work performed will be conducted using recognized industry and OSHA safety guidelines and best practices, including, but not limited to, electrical safety, confined space entry, trenching guidelines, lock out tag out procedures, etc. No work that endangers the health or safety of Operator will be performed at any time, for any reason. In the event that work cannot be performed in safe manner or requires the service of a helper or trade professional, Operator will notify Owner within a reasonable time and the Parties shall work together in good faith to develop a solution.

OTHER RESPONSIBILITIES OF PARTIES - In addition to the other obligations of Owner as set forth in this Agreement, Owner shall furnish at its sole expense, all maintenance supplies, utilities, and all other consumables necessary for the operation of Owner's Systems including, but not limited to, sampling supplies, shipping expenses for sending samples for lab testing, laboratory testing costs, telephone service at Owner's facility, and fuel for generators co-located with Owner's Systems.

Owner shall be solely responsible for management of Systems, including but not limited to collection of revenue from customers, communications with customers and the public, government relations not expressly provided by this Agreement, and regulatory compliance not expressly provided by this Agreement. Except as expressly provided in this Agreement, all other expenses and liabilities shall be the responsibility of Owner.

Operator shall furnish at Operator's own expense all labor and transportation necessary to perform its obligations under this Agreement except as otherwise agreed in writing for any specific project.

RATES & LIMITATIONS - The rate for Operator's services under this Agreement, up to a maximum of four (4) combined onsite and offsite hours, not to include Operator's travel time except travel time as provided below for repair or replacement of components or consumables, per month as documented by Operator, shall be FOUR HUNDRED AND NO/100 DOLLARS (\$400) per month.

Except for holiday and emergency services, the rate for any additional services of Operator, beyond the applicable monthly maximum number of hours shall be EIGHTY FIVE AND NO/100 DOLLARS (\$85) per hour, rounded to the nearest one-half (1/2) hour, including Operator's travel time. The rate for emergency service and service provided on any holiday observed by the state of Idaho shall be ONE HUNDRED FIFTY AND NO/100 DOLLARS (\$150) per hour, rounded to the nearest one-half (1/2) hour, including Operator's travel time. Emergency and holiday service hours shall not count against the applicable monthly maximum number of hours provided. For holiday and emergency service, mileage expenses for use of vehicle, if required, shall be charged at the standard IRS mileage reimbursement rate in place at time of service provided, and shall be added to the invoice for the same month of service.

Services other than those specified in this Agreement that are rendered by Operator at the request of Owner will be charged at a rate of EIGHTY-FIVE AND NO/ 100 DOLLARS (\$85) per hour, rounded to the nearest one-half (1/2) hour, including Operator's travel time. Mileage expenses for use of vehicle, if required, shall be charged at the standard IRS mileage reimbursement rate in place at time of service provided, and shall be added to the invoice for the same month of service.

OUT OF POCKET COSTS & TRAVEL EXPENSES - If, in the reasonable judgment of Operator, the repair, replacement, acquisition, servicing, or overhaul of any System component shall become necessary, or the purchase of any consumable for Systems become necessary at a time when funding for such costs is not immediately available from Owner, or where acquisition of funding in advance from Owner would be impracticable, Operator shall advance such costs up to a combined total not to exceed ONE THOUSAND AND NO/100 DOLLARS (\$1,000) per calendar month.

In consideration of Operator's service of advancing such cost items, including but not limited to the accounting and billing therefor, a fee equal to twenty percent (20%) of the total costs advanced, such total including applicable taxes and fees, shall be added, along with the total costs advanced, to the invoice for the same month of service. Such costs and fees shall be subject to the same payment terms for invoices provided herein. If any invoice is past-due as defined herein, Operator shall have no responsibility to advance any costs until all payments to Operator have been brought current, including interest.

Should travel be required in securing goods or services as provided above, Operator's travel time to and from Owner's Systems shall be counted against the applicable monthly maximum number of hours provided herein or shall be billed as holiday or emergency hours as applicable. Mileage expenses for travel required in securing goods or services as provided above shall be charged at the standard IRS mileage reimbursement rate in place at time of service provided and shall be added to the invoice for the same month of service.

PAYMENT - Operator shall send Owner a written monthly invoice which shall be paid in full no more than fifteen (15) days after such invoice has been sent. Interest will be charged on any past due invoice at the judgment rate provided by Idaho Code 28-22-104(2). Failure to remit timely payment in full shall constitute a breach of this Agreement.

TERM & AUTOMATIC RENEWAL • TERMINATION - The term of this Agreement shall be for one (1) year from and after the effective date of this Agreement and shall automatically renew for successive additional one (1) year terms unless notice of intent to terminate is given by written notice delivered by certified mail to either party no less than ninety (90) days prior to the end of the initial term or any renewal term. Each such automatic renewal shall commence on the relevant renewal date and end at the completion of the relevant renewal term. All automatic renewals shall be subject to the same terms and conditions as this original Agreement.

INSURANCE - Owner and Operator shall at all times during the term of this Agreement maintain a commercial general liability insurance policy in an amount not less than ONE MILLION DOLLARS (\$1,000,000) and shall provide a certificate of such coverage to the other party within thirty (30) days of the Effective Date of this Agreement. Should any such insurance policy be cancelled for whatever reason, the party previously covered by the cancelled policy shall notify the other party in writing Of such cancellation within seven (7) days.

DEFAULT — Either Party shall be in breach of this Agreement if such Party fails to comply with the terms and conditions of this Agreement. In the event of any breach, the party claiming the breach ("Claiming Party") shall send written notice thereof to the other Party ("Defaulting Party"). If the Defaulting Party fails to cure the breach within thirty (30) days after the earlier of the mailing of the Notice by the Claiming Party or receipt of the notice by the Defaulting Party, then the Defaulting Party shall be in default of this Agreement. In the event of default, the Claiming Party shall be entitled to exercise any remedy allowed at law or in equity. The Claiming Party shall not be obliged to exercise any one remedy before any other in the case of default, except as is otherwise prescribed by Idaho law. The waiver of or forbearance by either Party regarding any breach, or of any available remedy for a default shall not operate as a waiver of any subsequent breach or default.

INDEMNITY — Owner shall not assert any claim under the terms of this Agreement against Operator for loss or damage that may result from the inadequacy or nonavailability of drinking water, or wastewater collection, or wastewater treatment, or wastewater land application, as to pressure, quantity, or quality, or from leaks or other defects in Owner's Systems, unless such claims are related to or arise out of the negligence of Operator. Owner shall indemnify Operator from any and all claims or liability for loss or damage to any persons or property resulting from, arising out of or connected with the rendition of service under the terms of this Agreement, in the event of such inadequacy or nonavailability of drinking water, or wastewater collection, or wastewater treatment, or wastewater land application, as to pressure, quantity, or quality, or in the event of leaks or other defects in Owner's Systems, or in the event of any fine, penalty, or order of a government agency or court concerning Owner's Systems, unless such claims or liability are related to or arise out of the negligence of Operator.

In consideration of the rates charged by the Operator and the responsibilities borne by the parties as set forth herein, Operator hereby agrees that to the fullest extent permitted by law, Owner's total liability to Operator for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this Agreement from any cause or causes including, but not limited to, loss of use of equipment or facility, loss or profits or revenue, or Owner's negligence, errors, omissions, strict liability, breach of contract or breach of warranty, duty to indemnify, or other cause or causes whatsoever, (hereinafter "Operator's claims"), to the extent that Operator's claims are covered by insurance, shall not exceed the total sum paid on behalf of or to Owner by Owner's insurer(s) in settlement or satisfactory of Operator's claims under the terms and conditions of Owner's insurance policy or policies applicable thereto. This limitation of liability does not apply to a potential claim by Operator for Owner's failure to pay Operator under this Agreement.

LIMITS OF LIABILITY - In consideration of the rates charged by Operator and the responsibilities borne by Operator as set forth herein, Owner hereby agrees that to the fullest extent permitted by law, Operator's total liability to Owner for any and all injuries, claims losses, expenses or damages whatsoever arising out of or in any way related to this Agreement from any cause or causes including, but not limited to, loss of use of equipment or facility, loss of profits or revenue, or Operator's negligence, errors, omissions, strict liability, breach of contract or breach of warranty, or other cause or causes whatsoever, (hereafter "Owner's claims") shall not exceed the total sum paid on behalf of or to Operator by Operator's insurer(s) in settlement or satisfaction of Owner's claims under the terms and conditions of Operator's insurance policy or policies applicable thereto. Also in consideration of the rates charged by Operator and the responsibilities borne by Operator as set forth herein,

Owner hereby agrees that to the fullest extent permitted by law, while Operator shall be liable to Owner for direct damages caused by his error or omission (as limited by the terms of this Agreement), Operator shall not be liable to Owner for any special, indirect or consequential damages whatsoever, whether caused by Operator's negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever, including but not limited to, loss of use of equipment or facility, and loss of profits or revenue.

EXCUSE OF PERFORMANCE - Operator shall not be responsible if its performance of this Agreement is interrupted or delayed by contingencies beyond its control, including, without limitation, weather conditions making performance extremely impracticable, flood, acts of God, war, blockades, riots, explosion, strikes, lockouts or other labor or industrial disturbances, fires, accidents to equipment, injunctions or compliance with laws, regulations, guidelines, or orders of any governmental body or instrumentality thereof (where now existing or hereafter created).

RULES & REGULATIONS - All service rendered under the terms of this Agreement shall be furnished subject to the rules and regulations of Idaho DEQ, Idaho Central District Health(CDHD), the U.S. Environmental Protection Agency (EPA), the Idaho Bureau of Occupational Licenses (IBOL), OSHA, and the Safe Drinking Water Act, insofar as applicable to this Agreement.

CHANGES & MODIFICATIONS BY OFFICIAL ACTION - This Agreement shall at all times be subject to such changes or modifications as required by law or by any government agency, board, or department having jurisdiction over the subject matter of this Agreement as may be directed in the exercise of such jurisdiction.

ASSIGNMENT - This Agreement, or any part of this Agreement, shall not be transferred or assigned by Owner or Operator to any person or corporation without the written consent of the other party. No part of any sum due under this Agreement shall be transferred or assigned without the written consent of the other party.

COSTS & ATTORNEY FEES - In the event of any action to enforce or interpret this Agreement, or for any remedy on account of any breach of this Agreement, the prevailing party in such action will be entitled to recover from the other party the prevailing party's costs, disbursements and reasonable out-of-pocket attorney fees as determined by the court in such action and in any appeal therefrom. Prevailing party means that party which prevails affirmatively or by defense with respect to claims having the greatest value or importance as reasonably determined by the court after taking into consideration settlement offers made by a party.

MEDIATION - Any claim arising out of or related to this Agreement shall be subject to good faith mediation between the Parties hereto as a condition precedent to judicial proceedings by either party, The cost of any such mediation shall be shared by the Parties equally.

CHOICE OF LAW & VENUE - It is agreed that the venue of any legal action brought under the terms of this Agreement shall be in Valley County, State of Idaho. This Agreement is governed by and shall be construed in accordance with the laws of the State of Idaho without regard to the conflicts of laws principles of any jurisdiction.

WAIVER - This Agreement may not be modified or amended, and no term or provision hereof may be waived except by a written instrument executed by both Parties and in the case of a waiver, by the party granting such waiver. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof or shall constitute a continuing waiver.

NOTICE - Any notice required to be given by either party to the other shall be deposited in the United States mail, postage prepaid, addressed to the Owner at 401 Virginia Street, PO Box 324 New Meadows, Idaho 83654, or to Operator at 11 Cottontail Court, McCall, Idaho 83638, or at such other addresses either party may deliver to the other in writing from time to time.

NO PARTNERSHIP - Operator's relationship with Owner pursuant to this Agreement is that of an independent contractor, and nothing in this Agreement shall be construed to designate Operator as an employee, agent, or partner of or a joint venture with Owner. The obligations of the Parties shall be several, and not joint or collective, each party to be responsible only for the obligations assumed by such party. Nothing contained in this Agreement shall be deemed to impose on any party any responsibility for the obligations assumed by any other party.

Operator shall be free to determine the best methods and practices in the conduct of its services under this Agreement. Operator shall follow its own business policies and procedures in the conduct of its services under this Agreement.

COUNTERPARTS - This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one in the same instrument.

TIME/SEVERABILITY - Time is of the essence of this Agreement and each provision hereof. If any provision of this Agreement to any extent is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

AGREEMENT VOLUNTARY & WITHOUT DURESS - Each of the Parties acknowledges that it has read all the terms of this Agreement and enters into those terms voluntarily and without duress.

AGREEMENT JOINTLY DRAFTED - This Agreement shall be deemed to have been jointly drafted by the Parties, and, in construing and interpreting this Agreement, no provision shall be construed and interpreted for or against any of the Parties because such provision, or any other provision, or the Agreement as a whole, was purportedly prepared or requested by such party.

ENTIRE AGREEMENT - This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and incorporates all previous and contemporaneous oral or written understandings between the Parties concerning the subject matter hereof. This Agreement may not be amended or modified in any way except in writing signed by both of the Parties hereto.

SECTIONS & OTHER HEADINGS - Sections or other headings contained in this Agreement are for reference purposes only and in no way define, describe, extend, or limit the scope or intent of this Agreement, or the intent of any provision hereof.

AUTHORITY - The individuals signing below on behalf of the respective Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties, and that such execution is binding upon said Parties without further action or ratification.

IN WITNESS WHEREOF, The Parties have executed this Agreement on the 1st day of October, 2023.

OWNER:

CITY OF NEW MEADOWS

By:

Julie Good, Mayor

OPERATOR:

DRAKE DIVERSIFIED, LLC

By:



Warren Drake