

## PROFESSIONAL SERVICES AGREEMENT

This **Professional Services Agreement** (the “Agreement”) is made this **17<sup>th</sup> day of May 2023**, between:

- 1) **THE CITY OF SWEENY**, a Texas municipal corporation with its principal place of business at 102 W. Ashley Wilson Road, Sweeny, Texas 77480 (hereinafter the “Client”); and
- 2) **INFRAMARK, LLC**, a Texas limited liability company with its principal place of business at 2002 West Grand Parkway North, Suite 100, Katy, TX, 77449 (hereinafter the “Operator”).

### BACKGROUND

The Client desires to procure basic operation services required for the Client’s wastewater and water treatment facilities as defined in the Client’s state and federal permits and as set forth in Schedule 1 attached to this Agreement (“Facilities”) and the Operator desires to provide said operations services to the Client.

In consideration of the mutual promises in this Agreement, the parties agree as follows:

#### 1) **TERM**

This Agreement shall commence on **May 17, 2023** (“Commencement Date”) and shall remain in full force and effect until terminated earlier by either party under Section 5 below.

#### 2) **OPERATOR’S SERVICES**

- 2.1. Operator, in regard to the Facilities, shall provide the services as set forth in Schedule 2 attached to this Agreement (the “Services”).
- 2.2. Operator may perform additional services beyond the Services specified in Schedule 2 with mutual consent of both parties in accordance with the Rate Schedule as set forth in Schedule 3, unless otherwise agreed by the parties.
- 2.3. Except in the case of an Emergency Event, Operator shall obtain the prior written approval of the Client for any single expense which is estimated to cost more than Fifteen Thousand dollars (\$15,000.00). When the Operator determines that an Emergency Event exists, it may begin immediately taking any necessary action related thereto, without the Client’s prior approval. Any costs incurred by Operator during an Emergency Event shall be billed to and reimbursed by Client in accordance with the Rate Schedule as set forth in Schedule 3. If Operator demobilizes its staff from previously scheduled work in order respond to an Emergency Event, any costs incurred by Operator during an Emergency Event shall be billed to and reimbursed by Client in accordance with the Rate Schedule as set forth in Schedule 3 plus twenty percent (20%).
- 2.4. Operator may recommend Capital Improvements, operational changes to the Client as are necessary or recommended to perform the Services in compliance with the terms of this Agreement and Applicable Law, or maintenance and repair expenses for the Facilities. In the event the Client does not approve and make a Capital Improvement or operational change recommended by Operator and/or if Client does not approve a maintenance and repair expense exceeding \$15,000.00 pursuant to Section 2.3, Operator will not be liable for any loss, damage or liability arising from or related to the Client’s rejection of or refusal to implement the recommended Capital Improvement or operational changes, including, but not limited to, any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification.

2.5. Operator shall:

- 2.5.1. Perform the Services in accordance with the provisions of this Agreement, Applicable Law, and all permits, licenses, and specifications applicable to the operation of the Facilities to the extent reasonably possible based on the condition of the Facilities on the Commencement Date; exercising the degree of skill and care ordinarily exercised by members of Operator's profession in the geographic region of the Facilities.
  - 2.5.2. Use qualified (and where required, certified) personnel to operate the Facilities and all its equipment and processes in accordance with relevant operation manuals for the Facilities (if available and provided to Operator), Applicable Law, and the Client's Permits and Discharge Permits;
- 2.6. Operator may subcontract such services hereunder as may, in Operator's sole opinion, be desirable.
- 2.7. If agreed upon by the parties, Operator will pay all costs identified in Section 3.1.2 of this Agreement on behalf of Client. Client shall reimburse Operator for such costs in accordance with the rates set forth herein and the Rate Schedule set forth in Schedule 3.

**3) CLIENT OBLIGATIONS**

3.1. Client shall:

- 3.1.1. Obtain and maintain all state, federal, and local permits and licenses required for ownership, operation, and maintenance of the Facilities, including without limitation, the Client's Permits and Discharge Permits;
- 3.1.2. Directly pay for: i) all costs related to delivery to and consumption of utilities to the Facility, including electricity, water, gas and telephone usage at the Facilities; ii) all property, value-related, franchise, sales, use, excise, gross receipts, transaction privilege or other taxes associated with the Services and the ownership, operation and maintenance of the Facilities, other than taxes imposed on Operator's net income or payroll; iii) expenses incurred from the treatment of Non-Processible Water, including without limitation, any penalties and fines that may be assessed as a result; iv) expenses resulting from influent or pollutant loads exceeding the requirements of the Permits as set forth in Schedule 4 or the design capabilities of the Facilities; v) expenses resulting from hydraulic or organic loads exceeding the requirements of the Permits as set forth in Schedule 4 or the design capabilities of the Facilities; vi) all costs attributable to the transportation and disposal of grit, screenings, water treatment residuals, and wastewater sludge and biosolids generated by or through the operation of the Facilities; vii) all Capital Improvements; viii) all costs for grass cutting and other landscaping; ix) the costs of safety equipment required at the Facilities, including, but not limited to, oxygen masks and supplies for the disinfection process; and x) all other costs not specifically assumed by Operator hereunder;
- 3.1.3. Comply with Applicable Law relating to the management, ownership, operation, maintenance, repair, and replacement of the Facilities (to the extent that the responsibility of complying with those laws is not specifically assumed by the Operator under this Agreement). The Operator shall not be responsible for Client's failure to comply with any provision of Applicable Law that is not otherwise specifically assumed by the Operator hereunder;

- 3.1.4. During visits to the Facilities, comply with, and shall require its agents or invitees to comply with, all reasonable safety rules and regulations adopted by the Operator;
  - 3.1.5. Provide a complete set of “as-built” drawings of the Facilities and a copy of the Client’s current adopted rate order, which shall include, but not be limited to, water and wastewater tap standards, rate schedules and any other information necessary for the administration of the Facilities;
  - 3.1.6. Provide any information, data, procedures, charts, spreadsheets, logs, instruments, documents, plans, designs, specifications, operating manuals and specifications, customer data, regulatory filings, permits, authorizations, licenses, operation and maintenance records, or other records requested by Operator in to perform the Services;
  - 3.1.7. Be responsible for all maintenance, including but not limited to corrective maintenance and routine preventative maintenance, and repairs for the Facilities;
  - 3.1.8. Grant the Operator, free of charge, a license to use the Facilities, including all equipment, structures, vehicles, and facilities under Client’s ownership and which have been assigned by Client to the Facilities; and
  - 3.1.9. Perform all duties and discharge all responsibilities and obligations relating to the Facilities not expressly assumed by the Operator in Schedule 2 of this Agreement.
- 3.2. Unless otherwise agreed to by the parties, Client shall be responsible for all maintenance and repairs for the Facilities. In the event the Client does not perform any maintenance or repairs recommended by Operator for the Facilities, Operator will not be liable for any loss, damage or liability arising from or related to the Client’s failure to perform such maintenance or repairs, including any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, or (c) failure to meet the requirements of this Agreement.

#### **4) FEES AND PAYMENT**

- 4.1. For the period beginning on the Commencement Date, Client shall pay Operator for the Services performed in accordance with the Rate Schedule set forth in Schedule 3.
- 4.2. Client shall pay such invoices within thirty (30) days of the date of invoice.
- 4.3. Client shall notify Operator of any dispute with an invoice within ten (10) days from receipt of said invoice in writing. In the event that Client has a dispute with any charges, all undisputed charges on said invoice(s) will be due in accordance with the above times and the Parties shall negotiate in good faith to resolve any such dispute in a timely manner.
- 4.4. Any and all late payments due to either party from the other party shall accrue interest at a rate of one and one-half percent (1½ %) per month from the original due date and until payment is received, unless waived by written agreement.

#### **5) TERMINATION**

- 5.1. Either party may terminate this Agreement with or without cause upon five (5) days’ written notice to the other party.
- 5.2. Either party may terminate this Agreement by immediate written notice if the other has failed to comply with a material term, provided that the non-defaulting party has first given the

defaulting party written notice to cure their default within thirty (30) days, or ten (10) days for failure of Client to pay an undisputed invoice when due (such applicable period, "Cure Period") and the defaulting party has not done so. If a default cannot be cured within the Cure Period days, the parties may agree to an extension of the time to cure provided the defaulting party provides reasonable evidence within the Cure Period that it has identified a means to cure and is pursuing it diligently. Should Client pay an unpaid, undisputed invoice within the Cure Period, the termination notice under this provision will be deemed automatically withdrawn.

- 5.3. In the event of the termination of this Agreement by Client under Sections 5.1 or 5.2 above, Client shall pay Operator for the Services provided and invoiced by Operator up to the effective date of termination, and the effectiveness of such termination by Client will be conditioned upon receipt by Operator of such payment. If Client incurs costs for damages due to a default of the Operator that results in termination of this Agreement, Client may deduct such costs or damages from the final payment due to Operator under this Section 5.2. Such deduction will not exceed the final payment owed to Operator and will constitute a full and final settlement between Client and Operator for any and all claims against Operator by Client and a release by Client of any and all further claims against Operator.

## **6) FINES, INDEMNIFICATION AND LIMITATION**

- 6.1. Client shall be responsible for settlement of payment of all fines or penalties that may be imposed on either Client or Operator due to water or wastewater treatment violations or any other regulatory or administrative violations related to the Facilities. Prior to settlement or payment of any such fines or penalties, Operator reserves the right to contest any actions, suits, or proceedings for violations through administrative procedures or otherwise. Operator shall provide Client with prompt notice of any such violations.
- 6.2. If the Facilities loading exceed its design parameters or if influent contains: i) Abnormal or Biologically Toxic Materials, Non-Processible Water, or other substances which cannot be removed or treated by the Facilities in the condition the Facilities are in or cannot be treated by design parameters as of the Commencement Date; or ii) discharges which violate applicable sewage ordinances, the Operator will use its best reasonable efforts to maximize performance of the Facilities but shall not be responsible for associated effluent characteristics or damages, fines penalties, damages, or other liabilities which result. Operator shall provide Client with prompt notice of such conditions identified in this Section 6.2.
- 6.3. THE CLIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OPERATOR AND ITS RESPECTIVE SUCCESSORS AND ASSIGNS (EACH IS REFERRED TO HEREIN AS AN "INDEMNIFIED PARTY") AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, COSTS, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S FEES, ARISING OR RESULTING FROM OR RELATED TO OPERATOR'S PERFORMANCE OF THE SERVICES HEREUNDER, BREACH OF THIS AGREEMENT BY THE CLIENT, AND ANY CLAIM ASSERTED BY A THIRD PARTY AGAINST THE OPERATOR RELATED TO THE SERVICE PERFORMED BY OPERATOR UNDER THIS AGREEMENT OR OTHERWISE RELATED TO THIS AGREEMENT.
- 6.4. Operator shall not be liable for any damages, fines, penalties, or other liabilities of any kind resulting from following the instructions, directions, or policies of the Client or anyone acting on behalf of the Client.
- 6.5. Operator is not liable for any liabilities, losses, damages, expenses, fines, or penalties incurred by Client or any third party as a result of a data security breach or other cyber security breach to the Facilities or Client's computer systems, operating systems, and all other technological or

information systems related to the Facilities and Services provided hereunder, except to the extent such liability, loss, damage, expense, fine, or penalty is the direct result of Operator's willful or negligent acts or omissions.

- 6.6. If any information, opinions, recommendations, advice, or other work product or any data, information, procedures, charts, spreadsheets, logs, instruments, documents, plans, designs, specifications, operating manuals and specifications, customer data, billing information, regulatory filings, permits, authorizations, licenses, operation and maintenance records, or other records are provided by the Client or any third party acting on behalf the Client are provide to and used or relied on by Operator, the Client will be liable for any damages resulting directly or indirectly from such use and reliance.
- 6.7. Notwithstanding any provision to the contrary contained in this Agreement, in no event shall either party be liable, either directly or indirectly, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit, even if such party has been advised of the possibility of such damages.
- 6.8. Operator's maximum liability for any and all claims(s) raised by Client against the Operator on account of this Agreement, or on account of the Services performed hereunder shall not exceed an aggregate amount equal to the fees paid to Operator during the term of this Agreement.
- 6.9. FOR EQUIPMENT OR PARTS PURCHASED BY OPERATOR, OPERATOR SHALL PASS ON ANY MANUFACTURERS WARRANTIES OR GUARANTEES TO THE CLIENT AND PROVIDE THE CLIENT REASONABLE ASSISTANCE IN ENFORCING THE MANUFACTURER'S WARRANTIES AND GUARANTEES. OPERATOR SHALL NOT BE RESPONSIBLE TO THE CLIENT FOR ANY GUARANTEES OR WARRANTIES OFFERED BY OTHERS IN CONNECTION WITH ANY EQUIPMENT, MATERIALS, AND SUPPLIES PROVIDED IN CONNECTION WITH THE SERVICES HEREUNDER AND OPERATOR SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF ANY BREACH OF GUARANTEE OR WARRANTY, EXPRESS OR IMPLIED, BY ANY MANUFACTURER OR SUPPLIER OF EQUIPMENT OR MATERIALS PURCHASED FOR THE CLIENT UNDER THIS AGREEMENT. OPERATOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES REGARDING ANY EQUIPMENT, MATERIALS, AND SUPPLIES, IF ANY, OR ANY WARRANTIES THAT MIGHT ARISE FROM COURSE OF DEALING OR USAGE OF TRADE.

## 7) INSURANCE

- 7.1. Operator shall provide and maintain the following levels of insurance coverage at all times during the Term:
  - 7.1.1. Commercial General Liability Insurance with a limit of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;
  - 7.1.2. Workers Compensation Insurance in compliance with the statutes of the State that has jurisdiction over Operator's employees engaged in the performance of Services hereunder, to the required statutory amount; and
  - 7.1.3. Automobile Liability Insurance with a combined single limit of one million dollars (\$1,000,000).

- 7.2. Operator shall name Client as an additional insured on the general liability policy and automobile liability policy.
- 7.3. Operator shall provide Client with thirty (30) days' notice prior to cancellation of any policy hereunder.
- 7.4. Operator shall provide Client with insurance certificates confirming the levels of coverage in Section 7.1 and that Client is named as an additional insured.
- 7.5. Client shall name Operator as an additional insured on the general liability insurance policy with respect to the Services.

## **8) DISPUTES**

- 8.1 In the event of any disputes, the parties shall first attempt to resolve the situation by good faith discussions which shall take place in a timely manner. If the dispute cannot be resolved within sixty (60) days, the parties shall mediate their dispute before a mediator acceptable to both parties, if they cannot agree, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation, but the parties shall share equally the costs of the mediator and the mediation facilities.
- 8.2 If the parties are unable to resolve any disputes in accordance with 8.1 above, either party may request that such dispute be submitted for binding arbitration, which shall be governed by the rules of the American Arbitration Association or such other rules as the parties may agree. The parties agree that any judgment issued as a result of arbitration may be entered in the court having jurisdiction thereof. The parties agree that arbitration shall be the exclusive means to settle any dispute, controversy or claim arising out of this Agreement.

## **9) MISCELLANEOUS**

- 9.1. The relationship of Operator to Client is that of independent contractor for all purposes under this Agreement. This Agreement is not intended to create, and shall not be construed as creating, between Operator and Client, the relationship of principal and agent, joint ventures, co-partners or any other similar relationship, the existence of which is hereby expressly denied.
- 9.2. This Agreement contains the entire agreement between Client and Operator and supersedes all prior or contemporaneous communications, representations, understandings, or agreements that are not consistent with any material provision of this Agreement.
- 9.3. The parties may only modify this Agreement by a written amendment signed by both parties.
- 9.4. The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.
- 9.5. Client shall not directly or indirectly solicit, hire, or otherwise retain as an employee or independent contractor any employees of the Operator during the term of this Agreement or for a period of one (1) year following the termination of this Agreement.
- 9.6. This Agreement shall not be assigned by either party without the prior written consent of the other party unless such assignment shall be to a parent, subsidiary, affiliate, or successor of either Party. When written consent of a party is required, such consent shall not be unreasonably withheld.
- 9.7. A party's performance of any obligation under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure. In any such

event, the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder.

- 9.8. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- 9.9. In the event that Client receives notice of or undertakes the defense or prosecution of any legal or administrative action or proceeding in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, Client shall give Operator prompt notice of such proceedings and shall inform Operator in advance of all hearings. In the event Operator receives notice of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, Operator shall give Client prompt notice of such proceedings.
- 9.10. All notices will be in writing and shall be deemed given when mailed by first class mail or delivered in person. Notices required to be given to the parties by each other will be addressed to:
- |  |  |
|--|--|
| Inframark, LLC<br>2002 West Grand Parkway North, Suite 100<br>Katy, Texas 77449<br>ATTN: Todd Burrer | The City of Sweeny<br>102 W. Ashley Wilson Road<br>Sweeny, Texas 77480<br>ATTN: Lindsay Koskiniemi |
|--|--|
- With copy to:
- Inframark, LLC  
220 Gibraltar Road, Suite 200  
Horsham, Pennsylvania 19044  
ATTN: Legal Department
- 9.11. All records compiled by Operator with information and material gathered when performing this Agreement are the property of Client.
- 9.12. This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party.
- 9.13. Defined terms in this Agreement are set out in Schedule 5 or within the main body of this Agreement, capitalized or within quotation marks.
- 9.14. Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.
- 9.15. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.
- 9.16. Both parties warrant and represent to the other that they have full power and authority to enter into and perform this Agreement.


[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date at the top of this Agreement.

**THE CITY OF SWEENEY**

  
\_\_\_\_\_  
By: Lindsay Koskuniemi  
Title: City Manager  
Date: May 17, 2023

**INFRAMARK, LLC**

  
\_\_\_\_\_  
By: Todd Burre  
Title: Vice-President  
Date: 5-16-2023



## Schedule 1: Client's Facilities

Client's wastewater and water treatment facilities are:

**Wastewater Plant:** 2607 Avenue A, Sweeny, TX 77480/Located At The N End Of Avenue A, On The W Bank Of Dan Bernard River, Approximately 2 Mi NE Of The City Of Sweeny And Approx 3 Mi SE Of The Intersection Of State Hwy 35 And Fm Road 1459 In Brazoria County Texas

**Water Plant:** GPS: 29°02'15"N 95°42'01W - 2 GSTs on site

### **Active Wells:**

1. Well #1: W. 2nd St. & Peach St. Beside the Water Plant GPS: 29.037533, -95.700225
2. Well #2(#5): Sycamore & WD. Behind the Water Plant GPS: 29.037458, -95.701114

### **Lift Stations:**

1. W. 1st ST. & Pecan St. Across from AM "Chick" Anderson Park GPS: 29.037622, -95.698885
2. W. 5th St. & Cedar St. Beside T.J.T. Memorial Walking Trail GPS: 29.037708, -95.704595
3. NE end of Powell St., off of N. Main St. GPS: 29.045704, -95.708053
4. South end of San Bernard, off of Azalea St. GPS: 29.042474, -95.717961
5. Between 9395 FM 524 & Calvie Brown Rd. GPS: 29.048464, -95.718959
6. Across from 802 Shady Dr. GPS: 29.049759, -95.699884
7. Beside 9313 FM 1459, across from Milian Circle GPS: 29.056284, -95.687144

### **Grinding Station:**

NE end of Shari Ln. GPS: 29.050115, -95.688051

## **Schedule 2: Operator's Services**

The Operator shall provide the following services for the Client:

1. Operator shall provide qualified labor for normal operations, housekeeping, and process control at the Client's Wastewater Plant identified in Schedule 1 (7 days per week); the Client's Water Plant and Active Wells identified in Schedule 1 (7 days per week); the Client's seven (7) Lift Stations identified in Schedule 1; and the Client's Grinding Station identified in Schedule 1 (3 times per week).
2. Operator shall coordinate of chemical delivery necessary for the Facilities; provided however, that the Client shall directly pay for such chemicals or reimburse the Operator for all chemical costs incurred in accordance with Schedule 3.
3. Operator shall coordinate transportation and disposal of grit, screenings, water treatment residuals, and wastewater sludge and biosolids generated by or through the operation of the Facilities; provided however, that the Client shall directly pay for any such costs or reimburse the Operator for all such costs incurred in accordance with Schedule 3.
4. For the Client's Water Plant and Active Wells identified in Schedule 1, the Operator shall perform daily chlorine residual and monthly flushing of dead-end water lines as required by Applicable Law.
5. Operator shall attend the Client's Council meetings with agenda items related to the Services provided hereunder and provide an executive level report to the Client each month.
6. Operator shall compile and report compliance data to the Client for TCEQ reporting and provide Client with advance notice of TCEQ reporting deadlines; Client shall be responsible for preparing and submitting all reports for the Facilities are required by Applicable Law.

### Schedule 3: Operator's Rate Schedule

#### All Labor and Supervision

Standard hourly rate for the Services performed by Operator hereunder shall be Operator's employee hourly rate plus burden cost X (2).

Any overtime work for the Services performed by Operator hereunder shall be paid at the standard hourly rate set forth in this Schedule 3 times 1.5. Overtime is defined as work performed outside of normal working hours which are 7:30 AM through 4:00 PM on weekdays, and on weekends and holidays as designated by the Operator as company holidays.

#### Vehicles and Equipment

Utility Truck	\$ 20.00	per hour
Electrical Vehicle	\$ 37.50	per hour
Maintenance Truck	\$ 35.00	per hour
Mechanical Truck	\$ 37.50	per hour
Chlorination Truck	\$ 37.50	per hour
Crew Truck	\$ 50.00	per hour
Crane Truck	\$ 70.00	per hour
Backhoe w/trailer	\$ 65.00	per hour
Shoring Equipment	\$ 30.50	per hour
Utility Trailer	\$ 13.00	per hour
Lowboy (Gooseneck) Trailer	\$ 13.50	per hour
*Air Scouring Unit (4-hr. minimum)	\$ 130.00	per hour
*Televising Unit (4-hr. minimum)	\$ 165.00	per hour
*Vactor/Jet Unit (4-hr. minimum) Includes Technician	\$ 220.00	per hour –not including dump fee
*Vactor/Jet Unit (4-hr. minimum) Includes Technician	\$ 240.00	per hour – <b><u>overtime rate</u></b> , not including dump fee

Outside contractor, professional services, and materials (except for billing and collection services) utilized for services in this Schedule 3, will be billed at cost plus 15%.

#### **Schedule 4: Client's Permits**

Detail of: Wastewater Permit WQ0010297001

For: CITY OF SWEENY WWTP

Permit Status: ACTIVE

Detail of: Public Water System/Supply Registration TX0200009

For: CITY OF SWEENY

Registration Status: ACTIVE

CN Number: CN600584015

Last Update Date:01/12/2004

Name: CITY OF SWEENY

Legal Name: City of Sweeny

Customer Type: CITY GOVERNMENT

## Schedule 5: Definitions

*"Abnormal or Biologically Toxic Materials"* may include, but are not limited to, concentrations of heavy metals, phenols, cyanides, pesticides, herbicides, priority pollutants as listed by USEPA, any substance that violates the local or USEPA standards for finished water after the routine processing of the raw water, or any substance or material for which the Facilities and routine procedures are not designed to receive or treat.

*"Applicable Law"* means laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the above, in each case that relate to the (a) parties' respective responsibilities under this Agreement; (b) operation or maintenance of the Facilities; (c) health and welfare of individuals working at or visiting the Facilities; and (d) the collection, delivery, and treatment of the Client's raw and finished water.

*"Capital Improvements"* means any modifications, additions or upgrades to the Facilities made by or on behalf of the Client or with its prior approval and funded from Client's capital proceeds.

*"Client's Permit(s)"* and/or *"Permit(s)"* means all permits and licenses issued to Client and required for the treatment of potable water from the Facilities. Copies of all Permits are attached as Schedule 7 of this Agreement.

*"Emergency Event"* means an event which threatens the immediate shutdown of, or the substantial reduction in the operational capacity of, any of the Facilities, or the life, health, or property of Client and/or Operator, their employees and/or agents or others.

*"Force Majeure"* means an event which is beyond the reasonable control of a party, including without limitation: (a) acts of God; (b) flood, fire, earthquake, hurricane or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances, other than those involving the affected parties employees; (i) shortage of adequate power or transportation facilities.

*"Non-Processible Water"* is defined as influent raw water (i) which contains Abnormal or Biologically Toxic Materials; or (ii) which is otherwise detrimental to the operation and performance of the Facilities; or (iii) which exceeds the design capabilities of the Facilities as defined by the Operations and Maintenance Manual for the Facilities or as provided in submissions made to regulatory agencies in connection with the construction and/or the permitting of the Facilities.