## SUBJECT
Agreement Between El Paso Water Utilities and UW CMC, LLC

## BACKGROUND
In 2015, El Paso Water Utilities (EPWater) and Enviro Water Minerals Company, Incorporated (EWM) entered into an agreement under which EWM would construct and operate a brine water treatment facility next to the Kay Bailey Hutchinson Desalination Plant (KBH). The purpose of the agreement was to accept and treat brine water (a waste product from our KBH plant) and raw brackish well water and selling treated water back to us. EWM never successfully operationalized the brine water treatment process before the contractual deadline to commence services in the fall of 2020. EWM’s bank took possession of the EWM plant and sold ownership of the facility to Critical Materials Corporation (CMC). CMC has approached us to provide brine water treatment services to us. As a result, CMC has exclusive ownership and operation of the facility that can uniquely provide brine water treatment services next to the KBH. This meets the sole source exception under Texas Local Government Code Section 252.022(a)(7).

## STRATEGIC OBJECTIVES SUPPORTED
Improve Land & Water Management

## EVALUATION PROCESS
The conveyance of desalination brine to CMC for its processing and the return of the resulting treated water would provide a “new” supply of drinkable water while saving costs associated with transporting brine water.

## FINANCIAL IMPLICATIONS
EPWater will not have to construct any improvements since there are existing pipelines that connect the KBH to the facility owned by CMC. EPWater would acquire additional drinking water supplies under the Agreement by purchasing CMC’s treated water at $2.75 per 1,000 gallons. This agreement will also reduce the cost of brine disposal for the Utility.

## PROPOSED ACTION REQUESTED
Consider and take action to authorize the President/CEO to sign a Brine Water Treatment Services and Sales Agreement between UW CMC, LLC, and the El Paso Water Utilities Public Service Board.

## SUPPORTING DOCUMENTATION PROVIDED
Proposed Brine Water Treatment Services and Sale Agreement
BRINE WATER TREATMENT SERVICES AND SALES AGREEMENT

BETWEEN

UW CMC LLC

AND

EL PASO WATER UTILITIES - PUBLIC SERVICE BOARD

April 2021

Note:
The legal name of the contracting party is “UW CMC LLC”, which is a Delaware Limited Liability Company authorized to transact business in Texas.

CMC are the initials for Critical Materials Corporation and UW are the initials for UpWell Water
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This BRINE WATER TREATMENT SERVICES AND SALES AGREEMENT is made and entered into as of this 15th day of April, 2021 (the "Effective Date"), by and between UW CMC LLC., a Delaware limited liability company that is registered with the Texas Office of Secretary of State to transact business in Texas ("CMC"), and the EL PASO WATER UTILITIES - PUBLIC SERVICE BOARD, a component of the City of El Paso, TX, whose Board of Trustees is vested with the management and control of the City of El Paso water and wastewater system ("EPWU"). EPWU and CMC are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, pursuant to the authority granted by City of El Paso Ordinance No. 752 approved by the City Council on May 22, 1952, EPWU has been vested with the management and control of the City of El Paso's water and wastewater system to include the management and disposition of all facilities and revenues received, including a desalination plant named the Kay Bailey Hutchison Brackish Desalination Plant, located at 10751 Montana Avenue, El Paso, Texas 79935 ("Desalination Plant");

WHEREAS, the Desalination Plant currently produces Brine Water (as defined herein) that is being disposed of by transporting the Brine Water twenty-two miles to an underground injection well system;

WHEREAS, CMC has acquired ownership of certain water treatment assets uniquely located adjacent to the Desalination Plant, together with certain licensed Intellectual Property Rights and CMC plans to repair, refurbish and recommission such assets in a manner that can be applied by CMC to treat Brine Water and Raw Brackish Well Water (as defined herein) that will be provided to CMC by EPWU;

WHEREAS, the Parties are interested in reclaiming, recycling and reusing the Brine Water to the extent technologically and physically feasible; and, in furtherance of that public purpose, EPWU solicited requests for proposals for feasibility pilot testing for chemical and potable water recovery at the Desalination Plant pursuant to EPWU RFP No. 52-13, and on July 17, 2013 a feasibility pilot testing project was awarded to the prior owner of the assets acquired by CMC ("Pilot Testing Contract");

WHEREAS, such prior owner (of the assets acquired by CMC) completed a pilot project under the guidance of the Texas Commission on Environmental Quality ("TCEQ") to determine the possible use of such assets and Intellectual Property Rights to process and reclaim such Brine Water; and on May 13, 2014, the prior owner submitted to TCEQ a final report seeking approval of the Facility design, which approval was granted August 11, 2014 by TCEQ (an addendum thereto submitted by the prior owner on September 23, 2014 was thereafter approved by TCEQ on January 13, 2015);
WHEREAS, considering CMC’s exclusive acquisition, unique ability to operate and provide highly specialized services, and plan to repair, refurbish and recommission the assets, EPWU and CMC desire to enter into this Agreement under which CMC will construct and operate a brine and water treatment facility ("Facility") on the Ground Leased Property to enable CMC to provide long-term treatment services of the Brine Water and Raw Brackish Well Water for EPWU;

WHEREAS, this new Agreement replaces the prior brine treatment agreement dated December 2015 between EPWU and the prior owner of the Facility assets acquired by CMC;

WHEREAS, CMC will bear the cost to develop, construct, maintain, and operate the Facility without compensation from EPWU except for payment by EPWU for Return Water as set forth below;

WHEREAS, EPWU finds that this Agreement and the obligations of EPWU hereunder will serve a public need and purpose and will benefit the residents of the City and the ratepayers of EPWU by reducing Brine Water disposal costs and increasing available water supplies for El Paso Water customers;

NOW, THEREFORE, for and in consideration of the premises and mutual promises, obligations and benefits herein contained, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the capitalized terms used but not otherwise defined herein shall have the following meanings:

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by, or under common control with the first Person. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or the policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" means this Brine Water Treatment Services and Sales Agreement, as amended from time to time.

"Brine Water" means the liquid desalination waste stream (also sometimes called the "Concentrate Stream") from the Desalination Plant, which includes all water and water-borne solid ingredients and liquid or solid extraneous material in the Desalination Plant waste stream. For the avoidance of doubt, Brine Water excludes the Potable Water produced at the Desalination Plant and does not include Raw Brackish Well Water.
"Brine Water Delivery Rate" shall mean the rate at which EPWU is required to deliver Brine Water to CMC at the Delivery Location. The Desalination Plant includes five "skids" which may be utilized by EPWU, all or in any combination, at any given time. The Brine Water Delivery Rate is agreed to be that Brine Water output volume resulting from operation of at least two skids of the Desalination Plant at normal operating pressure at a full rate except for periods of Temporary Shut Downs, Temporary Reduced Operational Levels, or otherwise as permitted in Article 13. CMC shall have the right to take less than the Brine Water Delivery Rate in order not to exceed Facility capacity to process TDS concentrations.

"Brine Water Pipeline" shall mean the line used to transport the Brine Water from the Desalination Plant to the Facility. Note that the Brine Water Pipeline on the EPWU Desalination Plant Property has been built and will be maintained (and any adjacent land where EPWU has rights to build, own, operate and maintain a pipeline) by EPWU and the Brine Water Pipeline on the Ground Leased Property will be maintained and owned by CMC.

"Brine Water Specifications" means the required composition of the Brine Water delivered to CMC by EPWU as delineated on Schedule 1.

"Business Day" means a day, other than a Saturday, Sunday, or city, state or federal holiday.

"By-Products" means Ferric Arsenate Filter Cake and any other chemical, component or mixture or other material that the Parties agree in writing to be a By-Product. No other by-products from CMC shall be accepted by EPW that create a violation of the EPA Safe Drinking Water Act.

"Confidential Information" means any and all confidential or proprietary information and materials, whether patentable or not, and includes trade secrets, belonging to a Party or its Affiliates that is so designated by the owning Party. Confidential Information includes, without limitation: (a) business information and materials, including, without limitation, information about recovering water and/or chemicals, by-products and/or products from brine water; pricing models; market and business analyses; investments or investment opportunities; growth plans; acquisition prospects; strategy; finances; business plans, methods and processes; business proposals, operations, products or services; evaluations; contract terms and conditions; pricing and bidding methodologies and data; sales data; customer information; supplier and vendor information; credit information; financial data; purchasing, pricing, bidding, selling and marketing data and contracts; (b) technical information and materials, including, without limitation, computer programs; software; databases; methods; know-how; formulae; compositions; technological data; technological prototypes, processes, discoveries, inventions, ideas, concepts, surveys, improvements and designs; developmental or experimental work; training programs and procedures; diagrams, charts, products and services (including, without limitation, product developments, product specifications and technical specifications); (c) information and
materials relating to future plans including, without limitation, marketing strategies and 
techniques; Intellectual Property Rights; projects and proposals; acquisition and financing 
plans; strategic alliances; production processes; and research and development efforts; and 
(d) any other information the disclosing party designates as confidential and that gives the 
disclosing Party or its Affiliates an advantage with respect to its competitors by virtue of 
not being known by those competitors; provided, however, that information that is (i) 
obtained lawfully from a third party not subject to a confidentiality agreement; (ii) is or 
becomes publicly available through no fault of the Party desiring to use the information; (iii) 
is made public by the Party claiming confidentiality; (iv) is independently developed 
without using Confidential Information of the other Party; or (v) as to which confidentiality 
has been waived in writing by a Party, shall not be deemed to be Confidential Information.

"Contract Year" means each twelve (12) month period beginning on January 1st 
and ending on December 31st of a calendar year, starting the year of the Services 
Commencement Date and ending the last year of the Term (note: such Contract Year shall 
be prorated for the first year of the Agreement if the Services Commencement Date is not on 
January 1st, to correspond to the days between the Services Commencement Date and 
December 31st of that year; similarly, the Contract Year shall be prorated for the last year of 
the Term if the Termination Date is not on December 31st, to correspond to the days between 
January 1st and the Termination Date).

"Delivery Location" means the location at the boundary of EPWU's Desalination 
Plant Property where EPWU will deliver Brine Water and any Raw Brackish Well Water 
to CMC, which is to be located as set forth on Exhibit A.

"Environmental Law" means any Law relating to the environment, natural 
resources, Hazardous Materials or exposure to Hazardous Materials, including the 
Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 
§§ 6901, ct seq. ("RCRA"); the Federal Water Pollution Control Act, 33 U.S.C. §§ 
3808, et seq.

"EPWU Delay" means any interruption or delay in the commencement, 
prosecution or completion of the Services Commencement Date caused solely by or 
occurring solely at the direction of EPWU (including persons employed by EPWU or 
by any agent, contractor or subcontractor of EPWU having requisite authority) resulting 
from: (i) a failure by EPWU to perform (or a delay by EPWU in performing) any of its 
material obligations under this Agreement requiring actions prior to the Services 
Commencement Date, within the time or by the date established by or pursuant to this 
Agreement for performance thereof, (ii) negligent or willful misconduct by EPWU, or 
(iii) any direct or indirect action or omission by or attributable to EPWU (including acts 
or omissions of any Person employed by EPWU or of any agent, contractor or
subcontractor of EPWU having requisite authority) that materially interferes with or materially delays CMC's performance of its obligations hereunder prior to the Services Commencement Date, including any unreasonable delay by EPWU in approving or consenting to any matter that requires the approval or consent of EPWU under this Agreement; provided, that EPWU Delay shall not include delays or interruptions consistent with those contemplated in Section 13.2 herein, or those caused by or attributable to Force Majeure, compliance with applicable Law, ruling of a Governmental Body as defined herein, or caused in whole or any material part by CMC or any of its Affiliates, or any of their employees, principals, owners, agents, representatives, contractors or subcontractors.

"EPWU's Desalination Plant Property" means the real property upon which the Desalination Plant is located as delineated in the lease between EPWU and the United States of America, the Secretary of the Army, acting by and through the Chief, Real Estate Division, U.S. Army Engineer District, Ft. Worth, Texas and the City of El Paso, a Texas Home Rule Municipality and the El Paso Water Utilities Public Service Board, a component unit of the City of El Paso, Texas with a fifty (50) year primary term beginning June 1, 2009 ending May 31, 2059.

"Facility" means the treatment system to be constructed by and owned by CMC on the Ground Leased Property, including the administration and water treatment buildings, the infrastructure located on the Ground Leased Property used to transport Brine Water and Raw Brackish Well Water from the Delivery Point or to transport Return Water from CMC's Facility to the Return Location, and also any additional buildings or other CMC infrastructure on the Ground Leased Property related to CMC's Facility treatment system.

"Ferric Arsenate Filter Cake" means the By-Product created during the Services provided under this Agreement containing FeAsO4.

"Governmental Body" means any federal, state, local, municipal, foreign, tribal or other governmental body and its boards, departments, agencies or offices, entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority.

"GPM" means gallons per minute.

"Ground Lease" means that ground lease between CMC and the owner of the property adjacent to EPWU's Desalination Plant Property on which the Facility is located.

"Ground Leased Property" means the property leased to CMC pursuant to the Ground Lease, which is adjacent to EPWU's Desalination Plant Property.

"Hazardous Material" means (a) any hazardous materials, hazardous wastes, hazardous substances, and toxic substances as those or similar terms are defined under any
Environmental Laws including arsenic; (b) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable; (c) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids; (d) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; (e) any pollutant or contaminant (including petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions thereof, any oil or gas exploration or production waste, and natural gas, synthetic gas and any mixtures thereof) that in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources; (f) any substance that, whether by its nature or its use, is subject to regulation under any Environmental Law or with respect to which any Environmental Law or Governmental Authority requires environmental investigation, monitoring or remediation; and (g) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.), whether empty, filled or partially filled with any substance.

"Intellectual Property Rights" means any and all rights in or affecting intellectual or industrial property or other proprietary rights, existing now or in the future in the United States or anywhere in the world, and includes, without limitation, (a) all patents (including utility, utility model, plant and design patents, and certificates of invention), patent applications, invention disclosures, and other rights of invention, worldwide, including without limitation any additions, provisionals, continuations, continuations-in-part, divisionals, continued prosecution applications, reissues, and re-examination patents or applications thereof or any other applications or patents claiming benefit of the filing date of any such application or patent or, registrations, applications for registrations and any term extension or other action by a governmental or regulatory authority which provides rights beyond the original expiration date of any of the foregoing; (b) all proprietary information and materials, whether or not patentable or copyrightable, and whether or not reduced to practice, including without limitation all technology, ideas, concepts, research and development, protocols, inventions, designs, manufacturing and production processes and techniques, specifications, know-how, formulae, customer and supplier lists, pricing and cost information, business and marketing plans, shop rights, designs, drawings, patterns, trade secrets, confidential information, lab data, technical data, databases, data compilations and collections, computer programs, and all hardware, software and processes; (c) all registered or unregistered copyrights, rights in copyrights, copyrightable works, including, without limitation, all rights of authorship, use, publication, reproduction, exploitation, distribution, performance, transformation, moral rights, and ownership of copyrightable works, the right to create derivative works, and all applications, applications for registration, registrations, renewals, and extensions of registrations; and (d) all trademarks, service marks, logos, trade names, internet domain names, URLs, slogans, corporate names, division names including without limitation common law rights therein, together with all goodwill associated therewith, all applications for registration and registrations thereof, renewals thereof.
"Law" means any federal, state, international or local statute, law, treaty, rule, regulation, ordinance, code, order, writ, judgment, decree or rule of common law, as it may from time to time change (or any judicial or administrative interpretation thereof), policy or other legal or regulatory determination by a court of competent jurisdiction, regulatory agency or Governmental Body (including any order, certificate, judgment, decision, decree, injunction, common law, writ, or any action of any court of competent jurisdiction, arbitrator or other governmental authority).

"LOI" means the letter of intent entered into by the Parties on November 5, 2020.

"Month" means a calendar month in the yearly calendar.

"Monthly Brine Water" shall be that amount of Brine Water delivered to CMC by EPWU for any given Month that meets the Brine Water Specifications.

"Monthly Payment Amount" means the amount in U.S. dollars that EPWU is to pay CMC in a Month for Return Water that meets the Return Water Specifications, exclusive of Taxes, in the amounts delineated on Schedule 2.

"Monthly Payment Rate" means the base monthly rate on which the Monthly Payment Amount is based as delineated in Schedule 2, which shall be adjusted for each Contract Year as defined in Schedule 2.

"Monthly Raw Brackish Well Water" shall be the amount of Raw Brackish Well Water delivered to CMC by EPWU for any given Month that meets the Raw Brackish Well Water Specifications.

"Monthly Return Water" shall be that amount of Return Water delivered to EPWU by CMC in a Month that meets the Return Water Specifications.

"Person" means any individual, corporation, partnership, joint venture, limited liability company or other entity or organization.

"Permit" means any permit, license, certification, concession, approval, consent, ratification, waiver, authorization, clearance, confirmation, exemption, franchise, certification, designation, variance, qualification or accreditation issued, granted, given or otherwise made available by or under any Governmental Body or pursuant to any Law.


"Process Products" means any chemicals, compounds, materials and mixtures created or separated from the Brine Water (or from any Raw Brackish Well Water) during the performance by CMC of the Services, excluding Treated Water, Return Water and By-Products.
"Raw Brackish Well Water" means brackish water directly from EPWU's wells without the addition of any chemicals and without any treatment that is to be provided when requested by CMC up to a maximum of 1345 GPM (plus an additional 750 GPM during periods of time when EPWU is in Temporary Reduced Operational Levels delineated in Section 13.2 (b)), which shall meet the Raw Brackish Well Water Specifications. The parties acknowledge that the obligation of EPWU to provide Raw Brackish Well Water to CMC under this agreement is conditioned on CMC meeting its obligations to accept Brine Water provided by EPWU in accordance with this Agreement.

"Raw Brackish Well Water Pipeline" shall mean the line used to transport the Raw Brackish Well Water from the Desalination Plant to the Facility. Note that the Raw Brackish Well Water Pipeline on the EPWU Desalination Plant Property (and any adjacent land where EPWU has rights to build, own, operate and maintain a pipeline) will be maintained and owned by EPWU and the Raw Brackish Well Water Pipeline on the Ground Leased Property will be maintained and owned by CMC.

"Raw Brackish Well Water Specifications" means the required composition of the Raw Brackish Well Water delivered to CMC as delineated in Schedule 1.

"Return Location" means the location at the boundary of EPWU's Desalination Plant Property (and any adjacent land where EPWU has rights to build, own, operate and maintain a pipeline) where CMC will deliver Return Water to EPWU, which is to be located as set forth on Exhibit A.

"Return Water" means the Treated Water returned to EPWU.

"Return Water Pipeline" shall mean the line used to transport the Return Water from the Facility to the Desalination Plant or such other point on the Desalination Plant Property (and any adjacent land where EPWU has rights to build, own, operate and maintain a pipeline) as EPWU may designate from time to time. Note that the Return Water Pipeline on the EPWU Desalination Plant Property (and any adjacent land where EPWU has rights to build, own, operate and maintain a pipeline) will be maintained and owned by EPWU and the Return Water Pipeline on the Ground Leased Property will be constructed, maintained and owned by CMC.

"Return Water Specifications" means the required composition of the Return Water delivered to EPWU as delineated in Schedule 1.

"Services" means the services to be provided by CMC as delineated in Section 3.1. The intent of this Agreement is for CMC to prioritize the treatment of Brine Water as the primary service and not to solely treat Raw Brackish Well Water as the only service provided.

"Services Commencement Date" shall be the first Business Day after all
conditions precedent delineated in Section 12.2 have been satisfied.

"Services Manager" shall have the meaning described in Section 14.2.

"Taxes" means any and all governmental or quasi-governmental taxes, assessments, levies, duties, fees, charges or withholdings of any kind or nature whatsoever and howsoever described, including income, gross receipts, franchise, sales, use, excise, property, capital, value added, stamp, transfer, intangible, employment, occupation, generation, privilege, utility, consumption, lease, permit, license, filing, custom, and recording tax, fee or duty, together with any and all penalties, fines, additions to tax, or interest thereon, excluding franchise taxes and/or taxes on the net income of a Party.

"Term" shall have the meaning set forth in Section 8.1.

"Termination Date" shall mean the last day of the Term as delineated in Section 8.1.

"Treated Water" means water resulting from CMC's treatment of the Brine Water (and Raw Brackish Well Water) at the Facility after the By-Products and Process Products have been removed pursuant to the Services.

Section 1.2 Interpretation. The following rules shall govern the interpretation of this Agreement:

(a) The singular includes the plural and the plural includes the singular.

(b) A reference to any Law includes any amendment or modification thereto from time to time, all rules and regulations promulgated under such Law, and all administrative and judicial authority exercisable thereunder.

(c) A reference to any Person includes its permitted lawful successors and assigns.

(d) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provisions of this Agreement, unless otherwise specified or required by context; and article, section, schedule, exhibit, and annex references are to this Agreement unless otherwise specified.

(e) The word "including" (in its various forms) means "including, without limitation" or "including, but not limited to."
ARTICLE 2
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations by EPWU. EPWU hereby represents to CMC, as of the Effective Date, as follows:

(a) Organization. EPWU is a duly created and lawfully authorized component of the City of El Paso, governed by an appointed Board of Trustees, validly existing and operating under the Laws of the State of Texas and performing governmental functions, and is authorized to conduct its business and to perform this Agreement.

(b) Execution. The execution, delivery and performance of this Agreement are within EPWU's powers, have been duly authorized by all necessary action under EPWU's governing documents, and does not violate or conflict with or require any consent or waiver under any of the terms or conditions in EPWU's governing documents.

(c) Enforceability. This Agreement constitutes a legal, valid and binding obligation of EPWU.

(d) Recitals. The recitals contained in this Agreement: (i) are true and correct to the best of the EPWU Board's knowledge; (ii) form the basis upon which the Parties negotiated and entered into this Agreement; (iii) with respect to EPWU's intentions and actions, are legislative findings of EPWU; and (iv) reflect the intent of EPWU with regard to the subject matter of this Agreement.

(e) Performance. There are no matters, proceedings, claims, actions or investigations pending or, to the EPWU Board's knowledge, threatened against or relating to EPWU that materially adversely affects EPWU's ability to perform this Agreement and as of the date hereof there are no Laws that would materially adversely affect EPWU's ability to perform this Agreement. Performance of this Agreement is consistent with all EPWU’s rules and regulations. Any monetary obligations to be paid by EPWU pursuant to this Agreement shall be paid from EPWU's water and sewer revenues or other legally available revenues (but expressly excluding tax revenues).

(f) Consents. All governmental approvals and other material authorizations, permits, or filings, notices, certifications or registrations necessary in connection with the due diligence and delivery of, and performance of EPWU of its obligations and exercise of its rights under, this Agreement required to be obtained or made by EPWU have been duly obtained or made and are in full force and effect.

(g) Compliance. EPWU and the Desalination Plant are in substantial compliance in all material respects with applicable Law (including Environmental Laws). EPWU has good and marketable title or valid leasehold interests in the Desalination Plant and
there are no restrictions or other limitations on that property at present that would impede or prevent the obligations of EPWU under this Agreement. EPWU shall provide CMC with prompt written notice upon knowledge of potential actions that would impede or prevent the obligations of EPWU under this Agreement. EPWU will secure and maintain in good order all Permits and other requirements to operate the Desalination Facility and will operate the Desalination Facility as part of the EPWU utility system as would a reasonably prudent operator.

(h) **Current Character.** The current character and composition of the Brine Water is described in Schedule 1 and no material changes to such character and composition are anticipated other than that as the well water supply for the Desalination Facility is expected to increase in salinity over time, there will be a corresponding increase in the salinity and other mineral substance content of the Brine Water produced by that plant. EPWU does not by this representation guarantee no material change of any other character will occur.

(i) **Title.** At the time that EPWU delivers the Brine Water and any Raw Brackish Well Water to CMC at the Delivery Location: (i) it will have good title to the Brine Water and any Raw Brackish Well Water (and the By-Products and the Process Products contained in the Brine Water and Raw Brackish Well Water); (ii) it will have the right to convey title of the Process Products to CMC; (iii) it will deliver the Brine Water and any Raw Brackish Well Water (and the By-Products and Process Products contained in the Brine Water and Raw Brackish Well water) free from all liens, security interests, and encumbrances arising prior to the Brine Water and any Raw Brackish Well Water being delivered to CMC at the Delivery Location and (iv) EPWU can and shall transfer title to the Process Products to CMC in accordance with this Agreement.

(j) **Return Water.** The Return Water will be combined with other EPWU treated water, all of which is made available to members of the general public. The rates for the furnishing or sale of such water (i.e., the Return Water combined with other EPWU treated water) to the general public have been established or approved by EPWU. EPWU is solely responsible for the quantity and quality of the water it makes available to members of the general public.

Section 2.2 **Representations of CMC.** CMC hereby represents to EPWU as of the Effective Date and in all material respects during the Term of this Agreement as follows:

(a) **Organization.** It is a duly authorized Delaware limited liability company, validly existing and in good standing under the Law of the State of Delaware and is registered with the Texas Office of Secretary of State to transact business in Texas and is able to conduct its business to perform this Agreement. It shall seek all the regulatory authorizations necessary for it to legally perform its obligations under this Agreement.

(b) **Execution.** The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action under its governing and charter documents and does not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any
material contract to which it is a party or by which its assets are bound or affected, or any Law applicable to it.

(c) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of CMC.

(d) **Performance.** There are no matters, proceedings, claims, actions or investigations pending or, to CMC's knowledge, threatened against or relating to it that materially adversely affects its ability to perform this Agreement. Further, it is not subject to any rule, Law or other legally binding requirement that would materially adversely affect its ability to seek all requirements under this Agreement, or to perform this Agreement. Performance of this Agreement is consistent with CMC's legal authority. As of the Effective Date and to CMC's knowledge, CMC's operation of the Facility as contemplated under this Agreement does not infringe the Intellectual Property Rights of third parties.

(e) **Consents.** All governmental approvals and other material authorizations, permits, approvals or consents by, or filings, notices, certifications or registrations with any and all third parties necessary in connection with the due diligence and delivery of, and performance of CMC of its obligations and exercise of its rights under, this Agreement required to be obtained or made by CMC are in good faith to be sought or have been duly obtained or made and are in full force and effect.

(f) **Compliance.** CMC is in substantial compliance in all material respects with applicable Law (including Environmental Laws) and will use commercially reasonably efforts to remain so. CMC shall provide EPWU with prompt written notice upon knowledge of potential actions or circumstances that would impede or prevent CMC's performance of the obligations of CMC under this Agreement. Once obtained, CMC will secure and maintain in good order all Permits and other requirements to operate the Facility and will operate the Facility in a commercially reasonable and responsible manner.

(g) **Current Character.** CMC agrees that the current character of the Brine Water delineated in Schedule I is sufficient to satisfy the obligations of this Agreement and no material changes to such character and composition are anticipated other than that as the well water supply for the Desalination Facility is expected to increase in salinity over time, there will be a corresponding increase in the salinity and other mineral substance content of the Brine Water produced by that plant, and CMC understands and accepts this anticipated change.

(h) **Construction of Improvements on EPWU’s Property.** At the present time, it is understood among the Parties that EPWU has, pursuant to a previous Brine Water Treatment Services and Sales Agreement, already constructed the pipelines and infrastructure necessary for the delivery and acceptance of water to the Facility. Specifically, EPWU has constructed infrastructure so as to have required connectivity with the Ground Leased Property as provided for in this Agreement, EPWU has constructed, pipelines on the Desalination Plant Property (and any adjacent land where EPWU has rights to build, own, operate and maintain a
pipeline) as required under this Agreement for the Brine Water and any Raw Brackish Well Water to be transported from the Desalination Plant to the Delivery Location, and EPWU has constructed a pipeline on the Desalination Plant Property (and any adjacent land where EPWU has rights to build, own, operate and maintain a pipeline) as required under this Agreement for the Return Water to be transported from the Return Location to the Desalination Plant. CMC has inspected those improvements, and/or CMC has been afforded an opportunity to inspect those improvements, and CMC deems them to be satisfactory for the delivery and acceptance of water necessary for operation of the Facility. Accordingly, it is not anticipated that EPWU will need to construct additional improvements as part of this Agreement.

ARTICLE 3
SERVICES

Section 3.1 CMC Services Related to Brine Water. Commencing as of the Services Commencement Date and continuing thereafter during the Term of this Agreement, CMC shall provide the following services to EPWU in compliance in all material respects with applicable Law (the "Services"), subject to Article 13:

(a) maintain a capacity reservation in the Facility for the benefit of EPWU that will permit EPWU to discharge the Brine Water Delivery Rate of Brine Water and any Raw Brackish Well Water at the Delivery Location;

(b) accept and take possession of the Brine Water meeting the Brine Water Specifications from EPWU at the Delivery Location in the flow amount the Brine Water Delivery Rate and any Raw Brackish Well Water requested by CMC from EPWU at the Delivery Location in the flow amount requested by CMC (at the delivery rates defined in this Agreement);

(c) treat the Brine Water and any Raw Brackish Well Water delivered by EPWU and accepted by CMC, including removing any Process Products and By-Products, and providing any other treatment necessary for the Return Water to meet the Return Water Specifications; and

(d) deliver and transfer possession to EPWU of: (a) Treated Water at the Return Location in the flow amount of approximately 90% (or such other lower percentage as described below) of the volume of the Brine Water and Raw Brackish Well Water delivered by EPWU and accepted by CMC at the Delivery Location (note that the approximate 90% is based on TDS levels for 2014; therefore, if TDS levels are greater than 2014 levels, which are expected, and likely to further increase over time, the percentage return is expected to decrease below 90%); (b) Ferric Arsenate Filter Cake at the covered roll-off bin at CMC's Facility; and (c) any additional By-Products at the location determined by mutual Agreement.

Section 3.2 EPWU's Delivery and Acceptance. As consideration to CMC for providing the Services described in Section 3.1 above to EPWU, commencing as of the
Services Commencement Date and continuing thereafter during the Term of this Agreement, EPWU shall subject to Article 13:

(a) deliver Brine Water meeting the Brine Water Specifications to CMC at the Delivery Location in a daily average flow amount corresponding to the Brine Water Delivery Rate and any Raw Brackish Well Water requested by CMC in the flow rate requested by CMC (at the delivery rates defined in this Agreement);

(b) provide CMC yearly with groundwater well data for the water supply to the Desalination Plant and any Raw Brackish Well Water and will provide prompt written notice upon knowledge of potential material changes of character of the Brine Water or Raw Brackish Well Water due to any planned changes in the Desalination Facility; and

(c) accept: (i) the Return Water meeting Return Water Specifications from CMC at the Return Location in a flow amount consisting of approximately 90% of the volume of the Brine Water and any Raw Brackish Well Water accepted by CMC (note that the 90% is based on TDS levels for 2014; therefore, if TDS levels are greater than 2014 levels, which are expected, and likely to further increase over time, the percentage return is expected to decrease below 90%); (ii) Ferric Arsenate Filter Cake at the roll-off bin at CMC's Facility (EPWU shall be responsible for removing and emptying the covered roll-off bin at least once each calendar quarter per Contract Year); and (iii) any additional By-Products at the time and place delivered to EPWU within seven (7) Business Days' written notice from CMC or within such other time as agreed by the Parties when they agree in writing to designate additional By-Products.

Section 3.3 Title and Possession.

(a) Title. Subject to Section 3.3(c) below with respect to Title of Process Products, the title of the Brine Water, Raw Brackish Well Water, Treated Water, Return Water, and By-Products shall at all times be and at all times remain with EPWU. For the avoidance of doubt, title to the Process Products shall be governed by Section 3.3(c).

(b) Possession. During the Term of this Agreement: (i) possession and risk of loss of the Brine Water and any Raw Brackish Well Water shall transfer to CMC at the Delivery Point; and (ii) possession and risk of loss of the Return Water and the By-Products shall transfer to EPWU at the Return Location (or in the case of By-Products at the time of delivery under Section 3.2(d)(ii) and (iii) above).

(c) Process Products. During the Term of this Agreement, EPWU hereby transfers to CMC full title to the Process Products removed by CMC from the Brine Water and any Raw Brackish Well Water being treated at the CMC Facility at the point and time such Process Product is removed at the Facility. For avoidance of doubt, title to all Process Products shall transfer to CMC at the time such Process Product is removed from the Brine Water and any Raw Brackish Well Water at the Facility, and CMC is free to transfer and sell such Process Products to any person in any amount or on any terms CMC desires.
without any obligation to account to EPWU.

Section 3.4 **Right to Subcontract.** CMC may elect at any time to cause one or more Affiliates or any third-party contractors, subcontractors or other designated service providers to perform or provide any of the Services, and to provide equipment, but CMC shall remain primarily responsible for the performance of such Services, and no such delegation shall relieve CMC of any of its obligations under this Agreement. Nothing contained herein shall create any partnership, joint venture, or contractual relationship between any third-party contractor, subcontractor or other designated service provider and EPWU. No employee, principal or other owner, agent, representative, contractor, subcontractor, or other designated service provider of CMC is intended to be, or shall be deemed, a third-party beneficiary of this Agreement.

Section 3.5 **Safety.** In connection with this Agreement and the performance of the Services, the Parties acknowledge and agree that safety is of paramount concern, and each Party shall follow such safety procedures as constitute prudent practices in their respective industries.

Section 3.6 **Excluded Services.** CMC shall not provide or be required to provide to EPWU any of the following services: (a) environmental, legal, tax or accounting services; (b) any service that would subject CMC to regulation as a public utility under any applicable Law; (c) the removal or disposition or arrangement for disposal of any Hazardous Materials delivered to CMC by EPWU in the Brine Water; or (d) any services not expressly described pursuant to the terms of this Agreement to be provided by CMC.

**ARTICLE 4**

**WATER MEASUREMENTS**

Section 4.1 **Water Volumes.**

(a) **Furnishing of Meters/Calibration.** CMC, at its sole expense, shall furnish, operate and maintain at the Delivery Location and Return Location measuring equipment properly equipped with meters and devices of standard types approved by EPWU (such approval not to be unreasonably withheld or delayed) for measuring accurately the volumes of the Brine Water delivered by EPWU and accepted by CMC (and any Raw Brackish Well Water delivered by EPWU and accepted by CMC), and the Return Water delivered by CMC to EPWU, with a capacity to measure such quantity of water in accordance with the then-current water industry standards ("Meters"). However, in no case shall the accuracy tolerance of such Meters exceed five percent (5%). CMC agrees to calibrate said Meters as necessary, but at least every twelve (12) months. Calibration of the Meters is to be conducted by qualified personnel employed by a third-party contractor engaged and paid for by CMC and approved by EPWU (such approval not to be unreasonably withheld or delayed). Such third-party contractor shall provide a certified report to CMC and EPWU regarding the calibration. CMC shall notify EPWU five (5) Business Days in advance of the date for any measuring of the Meters and EPWU shall have
the right to be present and witness such calibration. CMC shall take necessary steps at its cost to promptly correct any inaccuracy in the Meters discovered during any test or calibration.

(b) Replacement of Meters/Title. The Parties anticipate that the Meters will be replaced from time to time, at CMC's expense, over the Term of this Agreement. All Meters shall be approved by CMC and EPWU prior to installation (such approval not to be unreasonably withheld or delayed). CMC shall retain title to all Meters it has installed under this Article 4 at all times.

(c) On-going Readings. CMC shall read the Meters on the Brine Water, any Raw Brackish Well Water, and Return Water as provided for herein weekly and provide such readings to EPWU within two (2) Business Days. Within ten (10) days following the end of each Month, CMC shall report to EPWU the total amounts of Brine Water (meeting the Brine Water Specifications), and any Raw Brackish Well Water (meeting the Raw Brackish Well Water Specification) delivered to CMC, and the Return Water (meeting the Return Water Specifications) returned to EPWU as the Monthly Brine Water, the Monthly Raw Brackish Well Water, and the Monthly Return Water, respectively. If for any reason, a Meter is out of service or out of repair and the Monthly Brine Water, Monthly Raw Brackish Well Water, and/or Monthly Return Water cannot be ascertained or computed accurately by the reading of the Meter, the quantity of Monthly Brine Water, Monthly Raw Brackish Well Water, and/or Monthly Return Water for that period shall be estimated and determined by mutual agreement of the Parties based on the best data available. If the Parties are unable to agree with regard to any Monthly Brine Water, Monthly Raw Brackish Well Water or Monthly Return Water within five (5) Business Days after the end of the Month that the Meters were out of service, or out of repair or calibration, then CMC shall use its good faith estimate, with a detailed written explanation including calculation back-up to EPWU of the method by which CMC estimated the volume(s) for the Monthly Brine Water, Monthly Raw Brackish Well Water, and/or Monthly Return Water, as applicable, for the invoice, and EPWU may invoke the disputed payments process in Section 5.3.

(d) EPWU Measurements. If, at any time but based on reasonably reliable information, EPWU determines that any Meter may not be accurate, EPWU shall deliver to CMC a written notice that questions the accuracy of the Meter, stating the basis for the concern, and CMC shall promptly test the Meter. The expense of such test will be paid by EPWU for all of CMC's Meters found to be accurate (i.e., within the required 5% accuracy tolerance) and by CMC for any test on any CMC Meter found to be inaccurate (i.e. outside the required 5% accuracy tolerance). EPWU also may furnish, install, operate and maintain check Meters, should EPWU so choose.

(e) Measurement Adjustments. If, as a result of any test or calibration, any Meter is found to be registering inaccurately (i.e. in excess of the 5% accuracy tolerance), the readings of the Meters shall be corrected at the rate of its inaccuracy for any period which is reasonably known and agreed upon (if such period is not known and agreed
upon, a period extending back half of the time elapsed since the most recent previous test or calibration with an acceptable accuracy tolerance will be used for invoicing). The Parties agree to implement billing adjustments to account for any corrections to the amounts paid or credited for Monthly Brine Water, Monthly Raw Brackish Well Water, or Monthly Return Water for the Contract Year in which the Meter inaccuracy was found.

Section 4.2 Water Quality.

(a) Sampling of Water. CMC, at its sole expense, may test the Brine Water, and any Raw Brackish Well Water at the Delivery Location and the Return Water at the Return Location for the constituents listed on Schedule 1. If it determines any of the Brine Water, Raw Brackish Well Water, or Return Water did not meet its respective specification, CMC shall notify EPWU promptly upon receipt of such information. If for any reason, a sampling event is believed not to be reliable in the reasonable determination of CMC or EPWU, then such sampling will be redone upon written notice to the other Party. If the resampling is requested by EPWU and such re-sampling confirms the initial sampling, then such testing is to be paid for by EPWU. All other sampling will be paid for by CMC.

(b) Additional Sampling. Either Party at any time can perform additional water quality tests on the Brine Water, any Raw Brackish Well Water or Return Water with regard to the chemical composition thereof at its sole option and expense. If such testing shows a variance from the testing performed by the other Party with regard to whether (and to what extent) such water does not meet the Brine Water Specifications for the Brine Water, the Raw Brackish Well Water Specifications for the Raw Brackish Well Water, or the Return Water Specifications with regard to the Return Water, then written notice shall be given to the other Party within two (2) Business Days and a resampling and test shall be done with an independent contractor selected by agreement of the Parties to resolve the discrepancy. The Party whose delivered water does not meet required specifications shall bear the cost of the resampling, but the other Party shall bear the cost if the resampling establishes specifications have been met.

(c) Off-Specification. If at any time sampling is deemed to show any Brine Water, Raw Brackish Well Water, or Return Water not in compliance with the Brine Water Specifications, Raw Brackish Well Water Specifications or Return Water Specifications, as applicable, then the period of time in which such water was out of specification shall be estimated and determined by mutual agreement of the Parties based on the best data available; provided, that if the parties cannot agree, the failure to meet specifications shall be deemed to have occurred for one-half the period of time between the retesting and the last testing at which the applicable water met specifications.

ARTICLE 5
PAYMENTS AND INVOICING

Section 5.1 Payment. Starting on the Services Commencement Date and to the extent mutually agreed by the parties, prior to the Services Commencement Date and continuing
through the Term, EPWU shall Monthly pay the following amounts based upon the Monthly Brine Water, the Monthly Raw Brackish Well Water, and the Monthly Return Water calculated for that Month:

(a) the Monthly Payment Amount as calculated in accordance with Schedule 2; and

(b) any costs due to CMC under Articles 4 or 5.

Section 5.2 Invoicing. Invoicing shall begin the Month after the Services Commencement Date. On or before the fifth (5th) Business Day of each Month, CMC shall determine and invoice EPWU for the preceding Month: Payment of the invoices above shall be due thirty (30) days after receipt by EPWU of such invoice. Any amounts not paid when due (including any amounts disputed in good faith and determined to be due and owing) shall accrue interest at the interest rate provided in Texas Government Code Section 2251.025. Any amounts improperly charged and paid and later determined not to have been due shall accrue interest and be due for refund to the Party which paid them, at a rate provided in Texas Government Code Section 2251.025.

Section 5.3 Disputed Payments. As permitted by Texas Government Code Chapter 2251, EPWU shall have the right to withhold payment of any invoiced amount that it disputes in good faith, provided that it provides a written description of the basis and nature of such dispute no later than the date payment is due and such withholding relates only to the disputed amount. The Parties will attempt in good faith to resolve the disputed payments within thirty (30) days of the written notice. If resolution is not reached within the thirty (30) days after written notice, a Party may invoke the provisions provided for in Article 7 of this Agreement.

Section 5.4 Taxes. Each Party shall be responsible for, and shall promptly pay when due, all Taxes or governmental charges imposed on it in connection with the transactions contemplated by this Agreement.

ARTICLE 6
INTELLECTUAL PROPERTY

Section 6.1 Intellectual Property. It is recognized that each of the Parties enters into this Agreement with existing Intellectual Property Rights (and that each Party may continue to develop Intellectual Property Rights during the Term of this Agreement). It is also recognized that each of the Parties may have or subsequently enter into license agreements with third parties that grant certain rights to use the Party's Intellectual Property Rights. Except as otherwise expressly set forth in this Agreement, neither the execution of this Agreement nor the undertaking of any actions under this Agreement (including providing of the Services or the providing of any Confidential Information) shall in any way be deemed to give either Party any rights to the other's Intellectual Property Rights, either expressly or by implication, nor shall it condition, modify or
expand the rights granted to third parties by either Party with regard to such Party's respective Intellectual Property Rights. Furthermore, the Parties shall not use Confidential Information of the other Party to develop any intellectual property. For clarity, EPWU understands and agrees that nothing contained herein grants any right or license to EPWU under CMC's Intellectual Property Rights, including inventions owned by CMC, relating to the treatment, reuse or reclamation of Brine Water or any of its constituents (including any By-Products or Process Products) or anything related to the Services.

ARTICLE 7
EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (the "Defaulting Party"), any of the following actions:

(a) any material representation or warranty made by a Party in this Agreement was incorrect as of the date made and remained uncorrected for a period of thirty (30) days after the representing Party has received written notice of its inaccuracy;

(b) any Party fails to pay any amount owed to the other Party pursuant to this Agreement for a period of thirty (30) days after the date such payment is due; subject, however, to a right of notice and opportunity to cure within ten (10) business days;

(c) EPWU fails to meet the Brine Water Specifications for the Brine Water or the Raw Brackish Well Water Specification for any Raw Brackish Well Water delivered at the Delivery Location or fails to deliver the Brine Water at the Delivery Location as required in the amount of the Brine Water Delivery Rate or the Raw Brackish Well Water at the delivery rate defined in this Agreement;

(d) CMC fails to accept delivery of Brine Water in the amount of the Brine Water delivery rate set forth in this Agreement, or CMC fails to meet the Return Water Specifications for the Return Water delivered at the Return Location; or fails to deliver Treated Water to EPWU in a volume equal to approximately 90% (or such lower percentage as contemplated by Section 3.2 (c) of this Agreement) of the Brine Water and Raw Brackish Well Water volume delivered by EPWU at the Delivery Location in accordance with the Brine Water Specifications and Raw Brackish Well Water Specifications within twenty-four (24) hours of receipt (or such longer time period as is reasonable under the circumstances) of such Brine Water and Raw Brackish Well Water (note that the 90% is based on ITDS levels for 2014; therefore, if TDS levels are greater than 2014 levels, as is expected by the Parties, the percentage return is expected to may decrease below 90%);

(e) Either Party fails to comply with its obligations under Article 6; or
A Party fails to perform any other material obligation under this Agreement and such failure of this Agreement continues for forty-five (45) days after written notice thereof; or if such failure cannot be cured within such forty-five (45) day period with the exercise of all commercially reasonable efforts, such longer period of time as shall be reasonably necessary to cure such default, provided such party diligently continues all reasonable commercial efforts to cure such default (but not to exceed 90 days in the aggregate).

Section 7.2 General Remedies. Subject to Article 12, upon the occurrence of an Event of Default, the Parties shall in good faith try to resolve the matter within thirty (30) days of written notice by the Party asserting an event of default to the other Party. Absent resolution of an Event of Default by the expiration of such period, any Party can use any remedy available to it under law or equity for such Event of Default, provided, however, that no Party may terminate this Agreement during the Term notwithstanding such Event of Default except as provided for in Article 8. Each Party acknowledges and agrees that its sole and exclusive remedies with respect to any and all claims against the other Parties or its Affiliates arising out of or relating to this Agreement shall be pursuant to the provisions set forth in this Article 7 and Article 8.

Section 7.3 Immunity and Damages. EPWU hereby stipulates, agrees and acknowledges as follows (i) EPWU is a Texas local governmental entity subject to Chapter 271, Subchapter I of the Texas Local Government Code, as that statute may be modified or amended from time to time; (ii) Texas Local Government Code Section 271.152, part of said Subchapter I, provides that a local governmental entity that enters into a contract subject to Subchapter I waives sovereign immunity to suit for the purposes of adjudicating a claim for breach of the contract, subject to other terms of Subchapter I; (iii) this Agreement is a written contract stating the essential terms of the agreement for providing goods or services to EPWU that is properly executed on behalf of EPWU and, therefore, is a contract currently subject to Subchapter I under Section 271.151(2)(A) of the Texas Local Government Code; (iv) in addition to any other rights and remedies available at law or in equity to CMC, under the current version of Section 271.153 of the Texas Local Government Code, but subject to any changes in that statute or other applicable law from time to time, CMC is authorized to seek a monetary award in an adjudication against EPWU for breach of this Agreement, subject to the limitations stated in Section 271.153; (v) the amounts to be paid to CMC by EPWU under Article 5 constitute the balance due and owed by the EPWU under this Agreement and not consequential or exemplary damages; and (vi) amounts to be paid by EPWU pursuant to this Agreement shall be paid from EPWU's water and sewer revenues or other legally available revenues (but expressly excluding tax revenues).

ARTICLE 8
TERM AND TERMINATION

Section 8.1 Term of Agreement. This Agreement shall be effective as of the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall continue in effect until the Termination Date, on which date this Agreement shall terminate
("Term").

(a) **Termination Date.** The Termination Date shall be twenty (20) years after the Services Commencement Date, unless terminated earlier pursuant to Section 8.2 or Section 8.1(b) below. The initial twenty (20) year Term may be extended for up to two additional five (5) year terms as set forth below.

(b) **Extension.** Provided that CMC is not then in default under this Agreement or under Section 7.1 of this Agreement, the Termination Date may be extended for up to two additional five (5) year terms upon mutual agreement, provided that the Party requesting such an extension gives the other Party written notice of its request for such extension at least one (1) year prior to the Termination Date and the other Party gives written notice of its agreement to or rejection of the requested extension within one month thereafter.

Section 8.2 **Termination.**

(a) **Termination by EPWU.**

(i) **Grounds.** EPWU may terminate this Agreement if CMC fails to achieve Services Commencement Date on or before thirty-six (36) Months from the Effective Date. The deadline herein shall be extended for the length of any unexcused EPWU Delay. Furthermore, EPWU may terminate this Agreement if: (A) CMC has been unable to take Brine Water from EPWU by such deadline and is not in good faith attempting to correct the situation with commercially reasonably diligence; or (B) there are no operational, technological, equipment or other Facility problems following the Services Commencement Date hereunder but CMC has nevertheless operated the facility for less than twenty-four (24) Months during any five (5) year period.

(ii) **Termination Obligation.** Should EPWU terminate this Agreement for any of the grounds listed in Section 8.2(a)(i), then neither EPWU nor CMC shall have any liability to each other except that the parties shall be responsible for any costs or amounts properly due under this Agreement that have already arisen.

(b) **Termination by CMC.**

(i) **Grounds.** CMC may terminate this Agreement at any time for any reason in its sole discretion upon ninety (90) days prior written notice to EPWU.

(ii) **Termination Obligation.** Termination by CMC will result in no cost or liability to CMC or EPWU except that the parties shall be responsible for any costs or amounts properly due under this Agreement that have already arisen.

(iii) **Termination Procedure.** Before terminating the Agreement pursuant to this Article 8, the Party desiring to terminate shall give the other Party written
notice detailing the subsection under which termination is sought and the reason therefor. CMC shall have the opportunity to cure the alleged matter if termination is sought by EPWU and, if such matter is in good faith estimated to be cured in one hundred and eighty (180) days then CMC shall have one hundred and eighty (180) days to cure such matter (which may be extended to three hundred and sixty-five (365) days if CMC has promptly begun diligent efforts to cure following notice and is in the process of curing the item and if so cured, there will be no early termination based upon such notice).

ARTICLE 9
CONFIDENTIALITY

During the Term of this Agreement and for a period of two (2) years thereafter, before releasing any Confidential Information or any other record related to CMC, the Pilot Testing Contract, the LOI, the Facility or this Agreement, in response to an open records request received pursuant to the Texas Public Information Act ("TPIA"), the Parties agree that EPWU will, as required by the TPIA, (a) provide notice to CMC of the request so CMC may, at its option and expense, seek and obtain an open records determination from the Texas Attorney General's office as to whether the requested records are exempt from disclosure under the Texas Public Information Act or its successor statute; and (b) give written notice to the Texas; Attorney General's Office of the open records request pursuant to Texas Government Code section 552.305, including a copy of the request, and, to the extent permitted under the law, that EPWU is withholding disclosure of the requested records pending notice to CMC, which may wish to seek an Attorney General open records determination. Such notice shall be provided to CMC as required by the TPIA. CMC, not EPWU, shall have the obligation to submit to the Attorney General its arguments why the requested records are excepted from disclosure under the Act. Upon the resolution of any Attorney General opinion request, the Parties agree promptly to provide CMC with a copy of the Attorney's General's decision. If the Attorney General determines that a requested record is wholly exempt from disclosure under the TPIA, the Parties agree not to release the record. If the Attorney General determines that a record is partially exempt from disclosure under the TPIA, the Parties agree to redact those specific portions of the record that are exempt from disclosure prior to releasing the record. To the extent permitted by applicable law, no record (or portion of record) shall be released until CMC has exhausted its rights with regard to contesting such release. EPWU agrees to provide CMC with a copy of any released record concurrently with the release of the record to the requesting party. Any information properly released after this process has been complied with shall no longer be deemed to be Confidential Information.

ARTICLE 10
INSURANCE

CMC will provide insurance as required by any CMC lender. If no lender requires insurance, CMC will provide insurance consistent with EPWU written policies or other procurement standards as generally applied to EPWU contractors.
ARTICLE 11
NO WARRANTY

Section 11.1 No Warranty by CMC. Except for the obligations of CMC to provide Return Water meeting the Return Water Specifications and in the volumes specified, CMC makes no (and hereby expressly disclaims any) representation or warranty, express or implied, with respect to the nature, quantity or quality of any of the Services, the Facility, the Return Water, the By-Products or any component or part involved in the Services, or any other matter in connection with this Agreement or obligation under this Agreement. IN PARTICULAR, BUT NOT BY WAY OF LIMITATION, NO IMPLIED WARRANTY OF MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN OR FITNESS, SUITABILITY FOR A PARTICULAR PURPOSE, CONFORMITY WITH MODELS, SAMPLES, PICTURES OR DRAWINGS IS MADE BY CMC IN ANY RESPECT WHATSOEVER, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. CMC HAS NOT MADE ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES INCLUDING THE AMOUNT OF ANY SAVINGS TO BE REALIZED FROM ANY PROJECT OR THE USE OF ANY RETURNED WATER OR BY-PRODUCT. EPWU agrees that no forward-looking statement or projection, oral or written, heretofore or hereafter made by CMC, whether in any report, study, analysis or other document furnished to EPWU, or otherwise, shall constitute a warranty with regard to nature, quantity, or quality of any Services, goods, savings or results to be received or achieved.

Section 11.2 No Warranty by EPWU. Except for the obligations of EPWU to provide Brine Water meeting the Brine Water Specifications (and meeting the Raw Brackish Well Water Specifications for any Raw Brackish Well Water EPWU delivers to CMC) and to provide good and marketable title to the Process Products, EPWU makes no (and hereby expressly disclaims any) representation or warranty, express or implied, with respect to the nature, quantity or quality of the performance of any of its obligations under this Agreement, the Desalination Plant, the Brine Water, the By-Products or any component or part involved in operation of the EPWU system including but not limited to the Desalination Plant, or any other matter in connection with this Agreement. IN PARTICULAR, BUT NOT BY WAY OF LIMITATION, NO IMPLIED WARRANTY OF MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN OR FITNESS, SUITABILITY FOR A PARTICULAR PURPOSE, CONFORMITY WITH MODELS, SAMPLES, PICTURES OR DRAWINGS IS MADE BY EPWU IN ANY RESPECT WHATSOEVER, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. EPWU HAS NOT MADE ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR THE OPERATION OF ITS SYSTEM INCLUDING THE DESALINATION PLANT, INCLUDING THE AMOUNT OF ANY PROCESS PRODUCTS OR BY-PRODUCTS CMC MIGHT REASONABLY EXPECT TO DERIVE FROM OPERATION OF ITS FACILITY IN PROVIDING THE SERVICES. CMC agrees that no forward-looking statement or projection, oral or written, heretofore or hereafter made
by EPWU, whether in any report, study, analysis or other document furnished to CMC, or otherwise, shall constitute a warranty with regard to nature, quantity, or quality of any results to be received or achieved by CMC.

Section 11.3 Forecasts. Estimates or forecasts furnished by either Party shall not constitute commitments, warranties or guarantees. Any and all reports furnished pursuant to this Agreement shall be governed by and limited by the terms of this Agreement and nothing in any such report shall constitute a guarantee or warranty.

ARTICLE 12
LIMITATION OF LIABILITY

Section 12.1 Limitation of CMC Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY SCHEDULE, ANNEX OR EXHIBIT ATTACHED HERETO TO THE CONTRARY, THE LIABILITY OF CMC AND ITS AFFILIATES TO EPWU AND ITS AFFILIATES ON ACCOUNT OF ALL CLAIMS ARISING FROM OR IN CONNECTION WITH CMC’S PERFORMANCE OF THIS AGREEMENT (INCLUDING PERFORMANCE OF THE SERVICES), INCLUDING ANY CLAIMS BASED ON THE NEGLIGENCE OR STRICT LIABILITY OF CMC OR ITS AFFILIATES, SHALL BE LIMITED TO DIRECT DAMAGES INCURRED BY EPWU. FOR THE AVOIDANCE OF DOUBT, CLAIMS FOR PAYMENT OF ALL AMOUNTS PROPERLY DUE AND PAYABLE BY CMC HEREUNDER SHALL NOT BE SUBJECT TO OR INCLUDED IN THE LIMITATIONS SET FORTH IN THIS SECTION 12.1

Section 12.2 Conditions Precedent. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY SCHEDULE, ANNEX OR EXHIBIT ATTACHED HERETO TO THE CONTRARY, NEITHER PARTY HAS ANY OBLIGATION TO PERFORM UNDER THIS AGREEMENT, UNLESS AND UNTIL THE FOLLOWING CONDITIONS PRECEDENT HAVE BEEN SATISFIED:

(a) The Ground Lease is fully executed and/or assigned to CMC.

(b) The Ground Leased Property is zoned to permit operation of the Facility.

(c) All Permits required to construct and operate the Facility and to provide the Services under this Agreement have been obtained by CMC.

(d) The Facility is constructed and all certificates of occupancy or other licenses or approvals needed for occupancy of the Facility have been issued.

Section 12.3 Preliminary Schedule. The following preliminary schedule has been agreed upon by the Parties:
September 15, 2021 - Finalized (mutually agreed) testing completed for the Brine Water Pipeline, Raw Brackish Well Water Pipeline, and Return Water Pipeline and meters.

December 31, 2021 - Commercial operation of Brine Water Pipeline, Raw Brackish Well Water Pipeline, and Return Water Pipeline (successful performance test) at approximately fifty percent (50%) capacity.

The Parties will meet as soon as practicable after the Effective Date of this Agreement to work on the above matters and shall proceed with all due diligence to finalize the preliminary schedule above, which the Parties may agree to make reasonable changes thereto. The Parties will thereafter use their best efforts to meet such schedule and shall supply each other with monthly reports confirming the status of each condition precedent. CMC shall provide thirty (30) days' prior written notification to EPWU of the Services Commencement Date.

Section 12.4 Limitation of EPWU Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY SCHEDULE, ANNEX OR EXHIBIT ATTACHED HERETO TO THE CONTRARY, THE LIABILITY OF EPWU AND ITS AFFILIATES TO CMC AND ITS AFFILIATES ON ACCOUNT OF ALL CLAIMS ARISING FROM OR IN CONNECTION WITH EPWU'S PERFORMANCE OF THIS AGREEMENT SHALL BE LIMITED TO ANY DIRECT DAMAGES INCURRED BY CMC, PROVIDED, THAT CLAIMS FOR PAYMENT ON ACCOUNT OF THE SERVICES (INCLUDING INTEREST, AND ALL OTHER SUCH AMOUNTS PROPERLY DUE AND PAYABLE BY EPWU HEREUNDER) SHALL NOT BE SUBJECT TO OR INCLUDED IN THE LIMITATIONS SET FORTH IN THIS SECTION 12.3.

THE PARTIES AGREE AND ACKNOWLEDGE THAT THIS SECTION 12.4 IS NOT INTENDED TO, AND SHALL NOT BE CONSTRUED TO, OPERATE AS ANY FORM OF WAIVER OF THE DAMAGE CAPS OR GOVERNMENTAL IMMUNITIES AFFORDED TO EPWU UNDER APPLICABLE TEXAS LAW.

Section 12.5 No Consequential Damages. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY, OR ANY OF ITS AFFILIATES, FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

ARTICLE 13
SHUTDOWNS AND FORCE MAJEURE

Section 13.1 Force Majeure. If either Party is rendered unable by Force Majeure (as defined below) to carry out, in whole or part, its obligations under this Agreement and such Party gives written notice and details of the Force Majeure to the other Party as soon as practicable after the occurrence of the Force Majeure, then during the pendency of such Force Majeure but for no longer period, the obligation for which the Force Majeure has rendered the
affected Party unable to perform shall be suspended to the extent required by the Force Majeure. The Party affected by the Force Majeure shall remedy the Force Majeure with all due diligence. "Force Majeure" means an event not within the reasonable control of the affected Party, and which by the exercise of due diligence by the affected Party is unable to avoid, overcome, or obtain or cause to be obtained a commercially reasonable substitute therefor. Events of Force Majeure may include, but are not restricted to: acts of God; fire; explosion; pandemic or similar public health outbreak, civil disturbance; labor dispute; labor or material shortage; sabotage; action or restraint by court order or public or governmental authority; or action by a third party or other unanticipated impacts to or circumstances affecting the EPWU utility system that makes EPWU's performance or compliance with the Agreement not practicable considering EPWU's obligation to operate its system prudently (so long as the affected Party has not created, instituted, applied for or assisted in the application for, and has opposed where and to the extent reasonable, such action or restraint).

Section 13.2 Shutdowns.

(a) **Temporary Shutdowns.** The Parties understand the need for outages for general maintenance and modification of the Desalination Plant and of the Facility, and on occasions when their respective facilities experience such outages or other circumstances that make operation impossible, such as scheduled maintenance or repair, or unexpected down-time not attributable to events of Force Majeure, or necessary outages as part of the standard operation of the Desalination Plant or the Facility. The Parties agree that EPWU shall be entitled to up to thirty (30) outage days per Contract Year for planned outages or unanticipated down-time, and that CMC shall be entitled to up to thirty (30) outage days per Contract Year for such planned outages or unanticipated down-time. Each Party shall give the other Party six (6) Months (or such other time as is practicable, but no less than forty-five (45) days) written notice of the desire to take planned outages and shall use commercially reasonable efforts to coordinate planned outages to occur at the same time as the other Party and as reasonably requested by EPWU and CMC to account for minimal disturbance to operating the Facility. As long as outages occur in compliance with this paragraph, such outages shall not constitute an Event of Default. Shutdowns caused by TXDOT (such as the ongoing construction of the Montana expressway project) shall not count against the 30 day allotment for either party nor shall they constitute an Event of Default.

(b) **Temporary Reduced Operational Levels.** For up to fourteen (14) additional days per Contract Year, or such longer time as the parties may mutually agree is reasonable under the circumstances, EPWU will be entitled to operate the Desalination Plant at a level involving only one skid, which is equivalent to a Brine Water Delivery Rate approximately half of the stated Brine Water Delivery Rate. To the extent practicable, EPWU will give CMC written notice (consistent with the timing set forth in subsection (a) above) of such periods that may be planned, and otherwise as promptly as practicable, of any unanticipated periods when operational constraints or unanticipated events make it impracticable or impossible to operate the Desalination Plant at a level capable of delivering the Brine Water Delivery Rate. In such instances, EPWU shall provide CMC with Raw Brackish Well Water to account for the lost Process Products in the second skid, and such Raw Brackish Well Water shall meet the Raw
ARTICLE 14
PLANNING/REPORTS

Section 14.1 Planning Meetings. The Parties agree to use commercially reasonable efforts to meet (face to face or via teleconference or similar means) periodically during the Term of this Agreement (but, in any event, not less than quarterly) for the purpose of discussing maintenance needs and topics related to the Desalination Plant, the pipelines, and the Facility. Both Parties will report on upcoming potential maintenance needs and any other material developments that could affect compliance with this Agreement.

Section 14.2 Key Contact Personnel. Each Party will appoint a contact person (a "Services Manager") who will serve as the primary point of contact for communications between the Parties relating to the day-to-day operations of the Services, have overall responsibility for managing and coordinating the performance of the nominating Party's obligations under this Agreement, and be authorized to act for and on behalf of the appointing Party concerning all matters relating to this Agreement. Neither Party will reassign a Services Manager unless it provides at least five (5) Business Day's prior written notice to the other Party. If a Services Manager ceases to be employed by the party that appointed it or is reassigned by such Party, such Party shall promptly appoint a new Services Manager and provide written notice to the other party of the new Services Manager so appointed.

Section 14.3 Reports. CMC will deliver to EPWU on or before February 1 of a Contract Year (beginning the Contract Year after the Services Commencement Date and continuing until the end of the Term) and at each semi-annual time period, a summary accounting of all volumes of Brine Water and any Raw Brackish Well Water received by CMC from EPWU and Return Water delivered to EPWU from CMC in the prior Contract Year and six-month period along with a report of the payments received therefor.

ARTICLE 15
MISCELLANEOUS PROVISIONS

Section 15.1 Preferred Provider. In consideration of CMC's agreement to provide the Services on the terms contained in this Agreement, EPWU agrees that at all times during the Term of this Agreement that CMC shall be EPWU's exclusive source of supply for the Services to the Brine Water at up to the stated Brine Water Delivery Rate; provided, that the Parties may agree in writing to such exclusivity as to a larger Brine Water Delivery Rate; and provided, further, that before EPWU commits to any other provider of similar Services, CMC shall have a right of first refusal, based on the CMC terms then applicable to the existing volumes of Brine Water EPWU delivers to CMC under this Agreement or the terms of the third-party offer, whichever EPWU determines to be more favorable to it. EPWU reserves the right to utilize Brine Water produced in excess of the applicable Brine Water Delivery Rate for other purposes from time to time as it may determine appropriate. EPWU
agrees to provide to CMC notice of any proposed agreement with an alternative provider of the Services or similar services involving the treatment of Brine Water. Nothing in this Agreement shall restrict either Party or any of its Affiliates from engaging in such business activities or any other business activity or from advising others on the same activities as are within the scope of this Agreement; or EPWU from using the Brine Water that CMC refuses in any other manner.

Section 15.2 Assistance. The Parties agree (a) to furnish, upon request of the other Party, such further assistance or information, (b) to execute and deliver to the other such other documents, and (c) to use reasonable efforts to do such other acts and things as a Party may reasonably request, for the purpose of carrying out the intent of this Agreement and the Services.

Section 15.3 Non-Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like kind or of a different nature.

Section 15.4 Notices, Demands and Consents.

(a) General. Any notice, demand or consent that under the terms of this Agreement or under any Law must or may be given or made by CMC or EPWU shall be in writing and shall be given or made by personal delivery, facsimile, email or by certified or registered mail addressed to the respective Parties as follows:

To 
EPWU: El Paso Water Utilities  
Attn: John E. Balliew, P.E., President/CEO  
1154 Hawkins Blvd.  
El Paso, TX 79925  
Phone No: 915-594-5501  
Fax No.: 915-594-5699

To 
CMC: UW CMC LLC  
Attention: Tom Currin  
Chief Operating Officer  
3640 Global Reach  
El Paso, TX 79936  
Phone No.: 704-906-4346  
Email: tcurrin@criticalmaterials corporation.com

Any such notice, demand or consent shall be deemed to have been given or made one (1) Business Day after received (if sent by personal courier having the ability to track and verify delivery to the specified address and person), one (1) Business Day after being sent when sent by facsimile or email to the person named, with receipt confirmed or, if by certified or registered mail, three (3) Business Days after being deposited (postage
prepaid) in the United States mail, when properly addressed to the person designated to receive notice and sent to the designated address. Either Party may change the address set forth in this Section 15.4(a) at any time by giving prior notice to the other Party as provided above.

(b) Failure to Provide Required Notice. In the event that either Party shall fail to deliver, within the time provided for herein, any notice, demand or consent required to be delivered by the terms of this Agreement within such time, such failure shall not constitute any waiver of any rights that the Party supposed to have given the notice, demand or consent may otherwise have with respect to the subject matter of such notice, demand or consent unless the other Party (the Party that did not receive the notice, demand or consent) provides, within sixty (60) days of such failure, a written request demanding the required notice, demand or consent, and in a circumstance where that written request is transmitted within the sixty (60) day period, the original Party (the Party that did not provide the required notice, demand or consent required under this Agreement) shall retain the ability to retransmit the required notice, demand or consent in accordance with the terms of this Agreement.

Section 15.5 Relationship of the Parties. Except as otherwise expressly provided in this Agreement, CMC shall perform the Services as an independent contractor. Nothing in this Agreement or in the performance of the Services by CMC shall be construed to create (a) a partnership, joint venture or other joint business arrangement or venture between CMC and EPWU or any of their Affiliates, (b) any fiduciary duty or similar fiduciary type of obligations owed by one Party to the other Party or any of its Affiliates, or (c) a relationship of employer and employee relationship between the Parties. If an agency relationship is created or implied (because, for example, one party must or is deemed to designate the other Party as the first Party's "agent" so that the second Party may perform certain aspects of the Services or other obligations hereunder) such agency shall be a limited agency wherein the implied agent's duties are specifically limited to the subject matter thereof and shall not create or result in the imposition on that implied agent of any other duties of any kind or nature, including any duties which may otherwise arise by operation of Law, and the scope of the implied agency shall be the minimum necessarily implied.

Section 15.6 Assignment.

(a) Assignment by CMC. CMC shall have the right to assign this Agreement and any right or interest under this Agreement without the prior written consent of EPWU, in (i) assigning its interest in monies due or to become due under this Agreement; (ii) transferring, pledging or assigning this Agreement as security for any financing; and/or (iii) transferring or assigning this Agreement to any Affiliate of CMC. Prior to assignment of all or a part of this Agreement to a third-party not included in (i)-(iii) above, CMC shall obtain prior written consent of EPWU, which consent shall not be unreasonably withheld.

(b) Assignment of Entire Agreement by CMC. In the event of an assignment by CMC of the entire Agreement to a third-party not included in 15.6(a)(i)-(iii) above, CMC shall be contractually required to assure that such proposed assignee shall
execute and deliver to EPWU an agreement containing an assumption by such assignee of the performance and observance of each covenant, obligation and condition of this Agreement to be performed or observed by CMC; and CMC and the proposed assignee shall promptly provide to EPWU such information as EPWU may reasonably request about the proposed assignee, including but not limited to financial, experience and qualifications information. Upon consummation of the assignment, the assignee shall succeed to, and be substituted for, and may exercise every right and power of CMC under this Agreement, and shall assume all of CMC's responsibilities and obligations under this Agreement, except that an assignment may not operate to relieve CMC of any contractual obligations or liabilities to EPWU that have already accrued or occurred prior to the time of the assignment.

(c) Assignment by EPWU. EPWU shall not assign this Agreement or any right or interest under this Agreement without the prior written consent of CMC, which consent shall not be unreasonably withheld; provided, that the Agreement may be assigned without CMC's consent to any entity that becomes the legal successor to EPWU.

Section 15.7 No Third-Party Beneficiaries. Nothing in this Agreement shall be deemed to provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind arising under this Agreement; it being the intent of the Parties that this Agreement shall not be construed as a third-party beneficiary contract.

Section 15.8 Entire Agreement. This Agreement and the Exhibits and Schedules attached to this Agreement constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and shall not be modified or rescinded except by a writing duly executed by CMC and EPWU. The provisions of this Agreement supersede all contemporaneous oral agreements and all prior oral and written quotations, communications, agreements and understandings of the Parties with respect to the subject matter of this Agreement, including any letter of intent or memorandum of understanding executed by the Parties with respect to the Services.

Section 15.9 Headings, Schedules and Construction. The headings used for the Sections herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of this Agreement. All Schedules and Exhibits referenced in this Agreement are hereby incorporated for all purposes. If any inconsistency exists or arises between the terms contained within the Articles of this Agreement and the terms contained within the Schedules and Exhibits of this Agreement, then the terms contained within the Articles of this Agreement shall prevail followed by the Schedules and then the Exhibits.

Section 15.10 Interpretation. Each Party has been represented by legal counsel who has participated throughout the formulation, drafting, and approval of this Agreement. Accordingly, this Agreement may not be interpreted more favorably in
favor of one Party than the other on the basis that one Party was the drafter.

Section 15.11 Choice of Law and Venue. This Agreement, and all of the rights and obligations of the Parties arising from or relating in any way to the subject matter of this Agreement, or the transactions contemplated hereby, shall be governed by, construed and enforced in accordance with, the laws of the State of Texas, without giving effect to its choice of law provisions. The Parties agree that venue for any action arising under or related to this Agreement will be and lie exclusively in El Paso County, Texas.

Section 15.12 Mediation. In the event any controversy arising under this Agreement is not resolved by informal negotiations between Parties within thirty (30) days after any Party requests negotiations, upon the request of either Party, the controversy shall be referred to nonbinding mediation, which shall occur in El Paso County, Texas. The mediation process will continue until the controversy is resolved, the mediator makes a finding that there is no possibility of settlement through mediation, or any Party chooses not to continue further and gives written notice thereof. All costs and expenses of the mediation (including the mediator's fees and expenses) will be shared equally by the Parties; provided, however, that costs and expenses incurred by each Party shall be borne solely by such Party.

Section 15.13 Severability. If any clause, sentence, paragraph or part of this Agreement should be declared or rendered unlawful by a court, regulatory agency or other lawful authority of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

Section 15.14 Survival of Obligations. The obligations of the Parties under this Agreement which by their nature would continue beyond the expiration of the Term of this Agreement, including those in the Articles 1, 5, 6, 7, 9, 11, 12, and 15 shall survive the expiration of the Term of this Agreement.

Section 15.15 Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.
UW CMC LLC

By: __________________________________
Name: Steve McArthur
Title: CEO

EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD

By: ___________________________________
Name: John E. Balliew, P.E.
Title: President & CEO
I. BRINE WATER SPECIFICATIONS

The brine water is the concentrate stream from the Desalination Plant with a typical TDS of 10,000 mg/l and greater. This Brine Water will be delivered at operating pressure directly from the operating train or trains, without the addition of any cleaning wastes, backflush water or other streams generated from offline operation (e.g. no permeate production). CMC plans to treat 868 GPM concentrate at a nominal TDS of 12,700 mg/l; however the actual flow will be adjusted based on:

1) The actual capacity of CMC's plant; and
2) The actual sodium and chloride concentration of the concentrate and the available flow which will have a minimum of combined sodium and chloride concentration of 5350 mg/L at a 868 GPM flow. The parties acknowledge that to the extent higher and lower concentration options are available, EPWU will use reasonable efforts to attempt to provide and CMC will use reasonable efforts to receive Brine water and Raw Brackish Well Water having the highest available sodium and sodium chloride concentrations.

II. RETURN WATER SPECIFICATIONS

The Return Water Specifications shall meet TCEQ wholesale potable water quality regulations and shall be at or below the maximum levels listed below:

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<thead>
<tr>
<th>Parameter (all are in mg/l unless otherwise delineated)</th>
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<tr>
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<td>K+</td>
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<tr>
<td>Corrosivity</td>
<td>Non-corrosive</td>
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<tr>
<td>Temperature (F)</td>
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</table>

(1) The value for pH is an approximate level; the actual value may be as high as 8.9 or as low as 8.5 depending on the TCEQ corrosivity requirement.

III. Raw Brackish Well Water Specifications

The Raw Brackish Well Water shall be raw water directly pumped from groundwater wells owned or leased, and operated, by EPWU, and shall not be chlorinated or treated.
SCHEDULE 2
MONTHLY PAYMENT RATE

In calculating the amounts described below, the Monthly Brine Water delivered in a Month, the Monthly Raw Brackish Well Water delivered in a Month, and the Monthly Return Water delivered in a Month shall be those amounts determined in accordance with Article 4.

**Monthly Payment Amount**

A. The Monthly Payment Amount for a Month shall be the Monthly Return Water volume for that Month multiplied by the Monthly Payment Rate. For example, if the Monthly Return water in a Month is 35,000,000 gallons (or 35,000 thousand gallons) and the Monthly Payment Rate is $2.75 per thousand gallons, then the then Monthly Payment Amount would be $2.75 \times (35,000) = $96,250.

B. The Monthly Payment Rate shall be $2.75 (in U.S. Dollars) per thousand gallons of Monthly Return Water for each applicable Month for the first Contract Year after the Services Commencement Date. The Monthly Payment Rate shall automatically escalate annually for each successive Contract Year by 1.5% per annum.
Exhibit A

Record Drawing of KBH Service Pipelines to CMC Facility