



**PUBLIC SERVICE BOARD MEETING
AGENDA ITEM
REGULAR MEETING
Wednesday, July 8, 2026**

SUBJECT

Amendment to the Brine Water Treatment Services and Sales Agreement between EPWater and UW CMC LLC for continued services at the Kay Bailey Hutchison (KBH) Desalination Plant.

BACKGROUND

In April 2021, the Public Service Board approved a Brine Water Treatment Services and Sales Agreement between EPWater and UW CMC LLC for treatment of brine water generated at the Kay Bailey Hutchison (KBH) Desalination Plant and the return of treated water to EPWater. The original agreement was intended to support beneficial reuse of brine water, reduce disposal costs, and increase available drinking water supplies. EPWater now seeks approval of an amendment to the original contract to revise certain terms and conditions of the agreement, support continued implementation of the project, and preserve the operational and financial benefits associated with the treatment and return-water services.

PRIOR PSB ACTION

- On April 14, 2021, the Public Service Board authorized the President/CEO to sign a Brine Water Treatment Services and Sales Agreement between UW CMC LLC and EPWater Utilities Public Service Board.

UTILITY KPI ALIGNMENT

Total Water Supply

EVALUATION PROCESS

The proposed amendment was evaluated based on the ongoing operational need for brine water treatment services, the continued benefit of reducing brine disposal requirements, and the value of maintaining a treatment process that can contribute additional potable water supply. The amendment is intended to preserve continuity of service and align the agreement terms with current project and operational needs. Annual expenditures under this agreement will vary based on the volume of potable water purchased by EPWater from UWCMC. Based on current assumptions, the financial analysis estimates an annual cost of approximately \$5.2 million for the purchase of 1.1 billion gallons of potable water.

FINANCIAL IMPLICATIONS

Expenditures will be budgeted for approval in future annual budgets.

PROPOSED ACTION REQUESTED

Consider and take action to authorize the President/CEO to sign an amendment to the Brine Water Treatment Services and Sales Agreement between UW CMC LLC and EPWater Utilities Public Service Board.

SUPPORTING DOCUMENTATION PROVIDED

- Proposed contract amendment

**FIRST AMENDED AND RESTATED BRINE WATER TREATMENT SERVICES AND
SALES AGREEMENT**

BETWEEN

UW CMC LLC

AND

EL PASO WATER UTILITIES - PUBLIC SERVICE BOARD

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**FIRST AMENDED AND RESTATED BRINE WATER TREATMENT SERVICES
AND SALES AGREEMENT**

This FIRST AMENDED AND RESTATED BRINE WATER TREATMENT SERVICES AND SALES AGREEMENT is made and entered into as of this ____ day of _____, 2026 (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 (“**UW 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 systems (“**EPWater**”). EPWater and UW 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, EPWater 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 (“**KBH Desalination Plant**”);

WHEREAS, the KBH 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 UW CMC owns certain water treatment assets uniquely located adjacent to the KBH Desalination Plant together with certain licensed intellectual property and UW CMC plans to repair, refurbish and recommission such sets in a manner that will be applied by UW CMC to treat Brine Water and Raw Brackish Well Water (as defined herein) that will be provided to UW CMC by EPWater;

WHEREAS desiring to reclaim, recycle and reuse the Brine Water to the extent technologically and physically feasible; and, in furtherance of that public purpose, EPWater solicited requests for proposals for feasibility pilot testing for chemical and water recovery at the KBH Desalination Plant pursuant EPWater RFP No. 52-13; and on July 17, 2013 EPWater awarded an agreement for a feasibility water testing project to a prior project developer for the purpose of accepting EPWater Brine Water (“**Pilot Testing Contract**”);

WHEREAS, such prior project developer completed a pilot project under the guidance of the Texas Commission on Environmental Quality (“**TCEQ**”) to determine a possible process to reclaim such Brine Water; and on May 13, 2014 such prior project developer 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 such prior asset owner on September 23, 2014 was thereafter approved by TCEQ on January 13, 2015);

WHEREAS, considering UW CMC’s ownership of, and representations regarding its unique ability to operate and provide highly specialized services and plan to develop and build a

facility to process Brine Water and Raw Brackish Well Water for EPWater, EPWater and UW CMC desire to enter into this Agreement under which UW CMC will construct and operate a brine water treatment facility (“**Facility**”) on the Ground Leased Property to enable UW CMC to provide long term treatment services of the Brine Water and Raw Brackish Well Water for EPWater and to enable UW CMC to sell and/or dispose of any chemicals, compounds, materials and mixtures created or separated from the Brine Water or any Raw Brackish Well Water as part of UW CMC’s treatment processes;

WHEREAS, on April 15, 2021, EPWater and UW CMC entered into a Brine Water Treatment Services and Sale Agreement (the “**Prior Agreement**”);

WHEREAS, upon the execution of this Agreement by all Parties, the April 15, 2021, Prior Agreement will be extinguished and terminated for all purposes by mutual agreement of EPWater and UW CMC;

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

WHEREAS, EPWater finds that this Agreement and the obligations of EPWater hereunder will serve a public need and purpose and will benefit the residents of the City and the ratepayers of EPWater by reducing Brine Water disposal costs and increasing available water supplies for its 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 brine concentrate stream (the wastewater stream or byproduct) of materials that is generated and removed from the brackish groundwater feed by the reverse osmosis process at the KBH Desalination Plant (also sometimes referred to as the “Concentrate Stream”). The Brine Water is the residual liquid that remains after the separation of permeate (desalted product water) and includes all water and water-borne solid ingredients and liquid or

solid extraneous material, including but not limited to concentrated dissolved salts, various minerals and residual pretreatment chemicals (including but not limited to antiscalants) within the Brine Water that are rejected by the KBH Desalination Plant's reverse osmosis process.

"Brine Water Delivery Rate" shall mean the rate at which EPWater is required to deliver Brine Water to UW CMC at the Delivery Location. The KBH Desalination Plant includes five "skids" which may be utilized by EPWater, 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 KBH Desalination Plant at the normal operating pressure of the KBH Desalination Plant at a full rate. This is anticipated to be, but is not guaranteed to be, approximately 868 GPM of Brine Water. The delivery of Brine Water from approximately two skids is subject to periods of Temporary Shutdowns, Temporary Reduced Operational Levels (See Section 13.2) or as otherwise specified under this Agreement. Each skid of the Desalination Plant is rated at 2083 gpm. To the extent UW CMC requests delivery of additional Brine Water, EPWater will make commercially reasonable attempts to do so, provided that EPWater's obligation to deliver Brine Water cannot be required to exceed the output volume from two skids, and the provision of any added Brine Water can never form the basis of avoidance of UW CMC's duties to provide Return Water that meets the Return Water Obligations and Return Water Specifications.

"Brine Water Pipeline" means the pipeline used to transport the Brine Water from the KBH Desalination Plant to the Facility.

"Brine Water Specifications" means the composition of the Brine Water delivered to UW CMC by EPWater as delineated in **Schedule 1**.

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

"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, byproducts 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; method; 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 development, 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 is 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 EPWater’s KBH Desalination Plant Property where EPWater will deliver Brine Water and any Raw Brackish Well Water to UW CMC which is to be located as set forth on **Exhibit A**.

“Drinking Water” means “Drinking Water”, or potable water, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings, as currently referenced and defined in 30 TAC § 290.38(25) and Texas Health & Safety Code § 341.001(3), as amended. This means water that fully complies with all federal, state and local water quality Laws, standards, regulations and requirements which apply to Drinking Water, and drinking water quality, including but not limited to the following: (i) all requirements imposed on a Public Water System related to the collection, treatment, storage and distribution of Drinking Water, within 30 Texas Administrative Code (TAC), Chapter 290 or in other Laws, (ii) all Drinking Water Standards in 30 TAC, Subchapter F, including but not limited to all prohibitions against primary contaminants, secondary contaminants or other prohibited substances, (iii) Texas Health and Safety Code, Chapter 341, Subchapter C; (iv) the Texas Water Code, Chapter 13, (v) the federal Safe Drinking Water Act, Title 42, Chapter 6A, Subchapter XII. Safety of Public Water Systems, 42 U.S.C. § 300f to 300j-26; (vi) federal regulations implementing the Safe Drinking Water Act, including but not limited to 40 CFR Parts 141-143, (vii) all rules, regulations or requirements established by the TCEQ, the Texas Department of State Health Services, the EPA (including their successor agencies) or any other state or federal agency with jurisdiction over UW CMC’s activities at the Facility, and (viii) all Laws, regulations and requirements which apply to a Wholesale Public Water System that provides Drinking Water to another Public Water System.

“Drinking Water Standards” means those standards under Texas and federal Laws which apply to the treatment of Drinking Water so that it is safe for human consumption, as amended, and as currently referred to in 30 TAC § 290.38(25), and which includes the TCEQ rules covering drinking water standards, as amended, and which are currently included within 30 TAC Chapter

290, Subchapter F (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems)

“Environmental Law” means any Law relating to the environment, pollution, natural resources, hazardous materials or exposure to hazardous materials (inclusive of any laws related to the disposal of any substance or materials) including any state, federal, or local statute, ordinance, code, rule or regulation, tariff, or policy, and judicial or administrative order, request or judgment, any common law doctrine or theory, any provision or condition of any permit, or any other binding determination of any Governmental Body related to any of the foregoing. These laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq. (**“CERCLA”**); the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901, et seq. (**“RCRA”**); the Federal Water Pollution Control Act, 33 U.S.C. §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; and the Safe Drinking Water Act, 42 U.S.C. §§ 3808, et seq.

“EPA” means the United States Environmental Protection Agency.

“EPWater 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 EPWater (including persons employed by EPWater or by any agent, contractor or subcontractor of EPWater having requisite authority) resulting from: (i) a failure by EPWater to perform (or a delay by EPWater 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 EPWater, or (iii) any direct or indirect action or omission by or attributable to EPWater (including acts or omissions of any Person employed by EPWater or of any agent, contractor or subcontractor of EPWater having requisite authority) that materially interferes with or materially delays UW CMC’s performance of its obligations hereunder prior to the Services Commencement Date, including any unreasonable delay by EPWater in approving or consenting to any matter that requires the approval or consent of EPWater under this Agreement; provided, that EPWater 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 UW CMC or any of its Affiliates, or any of their employees, principals, owners, agents, representatives, contractors or subcontractors.

“EPWater’s KBH Desalination Plant Property” means the real property upon which the KBH Desalination Plant is located as delineated in the lease between EPWater 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.

“EPWater’s System” refers to the Brine Water Pipeline, Raw Brackish Well Water Pipeline and all other facilities and improvements belonging to EPWater on EPWater’s KBH

Desalination Plant Property and in all other portions of the overall water system owned and operated by EPWater.

“Events of Suspension Remedies” refers to contract remedies described in Section 7.4.

“Facility” means the entire water treatment system to be constructed by and owned by UW CMC on the Ground Leased Property, including but not limited to 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 Location or to transport Return Water from UW CMC to the Return Location, and also any additional buildings or other UW CMC infrastructure or facilities on the Ground Leased Property related to UW CMC’s water treatment system.

“Governmental Body” or **“Governmental Bodies”** 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 over the Facility or the Ground Leased Property, including but not limited to the TCEQ and EPA.

“GPM” means gallons per minute.

“Ground Lease” means, collectively, any ground lease, easement or other interest pursuant to which UW CMC or any Affiliate have the right to develop, own and operate the Facility.

“Ground Leased Property” means any real property to which UW CMC, or any Affiliate have a leasehold, easement or other interest pursuant to the Ground Lease.

“Immediate Contract Remedies” refers to contract remedies described in Section 3.1(n).

“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 right 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 Body 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, idea, 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 good will associated therewith, all applications for registration and registrations thereof, renewals thereof.

“Law,” “Laws” whether capitalized or not, means any federal, Texas or local statute, law, treaty, rule, regulation, ordinance, code, order, writ, judgment, decree or rule of common law, including without limitation any Environmental Law, as it may from time to time change (or any judicial or administrative interpretation thereof), provision or condition of any Permit, policy or other legal 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 Body). Law and Laws include, but are not limited to, all Texas and federal Laws which govern or relate to the operation of a Public Water System, operation as a wholesale potable water supply system, and the treatment, storage or transportation of Drinking Water, including: (i) Texas Administrative Code, Title 30, Chapter 290. Public Drinking Water; (ii) Texas Health & Safety Code, Chapter 341, (iii) Texas Water Code, Chapter 13, and (iv) Texas Administrative Code, Title 30, Chapter 291. While Texas has primacy over the governance of a Public Water System, Drinking Water and Drinking Water Standards, it is the intent for the term Law and Laws to include (i) the federal Safe Drinking Water Act, Title 42, Chapter 6A, Subchapter XII. Safety of Public Water Systems, 42 U.S.C. § 300f to 300j-26, (ii) Code of Federal Regulations, Title 40, Parts 141-143, (iii) the Clean Water Act, 33 U.S.C. § 1251 et seq., and (iv) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. Law and Laws also includes any other directives, rules, regulations or requirements established by the TCEQ, the Texas Department of State Health Services, the EPA (including their successor agencies) or any other state or federal agency with jurisdiction over UW CMC’s activities at the Facility.

“Meters” means the necessary metering equipment, including a meter vault, and any other required devices of standard type, for properly measuring the quantity and delivery rate of the Brine Water and Raw Brackish Well Water, respectively, delivered by EPWater and accepted by UW CMC at the Delivery Location and the Return Water delivered by UW CMC to EPWater at the Return Location.

“Month” means a calendar month in the yearly calendar. The term “Monthly” shall have the correlative meaning.

“Monthly Brine Water” shall be that volume of Brine Water delivered to UW CMC by EPWater for any given Month that meets the Brine Water Specifications.

“Monthly Payment Amount for Return Water” means the amount in U.S. dollars that EPWater is to pay UW CMC each Month for the Monthly Return Water that meets the Return Water Specifications, exclusive of Taxes, as delineated in **Schedule 2**.

“Monthly Payment Rate for Return Water” means, for any Contract Year, the base monthly rate (expressed in \$/thousand gallons) for any Return Water on which the Monthly Payment Amount for Return Water is calculated in accordance with **Schedule 2** for such Contract Year.

“Monthly Raw Brackish Well Water” shall be the volume of Raw Brackish Well Water delivered to UW CMC by EPWater for any given Month that meets the Raw Brackish Well Water Specifications.

“Monthly Return Water” shall be the volume of Return Water delivered to EPWater by UW CMC in any Month that meets the Return Water Specifications.

“Off-Specification Water” shall refer to water that has been treated at UW CMC’s Facility (from the Brine Water and Raw Brackish Well Water) that does not meet 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.

“Prior Agreement” means the prior Brine Water Treatment Services and Sale Agreement between EPWater and UW CMC, which had an Effective Date of April 15, 2021.

“Process Products” means any chemicals, compounds, materials and mixtures created or separated from the Brine Water or any Raw Brackish Well Water during the performance by UW CMC of the Services, excluding Return Water and Off-Specification Water.

“Public Water System” means a public water system within the meaning of Texas and federal Law, and as currently defined and referenced in 30 TAC § 290.38(73) and in 42 U.S.C. § 300f(4), as may be amended from time to time, and which means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. This means a system that has at least 15 service connections or that serves at least 25 individuals at least 60 days out of the year. This term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system. Use of this term is intended to incorporate by reference and require compliance with any Laws applicable to the design, construction and operation of a Public Water System. A Public Water System also expressly includes a provider of Drinking Water on a wholesale basis to another Public Water System.

“Raw Brackish Well Water” means brackish water directly from EPWater’s wells without the addition of any chemicals or treatment and produced and supplied in compliance with all permits, approvals and regulations of any Governmental Body. For avoidance of doubt, the

Raw Brackish Well Water supplied to UW CMC will be from the same supply as the brackish water supplied to KBH.

“Raw Brackish Well Water Delivery Rate” means such delivery rate requested by UW CMC up to a maximum of 1345 GPM (plus an additional 750 GPM during periods of time when EPWater is operating at Temporary Reduced Operational Levels as permitted pursuant to Section 13.2(b)). As described in additional detail in Article 3, the Parties further acknowledge and agree that EPWater’s obligation to provide Raw Brackish Well Water to UW CMC under this Agreement is conditioned upon UW CMC meeting its obligations to accept and successfully treat Brine Water in accordance with this Agreement, including but not limited to compliance with the Return Water Obligations and the Return Water Specifications.

“Raw Brackish Well Water Pipeline” means the pipeline used to transport the Raw Brackish Well Water from the KBH Desalination Plant to the Facility.

“Raw Brackish Well Water Specifications” means the required composition of the Raw Brackish Well Water delivered to UW CMC as delineated in **Schedule 1**.

“Return Location” means the location at the boundary of EPWater’s KBH Desalination Plant Property where UW CMC will deliver Return Water to EPWater that meets the Return Water Specifications, which is to be located as set forth on **Exhibit A**.

“Return Water” means water delivered by UW CMC from the Facility to the Return Location that meets the Return Water Specifications.

“Return Water Obligations” refers to the recovery rate of Return Water in comparison to the overall volume of Brine Water and Raw Brackish Well Water that UW CMC receives from EPWater. UW CMC will deliver Return Water (meeting the Return Water Specifications) at the Return Location at a volume equal to at least 84% of the overall volume of the Brine Water and Raw Brackish Well Water delivered by EPWater at the Delivery Location unless changes in the character or composition of the Brine Water or Raw Brackish Water causes a reduction in the delivery of Return Water, in which event the Parties will meet and confer in good faith to agree on a new Return Water Obligation. UW CMC’s compliance with the Return Water Obligations will be calculated in successive two (2)-Month period by determining the overall amount of Return Water delivered to EPWater over the course of a given month in comparison to the total volume of Brine Water and Raw Brackish Well Water provided to UW CMC in such two (2)-Month period. For example, compliance will be determined by comparing the overall amount of Return Water delivered to EPWater at the Return Location during January and February of 2030 to the total volume of Brine Water and Raw Brackish Well Water provided to UW CMC at the Delivery Location in January and February of 2030. For purposes of determining compliance with the Return Water Obligations, the only Return Water that will be counted will be Return Water that meets the Return Water Obligations in all respects.

“Return Water Pipeline” means the pipeline used to transport the Return Water from the Facility to the KBH Desalination Plant or such other point on the KBH Desalination Plant Property (and any adjacent land where EPWater has rights to build, own, operate and maintain a pipeline) as EPWater may designate from time to time.

“Return Water Specifications” as contained in **Schedule 1**, refers to the standards and composition that the Return Water must meet before it can be returned to EPWater at the Return Location.

“Services” means the service to be provided by UW CMC as delineated in Section 3.1 and including any other duties and responsibilities of UW CMC contained in this Agreement.

“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.

“Startup Date” means the first date on which all of the following conditions have been satisfied:

(i) all TCEQ-required testing, disinfection, flushing, commissioning, bacteriological sampling, performance verification, and other startup procedures for the Facility have been successfully completed in accordance with 30 TAC Chapter 290, Subchapter D, and the TCEQ-approved plans and specifications for the Facility;

(ii) TCEQ has issued all necessary written approvals or other authorization expressly permitting the Facility to begin full operations and deliver Return Water to EPWater; and

(iii) the Facility begins accepting Brine Water and Raw Brackish Well Water and delivers Return Water back to EPWater.

“Tax” 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.

“TCEQ” means the Texas Commission on Environmental Quality.

“Term” shall have the meaning set forth in Section 8.1.

“Termination Date” means the last day of the Term as delineated in Section 8.1.

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.”

(f) Unless otherwise provided, reference to an agreement includes such agreement as the same may be revised, modified, amended, or amended and restated from time to time.

ARTICLE 2

REPRESENTATIONS, WARRANTIES & ADDITIONAL TERMS

Section 2.1 Representations by EPWater. EPWater hereby represents and warrants to UW CMC as of the Effective Date and in all material respects during the Term of this Agreement as follows:

(a) Organization. EPWater 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 EPWater’s powers, have been duly authorized by all necessary action under EPWater’s governing documents, and does not violate or conflict with or require any consent or waiver under any of the terms or conditions in EPWater’s governing documents.

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

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

(e) Performance. There are no matters, proceedings, claims, actions or investigations pending or, to EPWater Board’s knowledge, threatened against or relating to

EPWater that materially adversely affects EPWater's ability to perform this Agreement and as of the date hereof there are no Laws that would materially adversely affect EPWater's ability to perform this Agreement. Performance of this Agreement is consistent with all EPWater's Rules and Regulations. Any monetary obligations to be paid by EPWater pursuant to this Agreement shall be paid from EPWater's water and sewer revenues or other legally available revenues (but expressly excluding tax revenues).

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

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

(h) Current Character. The current character and composition of the Brine Water and Raw Brackish Water are described in Schedule 1 and no material changes to such character and composition that would affect the operation of the Facility are anticipated other than that the Raw Brackish Well Water is expected to increase in salinity over time, that is expected to result in a corresponding increase in the salinity and other mineral substance content of the Brine Water produced by the KBH Desalination Plant. EPWater does not, by this representation, guarantee that no material change of any other character will not occur.

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

(j) Construction of Improvements on EPWater's Property. At the present time, it is understood by the Parties that EPWater has already constructed the pipelines and infrastructure necessary for the delivery and acceptance of water to the Facility. Specifically, EPWater has constructed infrastructure so as to have required connectivity with the Ground Leased Property as

provided for in this Agreement, EPWater has constructed, pipelines (including the Brine Water Pipeline and the Raw Brackish Well Water Pipeline) on the Desalination Plant Property (and any adjacent land where EPWater 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 EPWater has constructed a pipeline on the Desalination Plant Property (and any adjacent land where EPWater 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. EPWater warrants that the pipelines that have been installed are in good order and have been installed, inspected and pressure tested according to supply conditions to the UW CMC facilities from EPWater. EPWater shall periodically monitor, inspect, and maintain these pipelines in order to ensure that they remain in a fit for purpose condition.

(k) Cooperation. EPWater agrees to cooperate in good faith with UW CMC in connection with any regulatory application, filing, proceeding, or approval required or reasonably pursued by UW CMC in connection with the design, construction, operation, or modification of the Facility, including but not limited to any application to the TCEQ, provided however, that UW CMC remains responsible for pursuing all necessary applications, filings, proceedings or other approvals for its Facility, and EPWater's willingness to cooperate shall in no event lessen UW CMC's duties, under Texas law and under this Contract, to timely pursue and obtain all necessary permits or other approvals from the TCEQ.

Section 2.2 Representations of UW CMC & Additional Terms and Duties Applicable to UW CMC. UW CMC hereby represents and warrants to EPWater as of the Effective Date and in all material respects during the Term of this Agreement as follows, and agrees to the following terms:

(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 UW CMC.

(d) Performance. There are no matters, proceedings, claims, actions or investigations pending or to UW CMC's knowledge, threatened against or relating to it that adversely affects its ability to perform this Agreement. Further, it is not subject to any rule, Law or other legally binding requirement that would adversely affect its ability to seek all requirements

under this Agreement, or to perform this Agreement. Performance of this Agreement is consistent with UW CMC's legal authority. As of the Effective Date and to UW CMC's knowledge, UW CMC's operation of the Facility as contemplated under this Agreement will not infringe the Intellectual Property Rights of third parties.

(e) Consents. All governmental approvals and other 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 this Agreement and exercise of its rights under this Agreement required to be obtained will be obtained and will be maintained in full force and effect.

(f) Compliance. UW CMC is in compliance with all applicable Law (including all Environmental Laws) and will remain so. UW CMC shall provide EPWater with prompt written notice, but in no circumstance later than three (3) Business Days, following UW CMC's knowledge of potential actions or circumstances that would impede or prevent UW CMC's performance of the obligations of UW CMC under the Agreement.

(g) Current Character. UW CMC has been provided the opportunity to sample, and UW CMC has sampled and analyzed, the Brine Water stream from the KBH Desalination Plant and the Raw Brackish Well Water from the source wells that supply KBH, and acknowledges and agrees that the current character of the Brine Water and Raw Brackish Well Water is sufficient for its Facility and that the Schedule 1 Specifications are 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 KBH Desalination Plant is expected to increase in salinity over time, there will be a corresponding increase in the salinity and other mineral substance content of the Raw Brackish Well Water and Brine Water produced by that KBH Desalination Plant, and UW CMC understands and accepts this anticipated change.

(h) At the present time, it is understood by the Parties that EPWater has already constructed the pipelines and infrastructure necessary for the delivery and acceptance of water to and from the Facility. Specifically, EPWater has constructed infrastructure so as to have required connectivity with the Ground Leased Property as provided for in this Agreement, EPWater has constructed, pipelines (including the Brine Water Pipeline and the Raw Brackish Well Water Pipeline) on the KBH Desalination Plant Property (and any adjacent land where EPWater 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 KBH Desalination Plant to the Delivery Location, and EPWater has constructed a pipeline on the KBH Desalination Plant Property (and any adjacent land where EPWater 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 KBH Desalination Plant.

(i) Public Water System. Notwithstanding anything else within this Agreement, UW CMC expressly agrees, acknowledges, understands and represents as follows:

(i) UW CMC has applied for approval from the TCEQ for authority to build the Facility, pursuant to Title 30, Texas Administrative Code, Chapter 290 – Rules and

Regulations for Public Water Systems. The UW CMC Brine Treatment Plant has been assigned Public Water System ID No. 0710211. The Facility meets the definition of, and qualifies as, a Public Water System as described in Texas and federal Laws, including but not limited to 30 TAC § 290.38(73). The Facility is a system for the provision to the public of Drinking Water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water, because it is providing water on a wholesale basis to a retail Public Water System that serves at least 25 individuals at least 60 days out of the year, within the meaning of 30 TAC § 290.38(73). UW CMC will continue to operate the Facility as a Public Water System, at all times during the term of this Agreement and will not contest TCEQ's regulation of the Facility as a Public Water System, with EPWater as its single customer. The operations of the Facility, as described herein, fully qualify as a public water system providing treatment using reverse osmosis and nanofiltration membranes, within the meaning of 30 TAC §§ 290.39 and 290.42.

(ii) Return Water from the Facility, after title is transferred to EPWater, will be distributed to EPWater's end users as Drinking Water. Therefore, the Facility also meets the definition of, and qualifies as, a Wholesale system within the meaning of Texas and federal laws, including but not limited to 30 TAC § 290.103(43), because it is a Public Water System that sells Drinking Water to another public water system, with EPWater as its single customer.

(iii) the Facility is subject to and is required to comply with applicable Texas and federal Laws and regulations which apply to a Public Water System that relate to Drinking Water and Drinking Water Standards, including but not limited to 30 TAC Chapter 290, Subchapters D-F, Texas Health & Safety Code, Chapter 341.

(iv) as a Public Water System that is engaged in the treatment, storage and distribution of Drinking Water in accordance with Drinking Water Standards, the Facility falls within the jurisdiction of the TCEQ and is subject to, and required to abide with, regulation by the TCEQ (or any other appropriate Regulatory Body) for all legal purposes, including but not limited to regulation of the design, construction and day-to-day operations of the Facility, as well as any lawful enforcement actions.

(v) Since Return Water will be treated to the status of Drinking Water before it leaves UW CMC's possession, following receipt of Return Water from UW CMC, EPWater shall have no duty to, and will not perform, any water quality finishing or other treatment activities that would be required to convert the Return Water to Drinking Water,

(vi) Sale of Drinking Water. This Agreement is an agreement for the sale of Return Water by UW CMC to EPWater that will constitute Drinking Water that is ready and fit for human consumption. This Agreement is not a contract for the provision of raw water by UW CMC to EPWater.

Each of these representations and terms in Section 2.2(i), and the fulfillment of same, are material parts of the parties' understanding of this Project and material inducements to entry into this Agreement.

ARTICLE 3

SERVICES & CONTRACTUAL DUTIES AND OBLIGATIONS

Section 3.1 UW CMC's Services. UW CMC shall provide the following services, and will be responsible for the following duties and obligations to EPWater in compliance in all respects with all applicable Law and (the “**Services**”) subject to Article 13:

(a) Commencing as of the Services Commencement Date, maintain a capacity reservation in the Facility for the benefit of EPWater that will permit EPWater to discharge at the Delivery Location Brine Water at the Brine Water Delivery Rate and Raw Brackish Well Water at the Raw Brackish Well Water Delivery Rate.

(b) Commencing as of the Services Commencement Date, accept and take possession at the Delivery Location of Brine Water at the Brine Water Delivery Rate and Raw Brackish Well Water at the Raw Brackish Well Water Delivery Rate.

(c) Commencing as of the Services Commencement Date, treat Brine Water and Raw Brackish Well Water delivered by EPWater in accordance with this Agreement, including removing any Process Products or other liquids, solids, gases or other substances of any kind so that the Return Water will meet the Return Water Specifications.

(d) UW CMC has applied for, and has been assigned, Public Water System ID No. 0710211 for the Brine Treatment Plant by the TCEQ. At all times during the Term of this Agreement, the Facility shall be treated and operated as a Public Water System, with EPWater as its single customer.

(e) At all times during the term of this Agreement, and prior to the commencement of any construction or operational activities on the Ground Leased Property, UW CMC shall obtain and maintain all approvals, Permits, and certifications required by Texas and federal Laws. Without limitation, this specifically includes a duty to timely obtain all approvals and Permits from the TCEQ which are described in 30 TAC Chapter 290, Subchapters D-F and which apply to a Public Water System involved in the collection, treatment, storage or distribution of Drinking Water in accordance with Drinking Water Standards. For sake of clarity, it is further understood that this includes, but is not limited to, a duty to timely obtain all applicable approvals and Permits described in the following non-exhaustive list: 30 TAC §§ 290.39, 290.42, 290.43, 290.44, 290.46, 290.106-.115, 290.118, which include activities such as the construction or operation of a public water system, treatment processes and facilities, water storage, water distribution, pre-approval of operational plans and modifications, monitoring plans, and secondary constituent levels. For avoidance of doubt, as of the Effective Date, UW CMC has commenced construction on the Ground Leased Property, and from time to time may be required to update, amend, or obtain new approvals.

(f) At all times during the term of this Agreement, UW CMC shall design, build and operate the Facility and everything on the Ground Leased Property in compliance with all Texas and federal Laws and regulations, including, without limitation, all Laws and regulations applicable to a Public Water System that treats Drinking Water to Drinking Water Standards, as specified in 30 TAC Chapter 290, Subchapters D-F. For clarity, this shall include, without

limitation, compliance with all requirements within Chapter 290 which relate to treatment, storage, distribution, water quality monitoring and testing, reporting to the TCEQ, use of certified operators, development and maintenance of an emergency response plan addressing possible disruptions, recordkeeping and inspections, waste management requirements, and anything else required by Law.

(g) Prior to the delivery of Return Water to EPWater at the Return Location, UW CMC shall be solely responsible for the performance of all treatment and other activities necessary for the Return Water to comply with all Drinking Water Standards applicable to a Public Water System, including but not limited to those described in 30 TAC Chapter 290, Subchapters D-F, and as necessary for the Return Water to constitute Drinking Water fit for human consumption, and which is ready for direct supply by EPWater to EPWater's end users without further treatment by EPWater. For sake of clarity, this shall include, but will not be limited to, the following:

(i) Disinfection of the Return Water as required by Texas Laws so that the Return Water constitutes Drinking Water and to meet the Return Water Specifications.

(ii) Re-mineralization, the addition of ortho-phosphate or corrosion inhibitor, pH adjustment, balancing, filtration, desalination, blending and any other treatment necessary for the Return Water to constitute Drinking Water and to meet the Return Water Specifications.

(iii) All treatment and post-treatment steps related to the operation of a Public Water System that uses reverse osmosis and nanofiltration membranes, as required to treat the Return Water to Drinking Water standards under Texas Laws, including but not limited to all steps specified in 30 TAC §§ 290.39 and 290.42, and to meet the Return Water Specifications.

(iv) All other treatment necessary for the Return Water to constitute Drinking Water, including, without limitation, compliance with all primary and secondary contaminant levels which apply to Drinking Water.

(h) UW CMC will design, build and operate the Facility in compliance with all applicable mandates, directives and requirements of any Governmental Body with jurisdiction over the Facility, including but not limited to the TCEQ.

(i) Build all improvements as specified, and as necessary to comply with, UW CMC's duties under Articles 3 and 4 of this Agreement.

(j) UW CMC will not oppose, resist or seek to avoid regulation by the TCEQ over the Facility as a Public Water System, with EPWater as its single customer. UW CMC will cooperate with all Governmental Bodies with jurisdiction over the Facility, and, as necessary,

EPWater, to fulfill all duties, agreements, acknowledgements, understandings and representations within this Agreement.

(k) Properly and diligently maintain everything on the Ground Leased Property, as a reasonably prudent operator and in compliance with all Laws.

(l) UW CMC will fulfill and act in compliance with all of the agreements, acknowledgements, representations and understandings in Section 2.2(i).

(m) UW CMC will provide EPWater with correspondence with the TCEQ acknowledging and agreeing that, as part of fulfilling the obligations under this Agreement, that UW CMC's Facility falls within the jurisdiction of the TCEQ and is subject to, and required to abide with, regulation by the TCEQ for all applicable legal purposes as a Public Water System. Prior to the commencement of construction of the Facility, UW CMC must supply EPWater with correspondence from the TCEQ stating that the TCEQ recognizes that the Facility is a Public Water System, with EPWater as its single customer that must be built, operated and maintained in compliance with Texas Laws, and that the Facility falls within the TCEQ's jurisdiction and will be regulated by the TCEQ as a Public Water System.

(n) Immediate Contract Remedies Available to EPWater. The Parties acknowledge and agree that the successful treatment of Brine Water is the purpose of this Agreement. Notwithstanding anything in Article 7 or 8 or elsewhere in this Agreement, commencing as of the Services Commencement Date, if UW CMC cannot treat Brine Water successfully and in accordance with the standards set forth in this Section 3.1(n), EPWater shall have the option to exercise the following Immediate Contract Remedies. If, over the course of any two-month period UW CMC fails to meet the Return Water Obligations by failing to deliver volumes of Return Water at the Return Location at a rate of at least 84% of the overall volume of the Brine Water and Raw Brackish Well Water supplied by EPWater, EPWater will have the option to exercise the following Immediate Contract Remedies by providing written notice to UW CMC: (i) EPWater may suspend delivery of all Raw Brackish Well Water to the Facility and/or (ii) EPWater may suspend purchasing all Return Water from UW CMC. Such suspension shall be effective on the tenth (10th) day following EPWater's notice, unless waived in writing by UW CMC, to provide UW CMC time to suspend operations.

As part of the calculation of compliance with this Section 3.1(n), only Return Water meeting the Return Water Specifications shall be counted. This Section 3.1(n) shall not in any way impact or lessen EPWater's ability to exercise any other remedies in this Agreement. By way of example, in addition to Immediate Contract Remedies (i) and (ii) above and without limiting EPWater's remedies as otherwise described in this Agreement, if UW CMC does not successfully meet the Return Water Obligations, as calculated in a successive two (2)-Month Period, such failure will constitute an Event of Default that will also give rise to EPWater's right to terminate this Agreement, subject to cure of the Event of Default, in accordance with Section 7.2 and Section 8.2(c).

(o) Following receipt of the Brine Water and Raw Brackish Well Water at the Delivery Location, UW CMC will be fully and solely responsible for the handling of same.

(p) Off-Specification Water. UW CMC will not, under any circumstances, deliver water to EPWater at the Return Location or otherwise, that does not meet the Return Water Specifications. In the event that Brine Water or Raw Brackish Well Water treated at the Facility does not meet the Return Water Specifications, all such Off-Specification Water will be redirected by UW CMC back through UW CMC's treatment processes or disposed of by UW CMC, so that EPWater will not receive any Off-Specification Water. To prevent the transmission of any Off-Specification Water to EPWater, UW CMC will voluntarily, and without notice to or from EPWater, immediately cease delivery to EPWater at the Return Location. If UW CMC does cease delivery for this reason, it will provide written notice to EPWater as soon as possible, and within one (1) day.

(q) UW CMC is fully responsible, at UW CMC's sole cost and expense, for the disposal, in compliance with all applicable Law and Environmental Law, of all Process Products, Off-Specification Water or any other chemicals, compounds, materials, minerals, by products and mixtures that are separated from, created from or which result from UW CMC's treatment, transportation, storage or any other activities on the Ground Leased Property following UW CMC's receipt of the Brine Water and Raw Brackish Well Water. UW CMC will not return anything to EPWater other than Return Water that meets the Return Water Specifications.

(r) UW CMC shall not sell or transfer any Return Water to any person or entity other than EPWater.

(s) Operate the Facility as would a reasonably prudent operator at all times. While UW CMC will be fully responsible for the performance of the Services, UW CMC may engage a third-party operator to operate and maintain the Facility and any other UW CMC facilities necessary to carry out the obligations of this Agreement on a day-to-day basis as permitted pursuant to Section 3.4. When UW CMC plans to engage any third-party operators, it must give not less than thirty (30) days-notice to EPWater of the intent to hire the operator, and UW CMC shall provide to EPWater all information and documents relevant to the selection of the operator.

(t) 100% of the Return Water provided to EPWater will result from the treatment of Brine Water and Raw Brackish Well Water in accordance with this Agreement and will not include water obtained by UW CMC from any other source.

(u) UW CMC will copy EPWater on all written communications between UW CMC (including UW CMC's agents, representatives and consultants) and the TCEQ, that relate directly or indirectly to the Facility, including but not limited to any communications or documents exchanged between UW CMC and the TCEQ that relate to any Permits, approvals, authorizations, monitoring, reporting or other documents related to the TCEQ's oversight or regulation of the Facility. Upon request, and within five (5) business days, UW CMC will provide EPWater with copies of any other materials or documents exchanged between UW CMC and the TCEQ prior to the date that this Agreement is signed.

(v) Upon request by EPWater, UW CMC will, within five (5) Business Days of EPWater's written request, supply EPWater with copies of all Permits or other types of approvals from any Governmental Body with authority over the Facility, along with any

applications, submissions or requests from UW CMC for same from any Governmental Body, and any communications between UW CMC and any Governmental Body related to any Permits.

(w) UW CMC will comply with all other duties, conditions, responsibilities, requirements, representations and promises applicable to UW CMC, as described in this Agreement.

Section 3.2 EPWater's Delivery and Acceptance. As consideration to UW CMC for providing the Services described in Section 3.1 above to EPWater, commencing as of the Services Commencement Date and continuing thereafter during the Term of this Agreement, EPWater shall provide the following to UW CMC in compliance with applicable Law and the terms of this Agreement, subject to Article 13:

(a) Subject to the terms of this Agreement, deliver and transfer possession to UW CMC at the Delivery Location Brine Water at the Brine Water Delivery Rate and Raw Brackish Well Water at the Raw Brackish Well Water Delivery Rate that meets the Brine Water Specifications and Raw Brackish Well Water Specifications, respectively;

(b) Provide UW CMC yearly, or more frequently as is reasonable, with groundwater well data for the water supply to the KBH Desalination Plant and any Raw Brackish Well Water and 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 KBH Desalination Plant; and

(c) Subject to the terms of this Agreement and provided that the Return Water meets the Return Water Specifications, accept and take possession of all the Return Water at the Return Location;

(d) Diligently maintain and repair, at all times, all improvements at the KBH Desalination Plant necessary for the delivery of Brine Water and Raw Brackish Well Water and Receipt of Return Water and keep them in good and working order as would a reasonably prudent operator.

(e) Unless waived by UW CMC, EPWater will not, under any circumstances, deliver to UW CMC Brine Water or Raw Brackish Well Water that does not meet the Brine Water Specifications and Raw Brackish Well Water Specifications, respectively. In the event that Brine Water or Raw Brackish Well Water does not meet such specifications, UW CMC shall not be required to take title to (and in the case of Raw Brackish Well Water, make payment for) same.

Section 3.3 Title and Possession.

(a) Title. Provided that it meets the Brine Water Specifications and Raw Brackish Well Water Specifications, respectively, subject to 3.2(e), title to the Brine Water, Raw Brackish Well Water and everything within same shall transfer to UW CMC for all purposes when delivered to UW CMC's possession at the Delivery Location. Provided that the Return Water meets the Return Water Specifications, title to the Return Water shall transfer to EPWater for all purposes when delivered to EPWater at the Return Location. Title to all Process Products, Off-

Specification Water, or other substances or Process Products removed or separated from the Brine Water and Raw Brackish Well Water shall remain with UW CMC.

(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 UW CMC at the Delivery Location; and (ii) possession and risk of loss of the Return Water shall transfer to EPWater at the Return Location.

(c) Process Products. EPWater hereby transfers to UW CMC full title to the Process Products removed during the Term by UW CMC from the Brine Water and Raw Brackish Well Water being treated at the Facility, which shall vest upon removal thereof from the Facility by UW CMC, and UW CMC is free to transfer and sell such Process Products to any person in any amount or on any terms UW CMC desires without obligation to EPWater.

Section 3.4 Right to Subcontract. UW CMC may elect at any time to cause one or more Affiliates or any third-party contractor, subcontractors or other designated service providers to perform or provide any of the Services, and to provide equipment, but UW CMC shall at all times remain fully responsible for the performance of such Services, and no such delegation shall relieve UW 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 EPWater. No employee, principal, owner, representative, contractor, subcontractor, or other designated service provider for UW CMC 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. UW CMC shall operate the Facility in compliance with all applicable state and federal workplace safety Laws.

Section 3.6 Excluded Services. UW CMC shall not provide or be required to provide any services not expressly described by this Agreement.

Section 3.7 Pipelines.

The Raw Brackish Well Water Pipeline on EPWater's KBH Desalination Plant Property (and any adjacent land where EPWater has rights to build, own, operate and maintain a pipeline) will be maintained and owned by EPWater, and the Raw Brackish Well Water Pipeline on the Ground Leased Property will be maintained and owned by UW CMC.

The Brine Water Pipeline on EPWater's KBH Desalination Plant Property has been built and will be maintained (and any adjacent land where EPWater has rights to build, own, operate and maintain a pipeline) by EPWater, and the Brine Water Pipeline on the Ground Leased Property will be maintained and owned by UW CMC.

The Return Water Pipeline on EPWater's KBH Desalination Plant Property (and any adjacent land where EPWater has rights to build, own, operate and maintain a pipeline) will be

maintained and owned by EPWater, and the Return Water Pipeline on the Ground Leased Property will be constructed, maintained and owned by UW CMC.

ARTICLE 4

WATER MEASUREMENTS, BACKFLOW PREVENTERS AND WATER QUALITY

Section 4.1 Water Volumes and Separation of Parties' Respective Systems.

(a) Furnishing of Return Water Meters/Calibration. UW CMC, at its sole expense, and in accordance with industry standards, shall furnish, operate and maintain in good working order and repair, at the Delivery Location and Return Location, measuring equipment equipped with meters and devices of standard, customary types, suitable for purpose and certified by National Sanitary Foundation (“**NSF**”) for the accurate measuring of the volumes of the Brine Water and Raw Brackish Well Water, respectively, delivered by EPWater and accepted by UW CMC, and the Return Water delivered by UW CMC to EPWater, with a capacity to measure quantities in accordance with the current water industry standards (“**Meters**”). However, in no case shall the accuracy tolerance of such Meters exceed 0.5 percent (0.5%). All Meters shall meet or exceed the TCEQ’s current specifications and standards. The Meters shall be used by UW CMC solely in connection with this Agreement. UW CMC shall install and maintain, and be responsible for all costs of acquisition, installation, maintenance, and operation of an electronic monitoring and communication system at the Meters to enable each Meter to communicate with UW CMC’s system within its Facility and EPWater will have electronic access to and the ability to review the readings from the Meters immediately and in real-time using either remote I/O’s or an internet connection at EPWater facilities.

(b) Ongoing Readings. UW CMC shall read the Meters on the Brine Water and shall record this data using data loggers for, Raw Brackish Well Water, and Return Water as provided for herein. This data shall be made available to EPWater with an online data connection. Within ten (10) days following the end of each Month, UW CMC shall also provide a written report to EPWater of the total amounts of Brine Water (meeting the Brine Water Specifications), and Raw Brackish Well Water (meeting the Raw Brackish Well Water Specifications) delivered to UW CMC, and the Return Water (meeting the Return Water Specifications) returned to EPWater as the Monthly Brine Water, the Monthly Raw Brackish Well Water, and the Monthly Return Water, respectively. In the event that the Parties agree on an online monitoring process where automated sensor metering data is automatically transmitted instantaneously, the reporting timings under this Subsection shall not apply. 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 Month that the Meters were out of service, or out of repair or calibration, the Parties may, in the first instance, mutually agree to use the average of the previous three (3) months’ data. If the Parties do not agree to use the previous three (3) months’ data, UW CMC shall use its good faith estimate, with a detailed written explanation including calculation back-up to EPWater of the method by

which UW 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 EPWater may invoke the disputed payments process in Section 5.4.

(c) Backflow Preventers. UW CMC, at its sole expense, shall furnish, operate, maintain in good working order and repair, at the Delivery Location and Return Location, two (2) reduced pressure zone backflow assemblies (the “**Backflow Preventers**”), and other reasonable protections or enclosures required by EPWater which shall meet or exceed the TCEQ’s current specifications and standards and to the reasonable satisfaction of EPWater, to maintain separation between the respective facilities and systems of UW CMC and EPWater and to prevent the unapproved or unintended transfer or movement of liquids, solids or any other materials through the pipelines and into the Parties’ respective systems, except as expressly authorized and contemplated herein. The Backflow Preventers will be located on UW CMC’s side of the Delivery Location and Return Location. EPWater will have the right to review and approve the Backflow Preventers and related equipment, protections and enclosures prior to their installation by UW CMC, which approval will not be unreasonably withheld.

(d) Testing and Calibration. UW CMC shall keep the Meters and Backflow Preventers fully functional and operating correctly and as intended at all times according to manufacturer instructions. UW CMC shall calibrate and test the Meters and Backflow Preventers as necessary, but at least once every six (6) months. EPWater shall have the right to require UW CMC to test and calibrate the Meters more often than six (6) months consistent with the standards contained herein, but not more than once every three (3) months. Testing of the Meters and Backflow Preventers is to be conducted by a qualified third-party contractor engaged and paid for by UW CMC who shall provide a certified report to UW CMC and EPWater regarding the testing and calibration. UW CMC shall notify EPWater five (5) Business Days in advance of the date for any calibration and testing of the Meters and Backflow Preventers and EPWater shall have the right to be present and witness same. UW CMC shall take necessary steps at its cost to promptly correct any inaccuracy in the Meters discovered during any test or calibration. UW CMC shall be responsible for the timely and prompt maintenance and repair of the Meters and Backflow Preventers and all related appurtenances. It shall be the duty of UW CMC to notify EPWater immediately if a Meter or Backflow Preventer is not registering accurately and/or is malfunctioning.

(e) Replacement of Meters & Backflow Preventers. The Parties anticipate that the Meters and Backflow Preventers will be replaced from time to time, at UW CMC’s expense, over the Term of this Agreement. UW CMC shall provide notice to EPWater prior to replacement of the original Meters and Backflow Preventers. UW CMC shall retain the title to all Meters and Backflow Preventers it has installed under this Article 4 at all times. At no time shall Return Water be delivered to EPWater unless both the Meters and Backflow Preventers are fully operable.

(f) EPWater Measurements. Without limiting EPWater’s right to request the testing and calibration of the Meters no more frequently than every three (3) months, if, at any shorter interval of time but based on reasonably reliable information EPWater determines that any Meter may not be accurate, EPWater shall deliver to UW CMC a written notice that questions the accuracy of the Meter, stating the basis for the concern, and UW CMC shall promptly test the

Meter. The expense of such test will be paid by UW CMC one (1) time per 12-month period regardless of any testing results. For any future testing of the Meters for accuracy requested by EPWater during the same 12-month period, EPWater will pay for all such tests found to be accurate (i.e., within the required .5 percent (.5 %) accuracy tolerance) and UW CMC will pay for any test on any UW CMC Meter found to be inaccurate (i.e. outside the required .5 percent (.5 %) accuracy tolerance).

(g) 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 percent (.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 and 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 the amount of Brine Water, Raw Brackish Well Water and Monthly Return Water for the Contract Year in which the Meter inaccuracy was found.

(h) Access to Meters and Backflow Preventers. EPWater will be granted access to the Meters and Backflow Preventers during normal business hours and upon reasonable notice to UW CMC to verify the readings or check the condition of same. Such access shall not be unreasonably withheld, conditioned, or delayed. In the event of an emergency or other time-sensitive circumstance, EPWater will be provided access to the Meters and Backflow Preventers immediately.

Section 4.2 Water Quality.

(a) Required Water Quality Testing Systems. UW CMC, at its sole expense, shall furnish, operate, maintain in good working order and repair, all instrumentation, equipment and devices necessary to conduct water quality testing at each of the locations within its Facility or within the Ground Leased Property (known hereinafter as the “Water Quality Testing Systems”) and record and transmit all information and results to EPWater. All Water Quality Testing Systems shall consist of the following forms of testing: Total Dissolved Solids (“TDS”), pH, hardness, conductivity and silica testing. All measuring and testing instrumentation, equipment, devices and overall systems will be designed and constructed to meet or exceed then-prevailing industry standards and best practices regarding the measurement of water quality, along with all requirements or specifications of any governing bodies with jurisdiction over the Facility, including but not limited to the TCEQ and EPA. All water quality monitoring and testing information and results will be made available to EPWater in an electronic format in real-time (i.e., as soon as those readings are taken) through an electronic system (the “Water Quality Communication System”). Prior to completion of both the design and construction of the Water Quality Testing Systems and the Water Quality Communication System, UW CMC will furnish relevant copies of the Process and Instrumentation Diagrams that indicate where probes are located, the design and make of such devices as well as readout equipment and data logging equipment. These devices shall be fit for the purpose and meet prevailing industry standards for drinking water applications and shall be capable of providing real-time, read only access to EPWater. It is the intent of the Parties for EPWater to have real-time access to all available data

related to the quality and contents of water passing through UW CMC's Facility, and accordingly, UW CMC will design and build a Read Only Water Quality Communication System that is compatible with EPWater's systems. Upon request by EPWater, UW CMC will provide access to the historical data produced by these systems provided that such data is not otherwise available to EPWater via a remote panel equipped with datalogging equipment. UW CMC shall keep all portions of the Water Quality Testing System or Water Quality Communication System (defined herein) at the Facility fully functional and operating correctly and as intended at all times.

(b) Location of Water Quality Testing Systems. Instrumentation, equipment and devices for Water Quality Testing Systems meeting the requirements of Section 4.2(a) will be installed in no less than five (5) locations within UW CMC's Facility or Ground Leased Property, including the following: (1) at the completion of the brackish water reverse osmosis system, which is designed to treat Raw Brackish Well Water, (2) at the completion of the industrial water treatment system, which is designed to treat Brine Water, (3) at the completion of UW CMC's polishing reverse osmosis system, which is designed to further treat Brine Water, (4) at UW CMC's storage tank on the Ground Leased Property, and (5) at the Return Location and before Return Water is delivered to EPWater.

(c) Calibration of Water Quality Testing Systems. UW CMC will, at its sole expense, create, document and at all times follow procedures that meet prevailing industry standards and best practices to assure that all instrumentation, equipment and devices used as part of the Water Quality Testing Systems are in good working order, are taking and communicating accurate measurements to UW CMC and EPWater, and are otherwise operating as specified herein. All Water Quality Testing Systems at the Facility will be properly calibrated every four (4) hours and according to manufacturer instructions. All results of calibration will be made available to EPWater immediately, and upon their completion. UW CMC shall adopt written calibration methods and procedures, or amendments thereto, which shall be made available to EPWater for approval, which approval will not be unreasonably withheld or delayed. Full calibration of all Water Quality Testing Systems will also occur prior to any initial startup of the Facility, and prior to any restart of the Facility following any shut down for maintenance or other reasons.

(d) Access to Water Quality Testing Systems and Water Quality Communication System. EPWater will be granted physical access to the Water Quality Testing Systems (and the calibration of same) and the Water Quality Communication System within the Facility during normal business hours and upon reasonable notice to UW CMC for the purpose of verifying the readings or checking the condition of any equipment, or for the purpose of taking samples for testing. Such access shall not be unreasonably withheld, conditioned, or delayed. In the event of an emergency or other time-sensitive circumstance, EPWater will be provided access to these systems and processes immediately and will provide notice to UW CMC of EPWater's intent to conduct that inspection and/or sampling as soon as reasonably possible.

(e) Testing By Independent Laboratory. Prior to the initial startup of the Facility and prior to the first delivery of any Return Water to EPWater at the Return Location, UW CMC will have the treated water in the storage tank tested at an independent testing laboratory to test for compliance with all aspects of the Return Water Specifications contained in **Schedule 1**. Alternatively, if UW CMC has a wet lab at its facilities that is operated by a qualified scientist and

has the equipment to accurately report the water quality criteria as set out herein, then this data can be accepted by EPWater provided that EPWater can witness the testing and/or have access to equipment data readouts, the testing methodology and testing protocols have been shared with and approved by EPWater, and the samples to be analyzed have been split with EPWater. In this instance, confirmatory independent laboratory testing shall be conducted concurrently but water may be approved for release by EPWater. Thereafter, the treated water in UW CMC's storage tank will undergo the same degree of monthly testing by an accredited independent testing laboratory and/or wet lab testing. UW CMC will provide EPWater with all results of this testing, whether written or electronic, within one (1) day of receipt by UW CMC, and EPWater shall be afforded the ability to obtain the same results directly from the independent laboratory and the UW CMC Wet Lab.

(f) Sampling and Testing at Delivery Location. UW CMC at its sole expense will test the Brine Water, and any Raw Brackish Well Water at the Delivery Location for the constituents listed on Schedule 1. If any of the Brine Water or Raw Brackish Well Water did not meet its respective specifications, UW CMC shall notify EPWater immediately and no later than one (1) day from the date of receipt of test results, and in the event that Brine Water or Raw Brackish Well Water does not meet those respective specifications, UW CMC shall not take title to same.

If UW CMC proceeds with the treatment and/or removal of Process Products from Brine Water and Raw Brackish Well that did not meet the Brine Water Specifications and/or the Raw Brackish Well Water Specifications, UW CMC makes a nonrevocable election to accept the Brine Water and Raw Brackish Well Water for all purposes, and accept title to same, but in no event shall UW CMC provide Return Water to EPWater that fails to meet Drinking Water Standards.

(g) Retesting. If for any reason, Water Quality Testing Systems or independent laboratory testing or UW CMC Wet Lab testing specified herein is believed to not be reliable in the reasonable determination of UW CMC or EPWater, then such sampling will be redone upon written notice to the other Party. If the sampling is requested by EPWater and such resampling confirms the initial sampling, then such testing is to be paid for by EPWater. All other testing will be paid for by UW CMC.

(h) Additional Sampling/Testing. Either Party at any time can perform additional water quality sampling or tests on the Brine Water, Raw Brackish Well Water or Return Water, with regard to the chemical composition thereof at its sole option and expense. Such testing shall not cause the UW CMC facilities to shut down or water to be rejected by EPWater. If such testing shows a variance from the testing performed by the other Party with regard to compliance with 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 of testing if the resampling establishes specifications have been met. UW CMC will provide EPWater with access to any facilities necessary for such testing.

(i) Rejection of Return Water/Treated Water and Suspension of Delivery of Brine Water and Raw Brackish Well Water. If at any time water quality monitoring or testing indicates that the Return Water has not been treated in compliance with the requirements applicable to this Agreement, or if EPWater reasonably believes that, based on water quality testing and monitoring information, water within UW CMC's Facility will not meet Return Water Specifications and should not be accepted into EPWater's custody, EPWater may immediately, and without prior notice to UW CMC, cease and shut off acceptance of all treated water or Return Water from UW CMC at the Return Location. EPWater will provide UW CMC with prompt written notice of such shutoff as soon as possible and no later than one (1) business day from the time when EPWater stops the receipt of same. EPWater will resume acceptance of treated water from the Facility at the Return Location when water quality testing and monitoring information confirms that the Return Water will meet all applicable Return Water Specifications. If at any time EPWater reasonably determines that the Water Quality Testing System or Water Quality Communication System at the Facility, or material portions thereof, are not functioning accurately or were not installed or are not being maintained or calibrated as required by this Agreement, EPWater will give written notice to UW CMC of the deficiency in sufficient detail for UW CMC to promptly address it, and if said condition is not cured within three (3) days from the date of notice, EPWater may stop the acceptance of Return Water and/or suspend the delivery of Brine Water or Raw Brackish Well Water until the condition is addressed. Notwithstanding this three (3) day notice period in advance of EPWater's exercise of remedies as discussed in Section 4.2(i), UW CMC's shall keep all portions of the Water Quality Testing System and Water Quality Communication System fully functional and in good working order at all times.

(j) If at any time sampling is deemed to show any Brine Water or Raw Brackish Well Water not in compliance with the Brine Water Specifications or Raw Brackish Well 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 specification 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.

(k) UW CMC shall protect EPWater's System from cross-connection and contamination under the specifications required by the health standards of the state of Texas. If UW CMC becomes aware of an emergency or non-emergency situation involving UW CMC's Facility or EPWater's System that could reasonably lead to the contamination of EPWater's System or could otherwise compromise the integrity of EPWater's System, UW CMC shall immediately notify EPWater. If UW CMC determines that the seriousness of the situation constitutes an emergency that requires immediate action because the integrity of EPWater's System or the water quality is at risk, UW CMC shall immediately, and without prior notice to EPWater, take such steps to prevent the contamination of EPWater's System, including, without limitation, severing connections between the Facility and EPWater's System and terminating the delivery of Return Water.

(l) EPWater shall protect UW CMC's System from cross-connection from their source of Brine Water and Raw Brackish Well Water. If EPWater becomes aware of an emergency or non-emergency situation involving EPWater's Facility or EPWater's System that

could reasonably lead to the contamination of UW CMC's System or could otherwise compromise the integrity of UW CMC's System, EPWater shall immediately notify UW CMS. If EP Water determines that the seriousness of the situation constitutes an emergency that requires immediate action because the integrity of UW CMS's system is at risk, EPWater shall immediately, and without prior notice to UW CMC, take such steps to prevent the contamination of UW CMC's System, including, without limitation, severing connections between UW CMC and EPWater's System and terminating the delivery of Brine Water and/or Raw Brackish Well Water.

(m) UW CMC's Responsibility for Off-Specification Water. Without limiting UW CMC's other obligations herein and in combination with UW CMC's obligations within Article 12, UW CMC hereby expressly agrees and acknowledges that UW CMC will be fully and solely responsible to promptly reimburse and indemnify EPWater for any and all losses, damages, costs, expenses, penalties fines or other monetary consequences incurred by EPWater that stem from EPWater's receipt of any water from UW CMC that does not comply with the Return Water Specifications.

ARTICLE 5 PAYMENTS AND INVOICING

Section 5.1 Payment for Return Water. 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, EPWater shall pay Monthly the following amounts based upon the Monthly Return Water calculated for that Month:

(a) the Monthly Payment Amount for Return Water as calculated in accordance with **Schedule 2**; and any Retesting or Additional Sampling/Testing Expenses owed by EPWater, pursuant to Sections 4.2(h) and (g).

Notwithstanding the foregoing, EPWater shall have no responsibility to pay for any water received from UW CMC that does not meet the Return Water Specifications.

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, UW CMC shall invoice EPWater for the Monthly Payment Amount for the preceding Month. The payment of such invoices by the Parties shall be due thirty (30) days after receipt by such Party of such invoice. Subject to Section 5.3, any amounts not paid when due (including any amount disputed in good faith and later determined to be due and owing) shall be paid with 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 be refunded to the Party which paid them, with interest at a rate provided in Texas Government Code Section 2251.025

Section 5.3 Disputed Payments. EPWater 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 twenty-one (21) days after EPWater receives the invoice and EPWater may supplement that written description of the basis and nature of the dispute as additional information becomes available. The Parties will attempt in good faith to resolve the disputed payments within ninety (90) days of the written notice. If resolution is not

reached within the ninety (90) days after written notice, a Party may invoke the provisions contained in Article 7 of this Agreement. If EPWater later learns that it has paid for Return Water that did not meet the Return Water Specifications, UW CMC shall issue a full refund to EPWater in not less than thirty (30) days.

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

Section 5.5 Regulatory Review. EPWater agrees not to seek review of the Monthly Payment Rate for Return Water from any Governmental Body under any Law or to ask any Governmental Body to set the Monthly Payment Rate for Return Water under any Law, and EPWater waives any right it may have under any Law to seek review of the Monthly Payment Rate for Return Water or to request under any Law a Governmental Body to set the Monthly Payment Rate for Return Water.

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, EPWater understands and agrees that nothing contained herein grants any right or license to EPWater under UW CMC's or its Affiliates' Intellectual Property Rights, including inventions owned by UW CMC or its Affiliates, 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. EPWater shall use commercially reasonable efforts to cooperate with UW CMC and its Affiliates to protect the Parties' rights to defend infringement claims by third parties as to Intellectual Property Rights relating to the operation of the Facility and the KBH Desalination Plant and in respect of the Services, provided that EPWater's involvement in any third party claim shall be limited in all circumstances to the provision of non-privileged information and shall not obligate EPWater to take any active role in any claim, dispute or litigation.

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. An “**Event of Default**” means actions or omissions which amount to any of the following:

(a) any representation or warranty made by a Party in this Agreement that was incorrect as of the Effective Date of this Agreement, or, if any representation or warranty becomes incorrect afterward and is not fully addressed and corrected within thirty (30) days after the representing Party has received written notice of its inaccuracy;

(b) subject to the payment terms in Article 5 and EPWater’s right to withhold disputed payments, any Party fails to pay any amount owed to the other Party pursuant to this Agreement including any amounts owing under any duty to indemnify under this Agreement;

(c) subject to the terms of this Agreement, EPWater (i) fails to deliver Brine Water meeting the Brine Water Specifications at the Brine Water Delivery Rate at the Delivery Location, (ii) subject to EPWater’s rights under this Agreement to withhold delivery of Raw Brackish Well Water, EPWater fails to deliver Raw Brackish Well Water meeting the Raw Brackish Well Water Specifications at the Raw Brackish Well Water Delivery Rate at the Delivery Location;

(d) UW CMC (i) fails to accept delivery of Brine Water meeting the Brine Water Specifications at the Brine Water Delivery Rate, (ii) fails to accept delivery of Raw Brackish Well Water meeting the Raw Brackish Well Water Specifications at the Raw Brackish Well Water Delivery Rate, (iii) delivers any volume of Off-Specification Water to EPWater at the Return Location or (iv) improperly diverts or fails to return any volume of Return Water to EPWater;

(e) Either Party fails to comply with its obligations under Article 3, 4, 5 and 6.

Section 7.2 General Remedies. Subject to the terms of this Agreement, upon notice to the other Party of 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 such Event of Default. Absent resolution of such Event of Default by the expiration of such period, the non-defaulting Party shall be entitled to pursue any remedy available to it under law or equity for such Event of Default, including a right to suspend performance of its obligations hereunder, or terminate this Agreement, provided, however, that such non-defaulting Party may not terminate this Agreement during the Term notwithstanding such Event of Default except as provided for in Article 8.

Section 7.3 Immunity and Available Damages. EPWater hereby stipulates, agrees and acknowledges as follows: (i) EPWater is a Texas local governmental entity subject to Chapter 271, Subchapter I of the Texas Local Government Code; (ii) Texas Local Government Code Section 271.152, 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; (iii) this Agreement is a written contract stating the essential terms of the agreement for providing goods or services to EPWater that is properly executed on behalf of EPWater 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 UW 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, UW CMC is authorized to seek a monetary award in an adjudication against EPWater for breach of this Agreement, subject to the limitations stated in Section 271.153; (v) the amounts to be paid to UW CMC by EPWater under Article 5 constitute the balance due and owed by EPWater under this Agreement and not consequential or exemplary damages; and (vi) amounts to be paid by EPWater pursuant to this Agreement shall be paid from EPWater's water and sewer revenues or other legally available revenues (but expressly excluding tax revenues).

Section 7.4 Events of Suspension. Without waiving, inhibiting or in any way affecting EPWater's rights to exercise remedies under Section 3.1(n) or Section 4.2(h), the following will constitute "**Events of Suspension**" and will allow EPWater to exercise the following remedies: (i) suspend delivery of all Brine Water and all Raw Brackish Well Water to the Facility and/or (ii) suspend purchasing all Return Water from UW CMC ("**Events of Suspension Remedies**") until UW CMC fully corrects the Event of Suspension and EPWater is able to verify same. For clarity, EPWater's remedies under Sections 7.5, Section 3.1(n) and Section 4.2(h) do not need to be preceded by a notice of an Event of Default under Section 7.2 and can be exercised concurrently with a notice of intent to terminate the Agreement (subject to Article 8).

(a) If UW CMC provides water to EPWater at the Return Location that fails to meet the Return Water Specifications, in any respect. In this event, EPWater may exercise its Events of Suspension Remedies immediately and without prior notice to UW CMC, but EPWater will provide written notice to UW CMC that it has exercised this remedy within one (1) day.

(b) Failure to fully obtain or fully maintain all insurance coverage as required by this Agreement, or failure to present required evidence of proof of said insurance, after a thirty (30) day cure period.

(c) Failure to accept delivery of Brine Water meeting the Brine Water Specifications at the Brine Water Delivery Rate at the Delivery Point, in accordance with this Agreement, after a thirty (30) days cure period and a ten (10) day period to allow for suspension of operations.

(d) Failure to obtain and maintain the status of the Facility as a TCEQ-approved Public Water System, including but not limited to a failure to obtain and maintain the status of a wholesale supplier of Drinking Water to a Public Water System.

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 and terminate upon the Termination Date ("**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.

(b) Extension. Provided that no Event of Default has occurred and is then continuing, the Termination Date may be extended for up to two additional five (5) year terms upon mutual agreement of the Parties in writing. The Party requesting such an extension shall give 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 shall give written notice of its agreement to or rejection of the requested extension within one month thereafter.

Section 8.2 Termination.

(a) Termination by EPWater.

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

(ii) Effect of Termination. Should EPWater terminate this Agreement pursuant to Section 8.2(a)(i), neither EPWater nor UW 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.

(iii) EPWater may terminate this Agreement if UW CMC has, through action or inaction, committed an Event of Default subject to any applicable cure periods; provided that no such termination shall waive any rights of EPWater in respect of any Event of Default by UW CMC occurring prior to such termination.

(b) Termination by UW CMC.

(i) Grounds. UW CMC may terminate this Agreement at any time for any reason in its sole discretion upon ninety (90) days prior written notice to EPWater; provided that no such termination shall waive any rights of UW CMC in respect of any Event of Default by EPWater occurring prior to such termination.

(ii) Termination Obligation. Should UW CMC terminate this Agreement under Section 8.2(b)(i), UW CMC shall be responsible for any losses, costs or amounts properly due under this Agreement that have already arisen. For clarity, under no circumstances will a termination by UW CMC reduce or lessen UW CMC's obligation to comply with the indemnity obligations in Section 12.1 or Article 4, nor will a termination result in any limitation or reduction of UW CMC's responsibilities or liability to EPWater for any losses, damages,

expenses, fines, penalties or liabilities incurred by EPWater at any time as a natural consequence of any events that have already arisen at the time of the termination by UW CMC.

(c) Termination by EPWater. Before terminating the Agreement pursuant to Section 8.2(a), EPWater shall give UW CMC written notice detailing the grounds for such termination, and (provided such grounds are reasonably capable of being cured within one hundred and eighty (180) days) UW CMC shall have one hundred and eighty (180) days to cure such matter. Such cure period shall be extended to three hundred and sixty-five (365) days if it is capable of being cured, and if UW CMC has promptly begun and thereafter undertakes diligent efforts to cure such matters. If UW CMC commits a repeat violation of an Event of Default that is the same as, a prior Event of Default, UW CMC shall have a total of one hundred and twenty (120) days to cure such matter.

Notwithstanding anything else in this Agreement, and without reducing or otherwise affecting EPWater's other remedies or rights herein, EPWater shall have a right to terminate this Agreement on one-hundred and twenty (120) days-notice if UW CMC delivers water to EPWater at the Return Location that fails to meet the Return Water Specifications and EPWater suffers any damage as a result, or if UW CMC fails to fully comply with UW CMC's indemnity responsibilities as outlined herein by failing to reimburse EPWater for any and all losses, damages, expenses, costs, fines, penalties, lost value of water or attorneys' fees incurred by EPWater that were caused by UW CMC's delivery of water to EPWater that did not meet the Return Water Specifications, within 120 days of written notice from EPWater, or if UW CMC opposes, challenges or takes a position that they are not a Public Water System.

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 UW 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**"), EPWater will, as required by the TPIA, (a) provide notice to UW CMC of the request so UW 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 EPWater is withholding disclosure of the requested records pending notice to UW CMC, which may wish to seek an Attorney General open records determination. Such notice shall be provided to UW CMC as required by the TPIA. UW CMC, not EPWater, shall have the obligation to submit to the Attorney General its arguments why the requested records are believed to be excepted from disclosure under the TPIA. Upon the resolution of any Attorney General opinion request, the Parties agree promptly to provide UW CMC with a copy of the Attorney 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 consistent with applicable law, no record (or portion of record) shall be released until UW CMC has exhausted its rights with regard to contesting such release. EPWater agrees to provide UW 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

UW CMC will meet the insurance requirements specified in Schedule 3 at all times while this Agreement is in effect.

ARTICLE 11 NO WARRANTY

Section 11.1 No Warranty by UW CMC. Except for the obligations of UW CMC to fulfill its duties and obligations under the terms of this Agreement and without limiting any warranties contained in Article 2, UW CMC makes no other representation or warranty, express or implied.

Section 11.2 No Warranty by EPWater. Except for the obligations of EPWater to fulfill EPWater's duties and obligations under the terms of this Agreement and without limiting any warranties contained in Article 2, EPWater makes no other representation or warranty, express or implied.

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 LIABILITY

Section 12.1 UW CMC's Liability and Duty to Indemnify, Defend and Hold Harmless EPWater.

UW CMC AGREES, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND PERMITTED ASSIGNS, THAT IT WILL DEFEND, PROTECT, INDEMNIFY, REIMBURSE, AND HOLD HARMLESS EPWATER AND ANY OF EPWATER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVANTS, CONTRACTORS, ATTORNEYS AND CONSULTANTS ("THE INDEMNIFIED PARTIES") FROM AND AGAINST ALL EXPENSES, FINES, PENALTIES, COSTS, DAMAGES, DEMANDS, JUDGMENTS, INCLUDING BUT NOT LIMITED TO ALL COSTS OF DEFENSE, SUCH AS REASONABLE FEES AND CHARGES OF ATTORNEYS, EXPERT WITNESSES, AND OTHER PROFESSIONALS INCURRED BY EPWATER, AND ALL COURT OR

ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS ARISING OUT OF OR INCIDENT TO, DIRECTLY OR INDIRECTLY, THE FOLLOWING:

I) ANY CLAIM BY A THIRD-PARTY ALLEGING BODILY INJURY OR DEATH THAT OCCURS ON THE GROUND LEASED PROPERTY OR IN THE FACILITY;

II) ANY CLAIM BY A THIRD-PARTY ARISING IN CONNECTION WITH UW CMC's FAILURE TO PROVIDE RETURN WATER MEETING THE RETURN WATER SPECIFICATIONS;

III) ANY CLAIM BROUGHT BY A GOVERNMENTAL BODY AGAINST AN INDEMNIFIED PARTY RELATING TO ANY VIOLATIONS OF STATE OR FEDERAL LAW OR REGULATION THAT MAY ARISE OUT OF OR BE OCCASIONED BY: (A) A FAILURE OF UW CMC TO ABIDE BY THE TERMS OF THIS AGREEMENT (B) THE NEGLIGENT ACT OR OMISSION BY UW CMC IN THE PERFORMANCE OF THIS AGREEMENT OR IN UW CMC'S OPERATIONS PURSUANT TO THIS AGREEMENT; OR (C) THE CONDUCT OF UW CMC THAT CONSTITUTES A VIOLATION OF STATE OR FEDERAL LAWS OR REGULATIONS AND/OR CAUSES EPWATER TO VIOLATE ANY STATE OR FEDERAL LAW OR REGULATION;

IV) ANY CLAIMS, BROUGHT BY ANY THIRD PARTY STEMMING FROM OR RELATED TO THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; AND

V) ANY CLAIMS, BY A GOVERNMENTAL BODY RELATED TO UW CMC'S DISPOSAL OF ANY CHEMICALS, COMPOUNDS, MATERIALS, MINERALS, BYPRODUCTS AND MIXTURES THAT ARE SEPARATED FROM THE BRINE WATER OR RAW BRACKISH WELL WATER BY UW CMC.

VI) UW CMC's INDEMNIFICATION OBLIGATIONS SHALL NOT APPLY TO THE EXTENT ANY OF THE FOREGOING ARE CAUSED OR CONTRIBUTED TO AS RESULT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTY.

The Parties acknowledge and agree that all indemnity obligations described above are clear and conspicuous and are fully enforceable pursuant to Texas law, and generally understands that upon the occurrence of any of the events listed above (Items I-VII) UW CMC will be financially responsible to cover any and all losses, damages or consequences suffered by EPWater, including any expenses incurred by EPWater. UW CMC's obligations in this Section 12.1 shall survive termination or expiration of this Agreement.

Section 12.2 Conditions Precedent. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY SCHEDULE, ANNEX OR EXHIBIT ATTACHED HERETO TO THE CONTRARY, UNLESS EXPRESSLY PROVIDED, EPWATER HAS NO OBLIGATION TO PROVIDE BRINE WATER OR RAW BRACKISH WELL WATER AND UW CMC HAS NO

OBLIGATION TO TREAT BRINE WATER OR RAW BRACKISH WELL WATER, UNLESS AND UNTIL THE FOLLOWING CONDITIONS PRECEDENT HAVE BEEN SATISFIED:

- (a) The Ground Lease is fully executed and/or assigned to UW 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 UW CMC.
- (d) The Facility is fully constructed as required by this Agreement, and as specified or required in any application to the TCEQ for authority to build or modify the Facility. This shall mean that the Facility is fully ready to begin operations by accepting and treating Brine Water and Raw Brackish Well Water in accordance with this Agreement, and all Permits, certificates of occupancy or other licenses or approvals needed for occupancy or operations of the Facility have been issued or obtained.

Section 12.3 Preliminary Schedule.

The Parties will meet as soon as practicable after the Effective Date of this Agreement to work on a schedule for the following matters and shall proceed with all due diligence to finalize the schedule, which the Parties may agree to make reasonable changes thereto. The Parties will thereafter use commercially reasonable efforts to meet such schedule.

Finalized (mutually agreed) testing completed for the Brine Water Pipeline, Raw Brackish Well Water Pipeline, and Return Water Pipeline and Meters. Commercial operation of Brine Water Pipeline, Raw Brackish Well Water Pipeline, and Return Water Pipeline, and a successful performance test at approximately fifty percent (50%) capacity.

Following the Effective Date, UW CMC shall supply EPWater with monthly reports regarding the status of the Project, UW CMC's efforts related to the design, planning and permitting of the Facility, the permitting and approval status of the Facility and any communications with Governmental Bodies, anticipated start dates on construction and thereafter the progress and updates regarding same, the anticipated completion timeframes for construction of any improvements for the Facility, and UW CMC's plans and expectations regarding the anticipated Services Commencement Date and Startup Date and any material delays regarding same.

UW CMC shall provide written notification to EPWater of the following milestones related to the Facility: (i) receipt of approval from the TCEQ and any Governmental Body to start construction of the Facility, (ii) completion of construction of any improvements at 25%, 50%, 75%, approximately, and (iii) the Services Commencement Date, and (iv) receipt of approval from the TCEQ to begin operations.

Section 12.4 Limitation of EPWater's Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ANY SCHEDULE, ANNEX OR EXHIBIT ATTACHED HERETO TO THE CONTRARY, THE POTENTIAL LIABILITY OF EPWATER AND ITS AFFILIATES

TO UW CMC AND ITS AFFILIATES ON ACCOUNT OF ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT (WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, OR ANY OTHER LEGAL THEORY) SHALL BE LIMITED TO THE FOLLOWING:

(i) **Payment Claims.** For any failure by EPWater to pay for Return Water meeting the Return Water Specifications when payment is properly due and owing under this Agreement, the sole and exclusive remedy available to UW CMC shall be the balance due and owing by EPWater for such Return Water pursuant to Article 5, including reasonable and necessary attorney's fees that are equitable and just and interest as allowed by law.

(ii) **Other Breaches.** For any breach of any other term of this Agreement by EPWater other than as described in Section 12.4(i), the sole and exclusive remedies available to UW CMC shall be limited to Revenue Loss. "Revenue Loss" means the amount of money that would have been paid by EPW to UW CMC under the Agreement from the date of the breach until the end of the Agreement or until the breach is cured and is equal to the average monthly revenue received by UW CMC under the Agreement from EPW's purchase of water for the 12 months preceding the breach multiplied by the number of months remaining in the Agreement, including any renewal periods, or the number of months from the breach until the breach is cured. The meaning of Revenue Loss expressly excludes all categories of damages described in Section 12.4(iii) below.

(iii) **No Special, Consequential or Other Damages.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL EPWATER BE LIABLE FOR ANY

(b) CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS OR ANTICIPATED PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOST PRODUCTON, LOSS OF BUSINESS OPPORTUNITY, LOSS OF GOODWILL),

(c) INCIDENTAL OR INDIRECT DAMAGES,

(d) PUNITIVE OR EXEMPLARY DAMAGES,

(e) LOST INVESTMENTS, OR COSTS TO DEVELOP, OR BUILD OR OPERATE THE FACILITY,

(f) DAMAGES ARISING FROM THE WORKABILITY OR PERFORMANCE OF UW CMC'S TREATMENT PROCESSES,

(g) ANY DAMAGES RELATED TO FOULING, SCALING, CORROSION, OR OTHER OPERATIONAL ISSUES IN UW CMC'S SYSTEM,

(h) ANY DAMAGES ARISING FROM A LACK OF COMPATABILITY OR SUITABILITY OF THE BRINE WATER AND RAW BRACKISH WELL WATER THAT

MEET THEIR RESPECTIVE SPECIFICATIONS WITH UW CMC'S TREATMENT PROCESS, AND

(i) ANY DAMAGES STEMMING FROM A NEGLIGENT FAILURE OF THE BRINE WATER OR RAW BRACKISH WELL WATER TO MEET THEIR RESPECTIVE SPECIFICATIONS.

THE PARTIES AGREE AND ACKNOWLEDGE THAT NOTHING IN THIS AGREEMENT IS INTENDED TO, AND SHALL NOT BE CONSTRUED TO, OPERATE AS ANY FORM OF WAIVER OF THE DAMAGE CAPS OR GOVERNMENTAL IMMUNITIES THAT MAY BE AVAILABLE TO EPWATER UNDER APPLICABLE TEXAS LAW.

Section 12.5 EPWater's Right to Cure. Notwithstanding any other term in this Agreement, before initiating any suit against EPWater, UW CMC shall provide EPWater written notice detailing the grounds and basis of UW CMC's claims, and (provided such grounds are reasonably capable of being cured within ninety (90) days, EPWater shall have UW CMC shall have ninety (90) days to cure such matter before any suit is initiated.

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 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 (including procurement times for long-lead items necessary to operate and maintain the Facility), sabotage; action or restraint by court order or any Governmental Body; other unanticipated impacts to or circumstances affecting EPWater utility system or the Facility outside the control of the affected Party that makes the affected Party's performance or compliance with the Agreement not possible (and 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). For clarity, a Force Majeure event shall not include circumstances under which a Party's respective facilities are not functioning properly or as designed.

Section 13.2 Shutdowns.

(a) Temporary Shutdowns. The Parties understand and agree that there is a need for outages for general and scheduled maintenance, repair and modification of the KBH Desalination Plant and the Facility as part of their standard operations that makes continuous

operation impossible, as well as additional circumstances and/or events where unexpected shutdowns will occur for various reasons including but not limited to unexpected operational issues not related to events of Force Majeure, electrical outages or fluctuations, storms or other severe weather, unpredictable issues with the supply of brackish water to the KBH Desalination Plant or other issues that impact normal operations. The Parties agree that EPWater shall be entitled to up to for thirty (30) outage days per Contract Year for planned outages or unanticipated down-time, and UW CMC shall be entitled to up to thirty (30) outage days per Contract Year for planned outages or unanticipated down-time (each, a “**Temporary Shutdown**”). Each Party shall make reasonable attempts to give the other Party two (2) Months’ advanced notice (or such shorter time as is reasonably necessary). If unexpected shutdowns occur, each Party shall provide written notice to the other Party as promptly as reasonably possible, The Parties shall use commercially reasonable efforts to coordinate Temporary Shutdowns to occur at the same time as the other Party in efforts to cause minimal disturbance to the operation of the KBH Desalination Plant and the Facility. Temporary Shutdowns in compliance with this paragraph shall not constitute a breach or an Event of Default. Shutdowns caused by any Governmental Body (including TXDOT’s ongoing construction of the Montana expressway project) shall be excused and not deemed a Temporary Shutdown.

(b) **Temporary Reduced Operational Levels.** For up to fourteen (14) additional days per Contract Year, or such longer time as is necessary under the circumstances, EPWater will be entitled to operate the KBH Desalination Plant at a level involving only one skid, which is equivalent to a Brine Water Delivery Rate approximately half of the Brine Water Delivery Rate (approximately 434 GPM) (“**Temporary Reduced Operational Levels**”). To the extent practicable, EPWater will give UW 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 KBH Desalination Plant at a level capable of delivering the Brine Water Delivery Rate. When EPWater is operating one skid, EPWater shall provide UW CMC with additional Raw Brackish Well Water as described in the definition of Raw Brackish Well Water Delivery Rate to account for the lost Process Products in the second skid.

On a temporary basis, not to exceed fourteen (14) days per Contract Year, UW CMC shall have the right to take less than the Brine Water Delivery Rate in order not to exceed the reasonable operating capacity of the Facility. With the exception of forced or unplanned outages, UW CMC shall provide notice of such a reduction to EPWater as soon as reasonably practicable, but in no event less than five (5) days in advance thereof, which notice shall include the reasons therefor and anticipated duration of such reduction.

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, Temporary Shutdowns, Temporary Reduced Operating Levels and topics related to the KBH Desalination Plant, the pipelines and the Facility. Both Parties will endeavor

to report on the aforementioned potential maintenance needs and any other material developments that could affect 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. Neither Party will reassign a Services Manager unless it provides at least five (5) Business Days’ 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. UW CMC will deliver to EPWater 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 UW CMC from EPWater and Return Water delivered to EPWater from UW CMC in the prior eighteen (18) month period along with a report of the payments received therefor.

ARTICLE 15

MISCELLANEOUS PROVISIONS

Section 15.1 Preferred Provider. In consideration of UW CMC’s agreement to provide the Services on the terms contained in this Agreement, EPWater agrees that at all times during the Term of this Agreement, UW CMC shall be EPWater’s exclusive source of supply for the Services to the Brine Water up to the stated Brine Water Delivery Rate coming from the KBH Desalination Plant, provided, that the Parties may agree in writing to such exclusivity as to a larger Brine Water Delivery Rate. Provided that UW CMC is not in default and before EPWater commits to any other provider of the same Services and methods of treatment as called for herein, UW CMC shall have a right of first refusal, and within thirty (30) days. UW CMC must deny that offer or accept it on the same terms and credibly demonstrate that UW CMC then possesses the financial and operational ability to perform on the same terms and in the same proposed timeframes. Nothing in this Agreement will prevent EPWater from utilizing Brine Water produced in excess of the applicable Brine Water Delivery Rate for other purposes as it may determine appropriate or from seeking treatments or uses through other methods. EPWater agrees to provide to UW CMC notice of any proposed agreement with an alternative provider of the same 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 themselves or any other business activity or from advising others on the same activities as are within the scope of this Agreement; or EPWater from using any Brine Water that UW 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 reasonable documents that do not alter or amend the existing agreements between the Parties, 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 UW CMC or EPWater shall be in writing and shall be given or made by personal delivery, email or by certified or registered mail addressed to the respective Parties as follows:

To
EPWater: El Paso Water Utilities – Public Service Board
Attn: EPWater President/CEO
1154 Hawkins Blvd.
El Paso, TX 79925
Phone No: 915-594-5501
Fax No.: 915-594-5699

With a copy to: El Paso Water Utilities
General Counsel
1154 Hawkins Blvd.
El Paso, TX 79925

Bickerstaff Heath Delgado Acosta, LLP
1601 South Mopac Expressway, Suite C400
Austin, Texas 78746
Phone No. 512-472-8021
Fax No. 512-320-5638
Attn: Steven H. Weller
Email: steven.weller@bickerstaff.com

At present, the President/CEO of EPWater is John Balliew, P.E. and the General Counsel is Daniel Ortiz.

To
UW CMC: UW CMC LLC
455 Market Street, Suite 1940
PMB 166635
San Francisco, CA 94105-2448
Attn: Geoff Adamson, Matthew Arth
Phone No: 917-902-7672
Email: Legal@Upwell.co, Geoff@Upwell.co,
Matthew@Upwell.co

With a copy to: Sheppard Mullin LLP
845 Texas Ave 25th Floor
Houston, TX 77002
Phone No.: 713-431-7100
Email: jboose@sheppardmullin.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 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, UW CMC shall perform the Services as an independent contractor. Nothing in this Agreement or in the performance of the Services by UW CMC shall be construed to create (a) a partnership, joint venture or other joint business arrangement or venture between UW CMC and EPWater 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.

Section 15.6 Assignment.

(a) Assignment by UW CMC. UW CMC shall have the right to assign this Agreement and any right or interest under this Agreement without the prior written consent of EPWater, by (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; (iii) transferring or assigning this Agreement to any Affiliate of UW CMC. Prior to assignment of all or a part of this Agreement to a third-party not included in (i)-(iii) above, UW CMC shall obtain prior written consent from EPWater, which consent shall not be unreasonably withheld.

(b) Assignment of Entire Agreement by UW CMC. Any proposed assignee of UW CMC must be capable of demonstrating that it possesses the financial ability and operational experience and capabilities to operate the Facility to fully satisfy all of UW CMC's obligations herein to EPWater's full satisfaction. The suitability of the assignee shall also depend on, without limitation, the assignee's financial ability to correct and fully remedy all possible consequences that EPWater might experience if it receives water from the Facility that does not meet the Return Water Specifications, to fulfill all requirements applicable to a Public Water System under Texas law. Prior to any assignment by UW CMC of the entire Agreement to a third-party not included in Section 15.6(a)(i)-(iii) above, UW CMC shall be contractually required to obtain EPWater's written consent as stated herein and assure that such proposed assignee shall execute and deliver to EPWater 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 UW CMC; and the proposed assignee shall promptly provide to EPWater such information as EPWater may reasonably request about the proposed assignee, including but not limited to information regarding the assignee's financial condition, experience, qualifications, and assumption of all legal requirements applicable to UW CMC under this Agreement, including but not limited to all requirements related to UW CMC's status and operation as a Public Water System. Provided that UW CMC has complied fully with all these requirements, upon consummation of the assignment in conformance with this Agreement, the assignee shall succeed to, and be substituted for, and may exercise every right and power of UW CMC under this Agreement, and shall assume all of UW CMC's responsibilities and obligations under this Agreement, except that an assignment will not operate to relieve UW CMC of its responsibility for any events that occur prior to the date of assignment and will not relieve UW CMC of any contractual obligations or liabilities to EPWater that have already accrued or occurred prior to the time of the assignment. For purposes of clarity, UW CMC's duty to comply with the mandates in Section 12.1 will not be relieved upon an assignment.

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

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 UW CMC and EPWater, and, in the case of EPWater, nothing herein can be modified or rescinded without proper approval by the EPWater Board at a duly called meeting. The Prior Agreement between EPWater and UW CMC, which was effective as of April 15, 2021, is hereby fully and finally terminated, extinguished, and cancelled for all purposes, by mutual agreement of EPWater and UW CMC. 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 the Prior Agreement and any letter of intent or memorandum of understanding executed by the Parties with respect to the Facility or this overall project.

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 the exclusive venue for any action arising under or related to this Agreement will be and lie exclusively in the state District Courts of 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. The mediator's fees and expenses will be shared equally by the Parties.

Section 15.13 Attorneys' Fees. Without limiting UW CMC's duties described in Articles 4 and 12 of this Agreement, in the event EPWater files litigation against UW CMC arising out of this Agreement and prevails in that litigation, UW CMC shall pay all reasonable attorneys' fees, expenses and costs of court expended or incurred by EPWater in connection with such litigation.

Section 15.14 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 15.15 Survival of Obligations. The obligations of the Parties under this Agreement, which by their nature would continue beyond the termination of this Agreement, shall survive the same, including, without limitation, those in Articles 1, 5, 6, 7, 9, 11, 12, and 15.

Section 15.16 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.

Section 15.17 Chapter 2252, Texas Government Code. Pursuant to Chapter 2252, Texas Government Code, UW CMC represents and certifies that, at the time of the execution of this Agreement, neither UW CMC nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 or 2252.153 of the Texas Government Code.

Section 15.18 Section 2274.002, Texas Government Code. As required by 2274.002, Texas Government Code (as added by Senate Bill 13, 87th Texas Legislature, Regular Session), as amended, UW CMC hereby verifies that UW CMC, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott energy companies, and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, “boycott energy companies” shall have the meaning assigned to the term “boycott energy company” in Section 809.001, Texas Government Code, as amended.

Section 15.19 Section 2274.002, Texas Government Code. As required by Section 2274.002, Texas Government Code (as added by Senate Bill 19, 87th Texas Legislature, Regular Session, “SB 19”), as amended, UW CMC hereby verifies that UW CMC, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, (i) does not have a practice, policy, guidance or directive that discriminates against a firearm entity or firearm trade association, and (ii) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, “discriminate against a firearm entity or trade association” shall have the meaning assigned to such term in Section 2274.001(3), Texas Government Code (as added by SB 19), as amended.

Section 15.20 Chapter 2271, Texas Government Code. As required by Chapter 2271, Texas Government Code, as amended, UW CMC hereby verifies that UW CMC, including any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same, does not boycott Israel and will not boycott Israel through the term of this Agreement. As used in the foregoing verification, the term “boycott Israel” has the meaning assigned to such term in Section 808.001, Texas Government Code, as amended.

[Signature page follows]

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

UW CMC LLC

By: _____
Name: John Sylvia
Title: Executive Chairman

**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

By: _____
Name: John E. Balliew, P.E.
Title: President & CEO

SCHEDULE 1 **SPECIFICATIONS**

I. BRINE WATER SPECIFICATIONS

The Brine Water is the concentrate stream from the Desalination Plant delivered by EPWater to UW CMC at the Delivery Location with a typical TDS of 10,000 mg/l and greater. The Brine Water will be delivered at a continuous rate and operating pressure directly from the operating train or trains in the Brine Water's existing state following completion of EPWater's desalination treatment process, without the addition of any cleaning wastes, backflush water or other streams generated from offline operation (e.g. no permeate production). UW CMC plans to treat 868 GPM concentrate at a nominal TDS of 12,700 mg/l; however the actual flow will be equal to the output volume resulting from operation of at least two skids of the Desalination Plant at normal operating pressure at a full rate and will be adjusted based upon the actual sodium and chloride concentration of the Brine Water concentrate and the available flow delivered by EPWater at the Delivery Location which will have a *minimum* combined sodium and chloride concentration of 5350 mg/L, assuming an 868 GPM flow.

Other than these Brine Water Specifications, EPWater does not make any other representations or assurances regarding the content or composition of the Brine Water.

UW CMC shall receive and successfully treat Brine Water at the Brine Water Delivery Rate and deliver Return Water in accordance with the Return Water Specifications and Return Water Obligations.

The Parties acknowledge that EPWater will make commercially reasonable efforts to supply Brine Water which meets the above-stated Specifications.

At present, it is anticipated that the well water supply for the Desalination Plant is expected to increase in salinity over time, and that there will be a corresponding increase in the salinity and other mineral substance content of the Brine Water produced by the Desalination Plant. By this representation, EPWater does not guarantee that other changes to the character or composition of the Brine Water will not occur. Both Parties acknowledge this anticipated change and agree that changes in salinity shall not cause the Brine Water to be noncompliant with the Brine Water Specifications.

II. RETURN WATER SPECIFICATIONS

To comply with the Return Water Specifications, the Return Water must meet the definition of "Drinking Water" as defined herein. This means "Drinking Water", or potable water, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings, as currently referenced and defined in 30 TAC § 290.38(25) and Texas Health & Safety Code § 341.001(3), as amended. This means water that fully complies with all federal, state and local water quality Laws, standards, regulations and requirements which apply to Drinking Water and drinking water quality, including but not limited to the following: (i) all requirements imposed on a Public Water System related to the collection,

treatment, storage and distribution of Drinking Water, within 30 Texas Administrative Code (TAC), Chapter 290 or in other Laws, (ii) all Drinking Water Standards in 30 TAC, Subchapter F, including but not limited to all prohibitions against primary contaminants, secondary contaminants or other prohibited substances, (iii) Texas Health and Safety Code, Chapter 341, Subchapter C; (iv) the Texas Water Code, Chapter 13, (v) the federal Safe Drinking Water Act, Title 42, Chapter 6A, Subchapter XII. Safety of Public Water Systems, 42 U.S.C. § 300f to 300j-26; (vi) federal regulations implementing the Safe Drinking Water Act, including but not limited to 40 CFR Parts 141-143, (vii) all rules, regulations or requirements established by the TCEQ, the Texas Department of State Health Services, the EPA (including their successor agencies) or any other state or federal agency with jurisdiction over UW CMC's activities at the Facility, and (viii) all Laws, regulations and requirements which apply to a Wholesale Public Water System that provides Drinking Water to another Public Water System. Return Water that meets the above definition of Drinking Water must have undergone all treatment requirements in Section 3.1(g).

The Return Water shall be at or below the *maximum* levels listed below, at or above the *minimum* levels listed below, or, in circumstances where a range is specified below, shall fall within those ranges and shall also comply with NSF 60 and 61, respectively.

Parameters are maximum values in ppm unless noted otherwise.	
SiO ₂	<10
Ca ⁺⁺	>30
Cl ⁻	<70
Phosphorus Reactive (Orthophosphate) 0.25-0.30	
pH (t)	7.5 to 8.5
Alkalinity	>90 as CaCO ₃
Free Chlorine	0.2 To 4.0
Pressure	15-30 psi in pipe at delivery point
El Paso Water optimal water quality parameters (OWQP) – corrosion inhibitor: Concentration between the minimum and maximum KBH system concentration shown above, or as updated by EPWater from time to time in the OWQP.	
Temperature (deg C)	10-32

UW CMC shall be fully and solely responsible for meeting the Return Water Specifications upon delivery of Return Water at the Return Location.

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 EPWater and shall not be chlorinated or treated, and shall be

from the same wells that supply water to the KBH Desalination Plant. No substantive treatment, chlorination for disinfection purposes, or chemical addition intended to alter the chemical composition of the Raw Brackish Well Water shall occur between the wellhead and the Delivery Point.

This Section shall not prohibit EPWater from performing normal and routine well and pipeline operations, or operations as required by Law related to the wells or pipelines or related facilities, including without limitation: pumping, mechanical straining or cartridge filtration to remove particulates, periodic well maintenance or disinfection (e.g., shock chlorination not introduced into the continuous flow), or addition of minimal conditioning chemicals (such as anti-scalants or corrosion inhibitors) consistent with standard industry practices for brackish groundwater conveyance, such as the industry practices performed or required prior to introduction of the well water at the Kay Bailey Hutchison Desalination Plant.

SCHEDULE 2
MONTHLY PAYMENT RATE FOR RETURN WATER

In calculating the amounts described below, the Monthly Return Water delivered in a Month shall be those amounts determined in accordance with Articles 4 and 5.

Monthly Payment Amount for Return Water

A. The Monthly Payment Amount for Return Water for a Month shall be the Monthly Return Water volume delivered to EPWater for that Month multiplied by the Monthly Payment Rate for Return Water. For example, if the Monthly Return Water volume delivered in a Month is 90,000,000 gallons (or 90,000 thousand gallons) and the Monthly Payment Rate is \$6.50 per thousand gallons, then the Monthly Payment Amount for Return Water would be $\$6.50 \times (90,000) = \$585,000.00$.

B. The Monthly Payment Rate for Return Water shall be (in U.S. Dollars):

- \$6.50 per thousand gallons of Monthly Return Water during the first year after the Services Commencement Date.
- \$7.00 per thousand gallons of Monthly Return Water during the second year after the Services Commencement Date.
- \$7.50 per thousand gallons of Monthly Return Water during the third year after the Services Commencement Date.

Starting three (3) years after the Startup Date is reached, the Monthly Payment Rate of \$7.50 per thousand gallons shall automatically escalate annually for each successive Contract Year by 1.5% per year. For example, on the third anniversary of the date that the Services Commencement Date is reached, the following Monthly Payment Rate shall take effect: $(\$7.50 \times 1.015\%) = \7.61 .

Discounts to Monthly Payment Rate

A. During the first five (5) years following the Startup Date, the Monthly Payment Rate shall be discounted to address the fact that EPWater is providing raw brackish well water to UW CMC without cost.

B. The Monthly Payment Rate (including any escalations for 1.5%) shall be discounted as follows:

- Year 1 and 2 - \$0.75 reduction to the Monthly Payment Rate.
- Year 3 and 4 - \$0.50 reduction to the Monthly Payment Rate.
- Year 5 - \$0.25 reduction to the Monthly Payment Rate.

- Year 6 and beyond – no reduction.

For example, in Year 1, the actual Monthly Payment Rate, following the application of the Discount, shall be \$5.75 ($\$6.50 - \$0.75 = \5.75). In Year 2, the actual Monthly Payment Rate, following application of the Discount, shall be \$6.25 ($\$7.00 - \$0.75 = \6.25). In Year 4, the \$7.50 Monthly Payment Rate shall escalate by 1.5%, to \$7.61, but shall remain subject to a reduction following the application of the \$0.50 Discount, and therefore, in Year 4 the actual Monthly Payment Rate shall be \$7.11 ($\$7.61 - \$0.50 = \7.11).

SCHEDULE 3 **INSURANCE**

UW CMC Insurance.

At all times during the term of the Agreement, UW CMC shall procure and maintain, or cause to be procured and maintained, in full force and effect the insurance coverages, at its sole expense, set forth in this schedule during the Term. UW CMC, at its own cost, may purchase any additional insurance it believes necessary to protect its interest. All such insurance carried shall be placed with such insurers having a minimum A.M. Best insurance rating of “A- VII” and be in such form, with such other applicable terms, conditions, limits and deductibles (subject to the insurance coverages and terms below):

- a. **Workers’ Compensation Insurance.** Workers’ compensation insurance and such other forms of insurance which UW CMC is required to maintain in order to comply with statutory limits under workers’ compensation laws of any applicable jurisdiction in the United States (and any other location in which the work is to be performed).
- b. **Employer’s Liability Insurance.** Employer’s liability insurance (including occupational disease) coverage with limits of \$1,000,000 per accident, \$1,000,000 for disease, and \$1,000,000 for each employee, which shall cover all of UW CMC’s employees, whether full-time, or part-time, leased, temporary or casual, who are engaged in the work. If any work is performed in a monopolistic state, stop-gap employer’s liability insurance must be provided.
- c. **Commercial General Liability Insurance.** Commercial general liability insurance written on an occurrence form and providing \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such coverage shall include premises/operations, contractual liability for written contracts, products/completed operations, broad form property damage, bodily injury (including death), independent contractors, and personal and advertising injury liability. Policy general aggregate limits shall be written on a per project or per location basis.
- d. **Commercial Auto Liability Insurance.** Commercial auto liability insurance with a combined single limit of \$1,000,000 including coverage for owned, non-owned, and hired automobiles for both bodily injury (including death) and property damage.

EPWater must be provided copies of the quotes and policy forms/endorsements at least thirty (30) days prior to the time that UW CMC purchases the ELL coverage, and EPWater’s approval, consistent with the requirements listed herein, must be obtained by UW CMC prior to purchase of this insurance.

- e. **Excess/Umbrella Liability Insurance.** Excess/umbrella liability insurance written on a following-form and occurrence basis and providing coverage limits in excess of the primary employers’ liability, commercial general liability and commercial auto liability policies. The limits of such excess/umbrella coverage shall be

\$10,000,000 each occurrence/aggregate. Such insurance shall not contain exclusions for punitive or exemplary damage where permitted by applicable law.

- f. All forms of insurance referenced above (except workers' compensation/employer's liability) shall be endorsed to name EPWater as an additional insured. UW CMC's obligation under this schedule shall be limited only where required by applicable Law and to the extent of UW CMC's obligations under the Agreement. The general liability and ELL coverage afforded to the additional insured shall be primary and noncontributing with any other insurance maintained by the additional insureds and to the extent of UW CMC's obligations under the Agreement; umbrella/excess liability shall be non-contributory. All policies shall, to the extent allowable by Law, be endorsed with a waiver of subrogation in favor of the additional insureds and to the extent of the UW CMC's obligations under the Agreement. The general liability, commercial auto liability, ELL and umbrella/excess liability policies will provide severability of interests (or separation of insureds) in favor of the additional insureds. The applicable insurer(s) or their designated representative shall provide additional insureds with 30 days advance written notice of cancellation or non-renewal of the policy by the insurer (except in case of cancellation due to non-payment of premium, in which case 10 days' notice is required). UW CMC shall provide EPWater with certificates of insurance evidencing compliance with the foregoing requirements, accompanied by copies of the required endorsements within 5 days upon receipt of EPWater's written notification.

EXHIBIT A
SITE LAYOUT

[to be attached]

Record drawing of KBH service pipelines to Facility