

CITY OF VILLE PLATTE RANDALL M DESHOTEL CIVIL DOCKET NO. 80653-A  
 CLERK OF COURT  
 VERSUS 2023 MAY 10 A 9:04 13<sup>TH</sup> JUDICIAL DISTRICT COURT  
 SP VILLE PLATTE WWTP, LLC EVANGELINE PARISH, LOUISIANA

PETITION FOR DECLARATORY JUDGMENT  
 AND INJUNCTIVE RELIEF

NOW INTO COURT COMES Petitioner, City of Ville Platte, a political subdivision of the State of Louisiana, hereinafter referred to as “the City”, with respect represents that:

1.

Made Defendant herein is SP VILLE PLATTE WWTP, LLC, a limited liability company doing business in the State of Louisiana with its principal business establishment at 201 Rue Beauregard, Ste. 202, Lafayette, Louisiana 70508, hereinafter “SP”.

2.

This is a matter over which the Court has subject matter jurisdiction as a court of general jurisdiction in the State of Louisiana.

3.

Venue is proper, pursuant to Louisiana Code of Civil Procedure article 76.1, as Evangeline Parish is where the work and services are to be performed in accordance with the subject contract.

4.

The City and SP entered into a Cooperative Endeavor Agreement and Service Addendum attached thereto, hereinafter collectively referred to as “CEA”, on or about June 21, 2022, July 15, 2022, and September 1, 2022, copies of which are attached hereto as **Exhibit A**.

5.

The general purpose and intent of the CEA appears to be to facilitate the construction by SP of a waste water treatment plant to facilitate such operations in the City.

6.

The CEA was not submitted to, reviewed by, or approved by the Louisiana State Bond Commission before or after its execution.

7.

Louisiana Revised Statute 39:1410.60(A) provides, in pertinent part:

A. No parish, **municipality**, public board, political or public corporation, subdivision, or taxing district... created under or by the constitution and laws of the state **shall have authority to borrow money, incur debt, or to issue bonds, or other evidences of debt, or to levy taxes, or to pledge uncollected taxes or revenues for the payment thereof, where they are authorized by the constitution or laws of the state to do so, without the consent and approval of the State Bond Commission. (Emphasis added.)**

8.

Attorney General Opinion 09-0003 provides:

In our view, each of the Agreements at issue contemplates the expenditure of public funds and/or resources by a public entity over the span of more than one (1) year. We believe such Agreements must contain the appropriate language, such as a termination for convenience provision and either a “non-appropriation” or “non-funding out” clause, in order to protect the public fisc. In fact, as reflected on their websites, both the Louisiana Legislative Auditor and the Louisiana Office of Contractual Review recommend and encourage the use of termination for convenience clauses and “non-appropriation” clauses in Cooperative Endeavor Agreements.

As such, it is our opinion that due to the existence of the penalty clause in the Work Release Contract/Lease, and the absence of a termination for convenience clause and reciprocal “non-appropriation” or “non-funding out” clauses in any of the Agreements at issue, we believe each of the Agreements incurs “debt” as provided for in La. Rec. Stat. 39:1410.60 and State Bond Commission approval is required for each of the Agreements.

It is our understanding that none of the Agreements were submitted to the State Bond Commission for approval. Accordingly, pursuant to La. Rev. Stat. 39:1410.63, we are of the opinion that the Work Release Contract/Lease, CEA, and Intergovernmental Agreement are null and void and non-binding on the office of the Sheriff, the Law Enforcement District, or the City of New Iberia.

9.

Attorney General Opinion 95-342 provides:

A “non-funding out” or “non-appropriations” clause provides that, if for any reason, the Board fails to appropriate or make available funds to meet its obligations under the agreement in any budget year, the agreement may be terminated with no penalty. When this clause is included in the agreement, it is, in essence, stating that the contract is funded on a year-to-year basis on current revenues, thereby negating the debt. Care should be taken that no additional clauses are structured into the agreement which would result in a penalty against the Board for cancellation.

10.

On August 30, 2022, Louisiana State Treasurer, John M. Schroder, and Louisiana Legislative Auditor, Michael J. “Mike” Waguespack, issued a joint letter, a copy of which is attached hereto as **Exhibit B**, which states, in pertinent part:

Therefore, when considering whether to enter into such agreements, we would urge you to consult with your attorney and consider the following in order to determine whether entering into the CEA constitutes incurring of a debt subject to State Bond Commission approval:

1. Whether the CEA provides for, either directly or indirectly, an interest rate (either stated or imputed), finance charge or carrying charge or other similarly designated charges.
2. Whether the CEA has a true non-appropriation clause pursuant to which if the funding for the CEA is impaired the political subdivision may terminate the CEA without penalty or charge.
3. Whether the CEA obligates the political subdivision to exercise authority to raise fees, taxes, charges or assessments to fund the CEA.

4. Whether the CEA has penalties, fees, charges or make-whole provisions for early cancellation, returns of products or other similar provisions upon termination of the CEA.
5. Whether upon termination or expiration, the political subdivision will own the goods and products which are the object of CEA or whether title to those goods and products transfers, reverts or remains vested with the private party to the CEA.
6. Whether there is any condition that requires granting of a security interest.

It appears to us that if one or more of the above provisions is present, the CEA may constitute the incurrence of debt requiring approval by the State Bond Commission. Any debt incurred without approval by the State Bond Commission would be contrary to Louisiana law and therefore null and void, *ab initio*.

11.

Section 2.1 of the CEA provides as follows:

2.1. *In General.* Customer will pay the USA Payments to the SP Entity as calculated in this Agreement. Where revenue sharing is the source of USA Payments and the revenue is insufficient to fund the USA Payments, Customer will be responsible to pay for the shortfall amount.

12.

Section 2.6 of the CEA provides as follows:

2.6. *Governmental Entity Provisions.* If a Customer is a Governmental Entity, the following provisions shall apply.

a) *Legislative Appropriation.* The SP Entity acknowledges that Customer's payments of amounts, other than revenue sharing, due under this Agreement is subject to appropriation by Customer's applicable legislative body of sufficient funds therefor and the availability of funds following legislative appropriation. In any budget submitted by Customer for approval and funding by Customer's applicable legislative body that provides for payment of Customer essential utilities, which Customer hereby agrees SP Entity payment is derived from, Customer shall include sufficient funding for unpaid amounts to be paid by Customer under this Agreement, as well as sufficient funding for such amounts anticipated to be paid by Customer under this Agreement for the period covered by the appropriation.

b) Customer makes no representations, warranties, or covenants, express or implied, that the legislature will make such appropriations. So long as (i) the Customer continues to make good faith best efforts to pass such appropriation, keeping the SP Entity fully informed of such efforts, and (ii) the SP USA Payment is treated pari-passu in all respects with payments to Customer essential utilities, failure to pass such appropriation will not result in a Payment Default by Customer. Except as provided for by satisfying conditions (i) and (ii) above, delays or failures to pay amounts when otherwise due under this Agreement, including the failure of Customer's applicable legislative body to appropriate necessary funds, this provision shall not restrict the SP Entity from terminating this Agreement for a resulting Payment Default by Customer.

c) *Invoicing and Payment.* If there is an applicable Prompt Payment Act based on the type and location of the Government Entity, then in lieu of application of Section 2.2 above, the SP Entity will electronically invoice Customer monthly, and invoiced amounts are due and shall be paid in full in accordance with the provisions of the Prompt Payment Act, payments shall be made by such method as Customer and the SP Entity hereafter agree.

d) *Late Fees.* If there is an applicable Prompt Payment Act based on the type and location of the Government Entity, then in lieu of application of Section 2.3 above, payments not timely made pursuant to the provisions of this Agreement shall entitle

the SP Entity to the penalties and other remedies as set forth in the Prompt Payment Act.

13.

Section 13 of the CEA provides:

13.1. *Payment Default.* If a Party fails to pay any undisputed material amount due and payable under this Agreement within 30 days of its due date (a "Payment Default") and fails to cure such Payment Default within 10 business days of written notice thereof, then the other Party may terminate this Agreement immediately upon written notice to the Party in Payment Default.

13.2. *Performance Default.* If a Party fails to substantially perform any other material obligation under this Agreement (a "Performance Default") and fails to cure such Performance Default within 10 business days of written notice thereof, the non-defaulting Party may immediately terminate this Agreement.

13.3. *Exclusive Remedies.* The remedies expressly provided in this Agreement are the sole and exclusive remedies of the Parties in connection with breaches of this Agreement provided that the Parties will at all times maintain the right to not extend this Agreement at the end of the Initial Term or Additional Term, as applicable, and further provided that the foregoing remedies are in addition to any late fees and accrual of interest provided elsewhere in this Agreement.

14.

Section 14.1 of the CEA provides:

14.1. *Disposition upon Termination.* Except to the extent otherwise required in this Section 14, upon a termination of this Agreement for any reason, Customer will immediately (a) if this Agreement expressly provides that Customer has a "Right of Return" ("RoR"), (where the Certificate of Acceptance has been fully executed and all USA Payments have been received by the SP Entity), to uninstall and deliver all Unit(s) and all property of the SP Entity in Customer's possession or control, to locations identified by the SP Entity but no further than the Unit(s) manufacturers closest reconditioning center, at Customer's sole expense, in undiminished performance or aesthetics from initial installation, using manufacture compliant packaging and documentation sufficient for individual resale, within 10 business days, or (b) have Disposition of Unit(s) according to selection in Addendum(s) to Customer within 45 business days as provided in Section 14.2, 14.3, or 14.4 below, as applicable and execute a General Release.

15.

Attorney General Opinion 05-0039 provides:

Debt is more than an obligation to pay a sum of money. As defined in the statutes, debt is incurred when there is a financing.

16.

On Page 2 of Exhibit 2 attached to the CEA, there is a chart labeled INSTALLATION MATTERS, wherein there is a notation that the Monthly "Carrying Charge" is 0.85% and the term "Carrying Charge" is referenced in Section 3.15 of the CEA.

17.

Section 5.3 of the CEA provides:

5.3. *Insurance.* Should the Customer not obtain and maintain (as primary insurance for the SP Entity and Customer as co-insureds as their interests may appear in the Agreement), reasonable insurance coverage, including, without limitation, liability insurance and insurance against loss or damage to the Unit(s), in such amounts, in such form and with such insurers as are reasonably satisfactory to the SP Entity and that will name the SP Entity, its successors and/or assigns, as loss payee and additional or co-insured with a certificate evidencing the same as to each policy, SP Entity shall obtain such insurance while the Unit(s) is/are at the Location, to the extent permitted under applicable federal laws of Venue State, and add its pro-rated cost to the USA Payments due to the SP Entity. The applicable certificates of insurance will expressly provide that the Customer's policies may not be terminated or significantly modified without giving the SP Entity at least 30 days' prior written notice.

18.

Section 6.1 of the CEA provides, in pertinent part:

6.1 *SP Entity Ownership.* To the fullest extent allowed by law, the SP Entity owns and will continue to own all title and legal and beneficial ownership interests in the SP Entity funded Unit(s). All SP Entity funded Unit(s) and other assets of the SP Entity used in performing the services will remain the sole property of the SP Entity, and will not attach to, be deemed a part of, or fixture to, the Location. All tax filings, reports and other documentation shall be filed in a timely and consistent manner. Customer is entrusted with possession of the SP Entity funded Unit(s), without the transfer to Customer of any ownership interest therein, only to use those Unit(s) at the Location during the Term. This Agreement will not be construed to transfer any ownership or control of SP Entity funded Unit(s) nature or method of use.

19.

It would appear that Sections 5.3 and 6.1 read *in pari materia* would have the City insuring property belonging to SP, and such obligation would extend for the life of the Agreement.

20.

Louisiana Code of Civil Procedure art. 1871 provides:

Courts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for; and the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The declaration shall have the force and effect of a final judgment or decree.

21.

The City seeks a declaration as to whether the CEA and its component parts/exhibits are public debt that was required to have been approved by the State Bond Commission in accordance with La R.S. 39:1410.60.

22.

The City seeks a declaration of the relative rights, status and other legal relations between the City and SP arising from the terms of the CEA in the event the City, through the action of its legislative body, the Ville Platte City Council, acting as the sole governing authority of the City, does not appropriate the funds, in a given fiscal year otherwise called for under the terms of the CEA.

23.

In the event the declaration of this Court is that the CEA is null and void and non-binding on the City, injunctive relief is further requested by the City ordering the immediate stoppage of any and all work currently being performed by SP pursuant to the CEA.

24.

Finally, upon issuance of said injunctive relief, the City seeks a declaration of what legal relations and obligations are owed between the parties in relation to any past debts, current debts, or prospective debts due under the CEA.

**WHEREFORE**, Petitioner, City of Ville Platte, respectfully requests the entry of a Declaratory Judgment by this Honorable Court on the following questions:

1. Is the Cooperative Endeavor Agreement entered into by the City of Ville Platte and SP VILLE PLATTE WWTP LLC an instrument of public debt that should have been submitted for approval of the State Bond Commission under La. R.S. 39:1410.60?;
2. If the Cooperative Endeavor Agreement is not an instrument of public debt, then what, if any, obligations are imposed upon the City in the event the City Council, acting as the sole governing authority of the City of Ville Platte, does not appropriate funds for a succeeding fiscal year in the adoption of its annual budget sufficient to fund the obligations as otherwise are provided for in the Cooperative Endeavor Agreement?
3. If the Cooperative Endeavor Agreement is an instrument of public debt, and injunctive relief is hereby granted by the Court, what past, present or future financial obligations are owed by the City of Ville Platte to SP VILLE PLATTE WWTP LLC?

**FURTHER**, the City of Ville Platte prays that this Petition be served upon SP VILLE PLATTE WWTP, LLC at 201 Rue Beauregard, Ste 202, Lafayette, LA 70508.

**FINALLY**, the City of Ville Platte prays that it be provided not less than ten (10) business days advanced written notice of any hearing, action or proceeding in this matter.

RESPECTFULLY SUBMITTED:

LUDEAU LAW, LLC

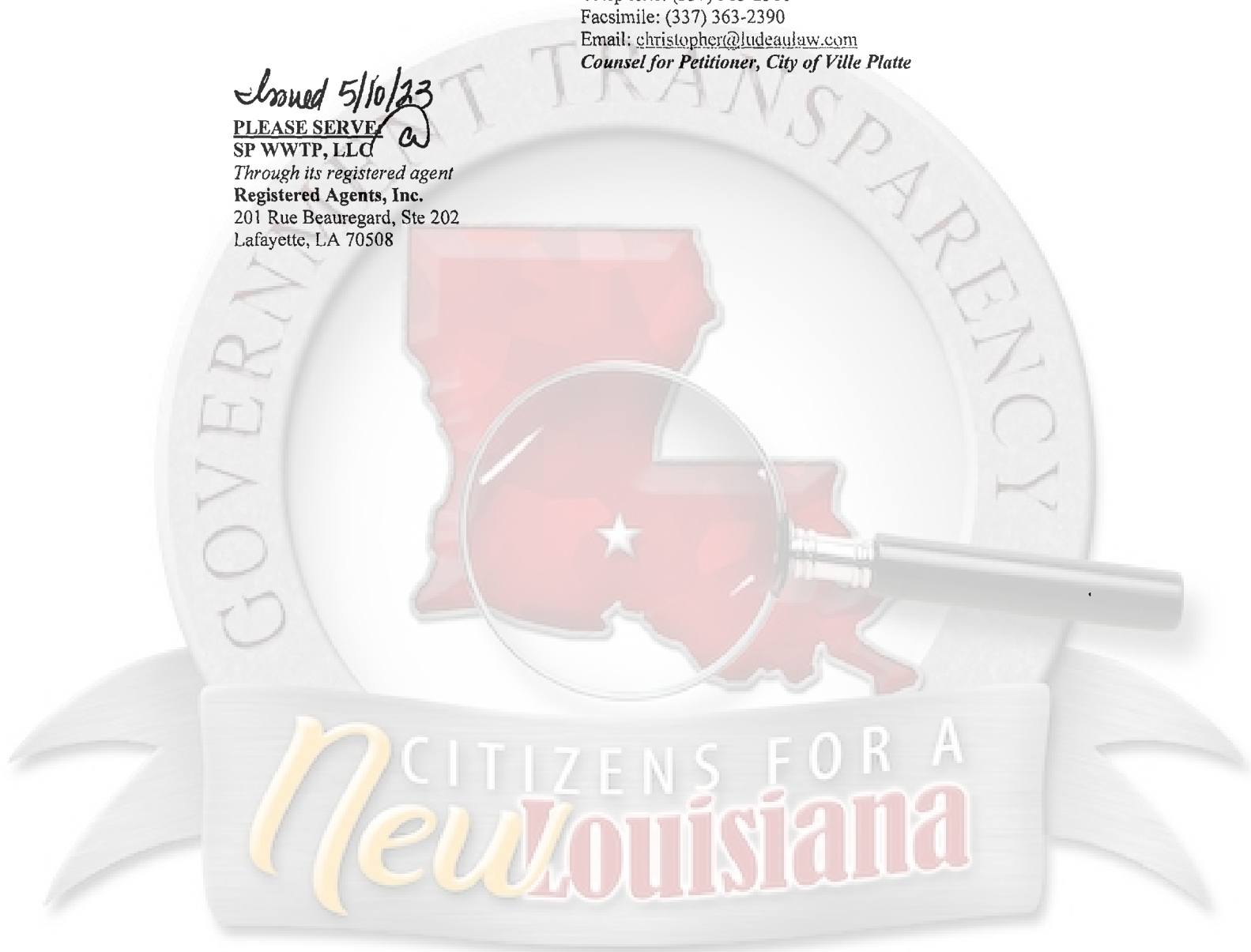


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*Counsel for Petitioner, City of Ville Platte*

*Issued 5/10/23*

**PLEASE SERVE**  
**SP WWTP, LLC**

*Through its registered agent*  
**Registered Agents, Inc.**  
201 Rue Beauregard, Ste 202  
Lafayette, LA 70508





SUSTAINABILITY

RANDALL M DESHOTEL  
CLERK OF COURT



2023 MAY 10 A 9:05  
Cooperative Endeavor Agreement

The parties to this Cooperative Endeavor Agreement ("CEA") are the City of Ville Platte, Louisiana ("Customer") and Sustainability Partners LLC, a Delaware limited liability company ("SP"). This CEA sets forth the General Terms and Conditions attached as Exhibit 1 (the "General Terms") that apply to sustainability solutions and related services to be provided by SP or an affiliate thereof (as applicable, the "SP Entity") as described in each subsequently executed Service Addendum identified as an Exhibit 2 to this CEA (each a "Service Addendum"), and subject to acceptance pursuant to one or more Certificates of Acceptance identified as an Exhibit 4 to this CEA for installed solution components contemplated by the corresponding Service Addendum (each a "Certificate of Acceptance" or "CofA").

This CEA is entered into by and between the undersigned parties for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, as of June 21, 2022.

City of Ville Platte, Louisiana

Sustainability Partners LLC

By:

By:

Name: Jennifer Vidrine  
Title: Mayor  
Phone: (337) 831-0831  
E-Mail: jennifervidrine@hotmail.com  
Address: P.O. Box 390, Ville Platte, LA 70586

Name: Thomas Cain  
Title: CEO  
Phone: (480) 840-0400  
E-Mail: tcain@s.partners  
Date: June \_\_, 2022





## Sustainability as a Service®

**Exhibit 1**  
**General Terms and Conditions**

These General Terms and Conditions (“**General Terms**”) apply to and are incorporated into each Agreement (as defined in the Glossary) between the Parties. Capitalized terms not defined in these General Terms have the meanings given in the applicable Agreement and the Cooperative Endeavor Agreement (“CEA”) to which these General Terms are attached as **Exhibit 1**.

1. **The Sustainability Services.** Customer engages the SP Entity as an independent contractor to provide the following services (the “**Services**”) at the Location on the terms set forth in this Agreement for Unit(s):
  - 1.1. *SP Entity ownership.* If the SP Entity is funding the Unit(s), the SP Entity will acquire and cause the Unit(s) to be installed at the Location and retain all Unit(s) ownership. The SP Entity will pay the Installation Cost in connection with the Installation of the Unit(s);
  - 1.2. *Customer ownership.* If the Unit(s) are Customer funded, the Customer has and retains all Unit(s) ownership and operation rights provided there is no Payment Default;
  - 1.3. *Maintenance.* Whether SP Entity ownership or Customer ownership, maintenance costs of Unit(s) shall be as provided for in Sections 7, 8, and 9 of this Agreement; and
  - 1.4. *Use.* Unless there is a Payment Default, the SP Entity allows Customer’s full use of the Unit(s) at the Location during the Initial Term and any and all subsequent Additional Terms (each being defined in the Service Addendum and collectively defined as the “**Term**”).
2. **USA Payments.**
  - 2.1. *In General.* Customer will pay the USA Payments to the SP Entity as calculated in this Agreement. Where revenue sharing is the source of USA Payments and the revenue is insufficient to fund the USA Payments, Customer will be responsible to pay for the shortfall amount.
  - 2.2. *Invoicing and Payment.* The SP Entity will electronically invoice Customer monthly, and invoiced amounts are due in full within 30 days by credit card, SP Entity’s standard ACH agreement, wire transfer or by such other method as Customer and the SP Entity shall hereafter agree. Where the Customer has unrated credit, is non-investment grade credit, or the invoice includes late or Rights Fee related amounts, the USA Payment shall be made through the aforementioned ACH.
  - 2.3. *Late Fees.* If any amount due to the SP Entity is delinquent for more than 30 days, such amount will accrue interest at the lesser of 1.5% per month or the maximum rate permitted by law, and Customer will bear the reasonable costs and expenses (including attorneys’ fees and costs) incurred by the SP Entity in collecting such amounts.
  - 2.4. *Data Interruptions.* If data for calculation of a USA Payment is unavailable to the SP Entity, the SP Entity may estimate the payment associated with such Units based on historical Usage, usage of similar Units or other reasonable means; provided that (a) any such estimated amounts shall be clearly identified on the applicable invoice, and (b) if the relevant actual data becomes available within six months following the invoice date for the estimated payment, the SP Entity will reconcile on the next invoice the actual data with the estimated data and provide a true-up calculation to Customer.
  - 2.5. *Excess Usage.* Should the aggregate USA Payments exceed that required for SP Entity obligations, those funds will be credited to the Support Reserves.
  - 2.6. *Governmental Entity Provisions.* If Customer is a Governmental Entity, the following provisions shall apply:
    - a) *Legislative Appropriation.* The SP Entity acknowledges that Customer’s payment of amounts, other than revenue sharing, due under this Agreement is subject to appropriation by Customer’s applicable legislative body of sufficient funds therefor and the availability of funds following legislative appropriation. In any budget submitted by Customer for approval and funding by Customer’s applicable legislative body that provides for payment of Customer essential utilities, which Customer hereby agrees SP Entity payment is derived from, Customer shall include sufficient funding for unpaid amounts to be paid by Customer under this Agreement, as well as sufficient funding for such amounts anticipated to be paid by Customer under this Agreement for the period covered by the appropriation.
    - b) Customer makes no representations, warranties, or covenants, express or implied, that the legislature will make such appropriations. So long as (i) the Customer continues to make good faith best efforts to pass such appropriation, keeping the SP Entity fully informed of such efforts, and (ii) the SP USA Payment is treated pari-passu in all respects with payments to Customer essential utilities, failure to pass such appropriation will not result in a Payment Default by Customer. Except as provided for by satisfying conditions (i) and (ii) above, delays or failures to pay amounts when otherwise due under this Agreement, including the failure of Customer’s applicable legislative body to appropriate necessary funds, this provision shall not restrict the SP Entity from terminating this Agreement for a resulting Payment Default by Customer.
    - c) *Invoicing and Payment.* If there is an applicable Prompt Payment Act based on the type and location of the Government Entity, then in lieu of application of Section 2.2 above, the SP Entity will electronically invoice Customer monthly, and invoiced amounts are due and shall be paid in full in accordance with the provisions of the Prompt Payment Act; payments shall be made by such method as Customer and the SP Entity hereafter agree.
    - d) *Late Fees.* If there is an applicable Prompt Payment Act based on the type and location of the Government Entity, then in lieu of application of Section 2.3 above, payments not timely made pursuant to the provisions of this Agreement shall entitle the SP Entity to the penalties and other remedies as set forth in the Prompt Payment Act.
3. **Unit Procurement, Installation and Acceptance.**
  - 3.1. *Selection of the Installed Units.* Upon execution of a Service Addendum, Customer and the SP Entity shall cooperate in defining the specific design and specifications of the Installation together with information in support of SP underwriting where there is an intent for the SP Entity to fund the Unit(s). Unit(s) for installation at the Location shall be selected by SP Entity and approved by Customer from an Approved MMC - MMR Provider listed in the applicable Service Addendum.
  - 3.2. *Selection of Installation Contractors.* Contractors for the Installation shall be selected by the SP Entity and approved by Customer from an Approved Contractor listed in the applicable Service Addendum.
  - 3.3. *Competitive Bidding.* If Customer is a Governmental Entity, then to the extent that Customer or the SP Entity determines that a competitive bidding process is required under applicable Laws, the selection of the Unit(s), vendor(s), or contractor(s) for the Installation shall be in accordance with provisions of such applicable Laws and conducted jointly by the SP Entity and Customer including requirements that the general contractor use commercially reasonable efforts to allow qualified local and/or minority contractors have an opportunity to competitively bid on the Service Addendum. The awards will be based on lowest cost of usage from qualified bidder(s) or best value bidders(s) over the Unit’s expected useful life, consistent with the requirements and analysis provided by the SP Entity. To the extent applicable, this Section 3.3 shall govern over the terms of Sections 3.1 and 3.2 above.

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- 3.4. **Vendor Contracts.** A written agreement with an Approved Contractor for Installation work (an "Installation Agreement") or with an Approved MMR/MMC Provider for the Unit(s) (collectively these agreements are referred to as the "Vendor Contracts") shall be executed by either the SP Entity or the Customer as determined by the related Service Addendum and subject to the other Party's written approval of such Vendor Contracts. Each Party shall be an express beneficiary to the Vendor Contracts' warranties, guaranties, and obligations. Each Party shall be independently entitled (without obligation) to enforcement of rights under the Vendor Contracts. All Vendor Contracts shall comply with any applicable Prevailing Wage Act to the extent required under applicable Laws. Neither SP nor an SP Entity will perform the work of a contractor, including, without limitation, building, construction, demolition, repair, maintenance, design, engineering, or related work.
- 3.5. **Underwriting.** Following selection of the Unit(s), Approved MMC Provider(s) and Approved Contractor(s) for the Service Addendum in accordance with the foregoing, the SP Entity shall make a good faith effort to contract for and underwrite the Vendor Contracts. Until the Notice to Proceed for a Service Addendum is fully executed, neither Party shall have any financial liability or performance obligation to the other with respect to the terms of this Agreement for the associated Service Addendum.
- 3.6. **Updating Agreement.** Should expectations of terms from project contractors, service providers, vendors or funding sources be changed, from which the Service Addendum relied, the SP Entity may provide Customer, in good faith, updated Notice to Proceed(s), restated Service Addendum(s) or Change Order(s) appropriate to those terms. Further efforts towards the related Installation may be suspended until provided document(s) are fully executed.
- 3.7. **The Installation.** Following Customer's issuance of a Notice to Proceed in accordance with the foregoing, the Customer and the SP Entity shall collaborate (either directly or through Customer's staff, construction manager or project manager) on the management of on-site Installation activities and general administration of Installation Agreements (including matters relating to the performance, conformity or timeliness of goods and services to be provided for the Service Addendum by contractors and vendors). SP may proceed with procurement of the Unit(s) and may also designate or engage an on-site SP Entity representative (i.e., Owner's Representative), to assist and support in the management of the Service Addendum efforts and administration, the costs of which shall be included as Direct Third Party Costs.
- 3.8. **Payment of the Installation Costs.** Direct Third Party Costs for Service Addendum work shall be paid in full by the Initial Funding Entity under this Agreement and shall be performed pursuant to the Vendor Contracts that comply with the terms of this Agreement. Subject to the terms of this Agreement, the Initial Funding Entity agrees to pay the Direct Third Party Costs, except to the extent the fully-loaded cost exceeds a specifically defined "Agreement Installation Limit" or "Installation Limit/Unit" in this Agreement, when due under this Agreement (each such payment, a "Service Addendum Payment"). In the event there are pre-installation services (e.g. engineering, survey, permitting etc.) paid by the SP Entity for a Unit that is not installed, those services will be charged monthly at 1.5% times the amount paid until a Certificate of Acceptance.
- 3.9. **Exceeding the Installation Limit.** If Direct Third Party Costs are expected to exceed the Installation Limit at the Location due to: (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Installation Agreement; or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Service Addendum, the contracted party shall promptly provide notice to the Customer and the SP Entity before conditions are disturbed. The Customer and SP Entity will jointly and promptly investigate such conditions. If the Customer and the SP Entity determine that the conditions at the Location are not materially different from those indicated in the Installation Agreement and that no change in the terms of the Service Addendum is justified, the SP Entity shall promptly notify the contracted party in writing, stating the reasons. If the Customer and the SP Entity determine that they differ materially and cause an increase or decrease in the cost of, or time required for, performance of any part of the work, the SP Entity and Customer will work together to an equitable adjustment in the Service Addendum for the contracted party. If additional costs are incurred, whether due to a previously unknown condition or event at the Location or otherwise, then Customer shall either:
- pay such additional costs (without any obligation of the SP Entity to pay or reimburse such costs);
  - update this Agreement as per Section 3.6 above; or
  - terminate this Agreement and reimburse SP and the SP Entity for Direct Third Party Costs incurred or resulting from said termination date, including those incurred with Customer agreed upon restoration efforts of the Location to its prior original condition.
- 3.10. **Protection against Liens.** The SP Entity agrees, at Customer's direction, to withhold payment to any provider of materials or services in connection with providing or installing any equipment associated with a USA Service (as defined in Service Addendum - Exhibit 2) until such providers execute and deliver to Customer waivers of lien against Customer's property or against any public fund established for the payment of the USA Service. Customer shall not be responsible for making payments under any USA Service or Addenda thereto until all such waivers of lien have been delivered to Customer.
- 3.11. **Installation Payment Notices.** Each Installation Payment Notice will (a) identify the amount to be paid by the Initial Funding Entity, (b) the date by which payment must be made, (c) payment instructions for electronic payment to the contracted party, and (d) be delivered at least 10 business days prior to the date by which the payment must be made.
- 3.12. **Inspection of Installation Work.** At its discretion and with reasonable prior notice to and coordination with Customer, the SP Entity may inspect the Installation work upon completion or any time prior thereto. If a contractor has not performed the Installation work in accordance with the Installation Agreement and in accordance with applicable industry standards, then (a) Customer and SP Entity will cause the contractor to diligently cure such conditions, and (b) the SP Entity may suspend its obligations until the contractor has cured such conditions.
- 3.13. **Late Installation Payments.** If the Initial Funding Entity fails to pay any undisputed Installation Payment amount when due and Customer pays the contractor such Installation Payment, then amounts will accrue interest at the lesser of 1.5% per month or the maximum rate permitted by law, and the Initial Funding Entity will bear the reasonable costs and expenses (including attorneys' fees and costs) incurred by Customer in collecting such amounts.
- 3.14. **Certificate of Acceptance.**
- For Rights Fee or Jaaf:** Customer will be deemed to have executed the applicable CoFA and start remitting USA Payments upon Customer receiving the funds or control of the funds through either a bank deposit, escrow account or irrevocable trust account.
  - For USA Service and all Other:** Whenever Unit(s) have been installed and the Customer begins use of those Unit(s), the Customer will be deemed to have executed that applicable CoFA and start remitting the USA Payments applicable to the Unit(s). Otherwise, as Unit(s) are installed, the Customer shall be provided with applicable and periodic (no more frequent than monthly) CoFA's for execution. If within 5 business days of delivery, the Customer has neither executed a CoFA nor provided the Contractor and the SP Entity in writing the specific defects that are within the statement of work for the Unit(s) being covered by the CoFA, which need to be cured prior to executing the CoFA, the CoFA will be deemed executed by the Customer. Should the Contractor not promptly accomplish any cures satisfactory to the Customer and the SP Entity, the SP Entity may in good faith initiate immediate binding arbitration from an independent arbitrator competent in the scope of work to clearly define any remaining work. Upon SP Entity identifying the arbitrator, both Contractor and Customer will have three days to provide written reasonable objection to selection with specific reasons. The SP Entity may repeat this process with a new arbitrator until one is identified to which no Party objects. Upon the arbitrator declaring that all work covered by the statement of work has been completed to the usual and customary industry standards, the Customer agrees the CoFA is deemed executed.

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- 3.15. *Installation Delays.* Except to the extent solely caused by either the SP Entity or Approved MMC Providers, if the CofA has not been executed and delivered by Customer on or before the Completion Target specified in the Service Addendum, the Customer will promptly pay an amount equal to the carrying charge percentage of the Service Addendum Actual Cost (the "Carrying Charge") and an additional Carrying Charge after each 30-day period thereafter during which such condition continues on Service Addendum Actual Cost. The Installation by contractors, engineers, architects, and vendors are solely responsible for the performance, conformity or timeliness of goods and services to be provided for the Installation.
4. Unit Operation.
- 4.1. *Customer Operation.* To the extent permitted under applicable federal laws and laws of Venue State, Customer is solely responsible for the Unit(s), except for those obligations specifically defined for the SP Entity in Sections 7, 8, and 9, while in Customer's operation, use or possession and will indemnify, defend, and hold harmless the SP Entity from and against any and all third-party Claims relating to Customer's operation, use or possession of the Unit(s).
- 4.2. *Unit Location.* Customer will keep the Unit(s) at the Location, except to the extent the SP Entity approves otherwise. The Unit(s) shall be used solely in the conduct of Customer's business. To the extent permitted under applicable federal laws and laws of Venue State, Customer warrants that the Unit(s) will be used for commercial or business purposes and not for consumer, personal, home or family purposes.
- 4.3. *Malfunctions; Defects; Changes to Environment.* Customer will promptly notify the SP Entity if Customer discovers a material malfunction, defect or interruption in the operation or condition of the Unit(s) or material change to an integral environmental resource, such as water, energy, gas, or air that may degrade the Unit's performance, maintenance, or Useful Life. Customer may continue operating the Unit(s) that Customer knows is not in good and working condition only to the extent approved in writing by the SP Entity.
- 4.4. *Efficiency Programs/Features.* The SP Entity may incorporate demand response and similar programs and features into the operation of the Unit(s), but these may not materially impact Customer's operations without Customer's prior approval of such program or feature.
5. Customer Care at the Location.
- 5.1. *In General.* The Unit(s) is/are entrusted in Customer's care while at the Location. While any Unit is at the Location, Customer shall be responsible for competently protecting such Unit from damage, modification, vandalism, interference, or destruction (excluding any damage, modification or destruction caused by the SP Entity or defect in the Unit itself), ensuring interconnected systems are performing reliably, safely, and effectively with related services not adversely impacting Expected Use defined in the Service Addendum.
- 5.2. *Obstructions; Interference.* Customer will keep all areas in and around the Unit(s) free from any obstruction or interference that would impair the Unit(s) performance, installation, access, maintenance, or removal. Except as otherwise provided by this Agreement or otherwise authorized by the SP Entity in writing, Customer will not allow any service, alteration, modification, interference, or other infringement upon the Unit(s).
- 5.3. *Insurance.* Should the Customer not obtain and maintain (as primary insurance for the SP Entity and Customer as co-insureds as their interests may appear in this Agreement), reasonable insurance coverage, including, without limitation, liability insurance and insurance against loss or damage to the Unit(s), in such amounts, in such form and with such insurers as are reasonably satisfactory to the SP Entity and that will name the SP Entity, its successors and/or assigns, as loss payee and additional or co-insured with a certificate evidencing the same as to each policy, SP Entity shall obtain such insurance while the Unit(s) is/are at the Location, to the extent permitted under applicable federal laws and laws of Venue State, and add its pro-rated cost to the USA Payments due to the SP Entity. The applicable certificates of insurance will expressly provide that the Customer's policies may not be terminated or significantly modified without giving the SP Entity at least 30 days' prior written notice.
- 5.4. *Connectivity.* When required for the project and in conformance with all Location security protocols, Customer will provide, at no cost to the SP Entity, continuous Internet access to the Unit(s) at the Location during the Term to enable the SP Entity to monitor and collect data to facilitate reliability, maintenance, performance, usage, and replacements, as well as supporting initiatives, such as demand response, benchmarking, and forecasting. The SP Entity agrees to fully support Customer requirements to ensure the SP Entity and Approved MMC Providers have no access to Customer's internal data or systems.
- 5.5. *Access.* During the Term of this Agreement (as defined in Section 10) and for 120 days thereafter, to the extent permitted under applicable federal laws and laws of Venue State, together with conformance with all Location security protocols, the SP Entity and its agents, employees, affiliates, suppliers, contractors, subcontractors, lenders, and insurers may enter and access the Location to perform activities contemplated by this Agreement and, if necessary, to protect the SP Entity's interests in the Unit(s). Notwithstanding the foregoing, Customer may, upon at least three days' prior written notice to the SP Entity identifying the relevant details, reject specific personnel who have previously failed to comply with codes of conduct or other similar policies applicable to Customer's personnel at the Location.
6. Ownership & Reporting.
- 6.1. *SP Entity Ownership.* To the fullest extent allowed by law, the SP Entity owns and will continue to own all title and legal and beneficial ownership interests in the SP Entity funded Unit(s). All SP Entity funded Unit(s) and other assets of the SP Entity used in performing the services will remain the sole property of the SP Entity, and will not attach to, be deemed a part of, or fixture to, the Location. All tax filings, reports and other documentation shall be filed in a timely and consistent manner. Customer is entrusted with possession of the SP Entity funded Unit(s), without the transfer to Customer of any ownership interest therein, only to use those Unit(s) at the Location during the Term. This Agreement will not be construed to transfer any ownership or control of SP Entity funded Units(s) nature or method of use. In the event of a bankruptcy proceeding under U.S. Bankruptcy Code with respect to either the SP Entity or the Customer, the other Party shall be treated as a licensee under and pursuant to 11 U.S.C. Section 365(n). In the event of a further liquidation of assets pursuant to Chapter 7 of the U.S. Bankruptcy Code, the other Party shall have an option of the Disposition of any unowned Units on an "AS-IS", "WHERE-IS", "WITH ALL FAULTS", and "WITHOUT WARRANTY OF ANY KIND" basis for a Disposition Fee of \$1.00.
- 6.2. *Ownership Notice Filings.* The SP Entity may file or record any documents or instruments, including Uniform Commercial Code ("UCC") ownership statements or fixture filings, to give third parties notice that the SP Entity is the owner of the SP Entity funded Unit(s). Only where the Customer owns the Unit(s), has an outstanding loan amount or there is a reasonable expectation the Customer may be deemed the Unit(s) owner without this Agreement being terminated, to the extent allowed by law: (a) the Customer grants the SP Entity continuing security interests and liens sufficient to be reasonably collateralized for Customer SP Entity obligations with the right to have filed any documents to aid in perfecting, maintaining, and/or protecting these interests and their priority; and (b) customer must obtain SP Entity written permission prior to any collateral transfer, encumbrance or action that may reduce the collateral's value.
- 6.3. *Incentives.* Unless otherwise specified in the applicable Service Addendum, during the Term of this Agreement the Customer shall be responsible for obtaining and may receive all Incentives with respect to the Unit(s). Customer agrees to inform of SP Entity on a timely basis of all Incentive related communications that may affect obtaining such Incentives after the Term of this Agreement. SP Entity retains the economic benefits from activities independent of the Customer such as depreciation, financial restructuring, cash discounts, volume incentives, training credits, leverage, and investments.
- 6.4. *No Liens by Customer.* Customer will not directly or indirectly cause or create any Lien on or with respect to the Units(s) that are SP Entity funded or Units(s) covered by an SP Rights Fee or any other property of the SP Entity except as otherwise agreed in writing, and, to the extent permitted under applicable federal

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laws and laws of Venue State, will indemnify the SP Entity against all costs and expenses (including attorneys' fees and costs) incurred by the SP Entity in discharging, releasing or terminating such encumbrances or in litigating to quiet title as to or relating to any Liens.

- 6.5. *Reporting.* Customer is solely responsible for the accurate and timely documenting, collecting, maintaining, and filing of all government reporting regarding Unit(s) related to safety, use, maintenance, warranty, emergency response, operators, permits, complaints, accidents, and performance with copies simultaneously sent to SP Entity.
- 6.6. Customer agrees that the SP Entity shall use Sustainability Partners Services, LLC as the Owner's Representative for the Unit(s) useful life.
7. Major Maintenance / Renewal.
- 7.1. *Unit Major Maintenance / Renewal ("MMR").* During the Term of this Agreement and prior to any Unit Disposition to Customer, should either Party have material concerns over any and/or all Units reliability, safety, performance, maintainability, or effectiveness, at SP Entity's discretion, the SP Entity will either perform MMR where Customer expresses no timely, reasonable and material objection, with agreement of Customer as to timing and procedure to minimize operational disruptions or, if the SP Entity elects not to perform MMR, Customer shall promptly terminate this Agreement.
- 7.2. *Updated Terms.* Upon and following a MMR,
- references in this Agreement (including the definitions of "USA Service", "Unit" and "Accepted Unit" for purposes thereof) will thereafter be deemed to refer to and mean the items included as a result of such MMR and to exclude the items removed as a result of such MMR,
  - the applicable Install Date for such Renewed Unit(s) shall be the date of the MMR,
  - the Useful Life for Renewed Unit(s) shall be updated based on the date of MMR and the Renewed Unit(s) characteristics, and the material and labor portion of Unit(s) Actual Cost shall equal new cost plus where MMR occurs prior to old Useful Life then add ((old Useful Life - amount of Useful Life used at MMR) / old Useful Life) \* old Unit(s) Actual Cost. Should annual USA Payments be less than required to cover SP Entity obligations, SP Entity may apply the Support Reserves to reduce the difference.
- 7.3. *Customer MMR.* If (a) there is a deficiency in a Unit that is reasonably resolved by replacement of such Unit, (b) the applicable Service Addendum provides that "Customer Unit Replacement" applies to the replacement of the relevant Unit, (c) the SP Entity has provided Customer with sufficient standby Units, and (d) the SP Entity has not directed otherwise, then Customer will:
- perform a replacement of the applicable Unit,
  - promptly notify the SP Entity, and
  - store the removed items for further instructions from the SP Entity regarding their inspection, collection and/or disposition.
- Unless the Unit deficiency results from an event or condition for which Customer (and not the SP Entity) is responsible under this Agreement, Customer shall be issued a Replacement Credit. Customer's replacement of the Unit and issuance of the Replacement Credit will constitute Customer's sole and exclusive remedies with respect to the Unit(s) deficiency that can be resolved through a Unit replacement by Customer when the conditions described in clauses (a) – (d) above apply.
8. Minor Maintenance / Care.
- 8.1. *Minor Maintenance / Care ("MMC").* Customer shall be solely responsible to Operate the Unit(s). Notwithstanding the foregoing, the SP Entity shall have the right, but not an obligation, to cause the MMC to be performed, in collaboration with the Customer, to the extent SP Entity deems necessary or appropriate in its sole discretion to keep the Unit(s) in a State of Good Repair, the cost of which shall be included as Support Costs and reduce the Support Reserves accordingly.
- 8.2. *Approved MMC Provider.* Except as otherwise provided in this Agreement, Customer will restrict performance of the MMC to one of the Approved MMC-MMR Providers listed in the applicable Service Addendum. Customer may request a new Approved MMC-MMR Provider be added to the Approved MMC-MMR Provider list. If the SP Entity fails to respond to such a request within 10 business days, then such suggested Approved MMC Provider shall be deemed to have been added to the Service Addendum list of Approved MMC-MMR Providers. Customer and SP Entity agree that it is solely the selected vendors' and installers' responsibility for Unit performance.
- 8.3. *Unit Critical Repair.* Should a Unit that is an essential service, be inoperable and no Approved MMC-MMR Provider is available to affect a repair, Customer shall use their best judgment in causing the Unit to be immediately repaired with such repair being paid for through the Support Reserve.
- 8.4. *MMC Agreements.* MMC will be performed pursuant to a written agreement between either SP Entity or Customer as determined by the related Service Addendum, and an Approved MMC Provider that has been approved by both Customer and SP Entity (a "MMC Agreement"), such approval not to be unreasonably withheld or delayed. If a Party fails to respond within 10 business days of receipt of a proposed MMC Agreement, that Party's approval will not be required for such Support Agreement. The non-contracting Party shall be an express third-party beneficiary of the MMC Agreement and the Approved MMC Provider's warranties, guaranties, and obligations with respect to the Unit maintenance, and shall be independently entitled (without obligation) to enforcement thereof.
- 8.5. *Approved MMC Provider Replacement.* If Customer or the SP Entity determines that an Approved MMC-MMR Provider cannot reasonably be relied upon to perform Unit care consistent with adequate quality, reliability, or efficiency, or following a Material MMC Cost Increase, then
- MMC will be performed by a different Approved MMC-MMR Provider identified on the Service Addendum, and
  - Customer and the SP Entity will jointly endeavor to identify a replacement Approved MMC Provider capable of performing Unit care with the appropriate quality, reliability, and efficiency at the lowest applicable cost. The Parties will update the Service Addendum to reflect any such Approved MMC-MMR Provider replacement.
- 8.6. *Material MMC Cost Increases.* If Customer becomes aware of a Material MMC Cost Increase, Customer will promptly notify the SP Entity in writing, as promptly as reasonably possible, before contracting with the Approved MMC Provider for further Unit MMC.
- 8.7. *Inspection of Unit MMC.* At its discretion, with reasonable prior notice to and coordination with Customer, the SP Entity may inspect the Unit MMC work performed or being performed. If the Approved MMC Provider has not performed the Unit MMC work in accordance with the MMC Agreement and in accordance with applicable industry standards, then
- Customer will cause the Approved MMC Provider to diligently cure such conditions, and
  - the SP Entity may suspend its obligations until the Approved MMC Provider has cured such conditions. Items removed by the Approved MMC Provider in connection with Unit care will be held by Customer for further instructions from the SP Entity regarding their inspection, collection and/or disposition.
9. Reserves and Costs.
- 9.1. *Support Costs.* "Support Costs" means any Unit MMC and MMR to be paid by the SP Entity that are direct third-party out-of-pocket costs (and any applicable Customer Unit Replacement amounts, including Replacement Credit, to the extent provided in the applicable Agreement). All other internal or other costs incurred by Customer are excluded from any payment obligation of this Agreement. Customer is responsible for the operation, service, and safe keeping of the Unit(s). Accordingly, Support Costs exclude, and Customer (and not the SP Entity) shall be responsible for, the costs of any Unit MMC or MMR costs necessary due to or resulting from improper operation, improper environmental controls, improper service, vandalism, Force Majeure Event.

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abuse, negligence, or willful misconduct by Customer or any third party, or a breach of this Agreement by Customer and said costs shall be paid forthwith and prior to any Remaining Useful Life determination. For any Unit MMC and MMR (including associated costs of diagnosis and correction) for which the SP Entity pays but is not responsible for paying as Support Costs, Customer will pay the SP Entity's associated out-of-pocket costs and expenses. Additionally, Customer and the SP Entity are responsible for appropriate planning and coordination of MMC and MMR services.

- 9.2. *Creation of Support Reserves.* To support the reliability, durability and safety priorities established by the Parties, a portion of the USA Payments shall be applied to fund the Support Reserves, which shall be determined after the Service Addendum is executed and set forth in subsequent Agreement documents. The SP Entity may invest reserves created by this Agreement into instruments reasonably equivalent to those with AA+ rating, the net proceeds of which will be retained by the associated reserve.
- 9.3. *Payment of Support Costs.* The SP Entity shall pay Support Costs associated with the Unit(s) from the associated Support Reserve. If the Support Reserve is insufficient to fund certain Support Costs, the SP Entity may offer to pay and bear such excess Support Costs, subject to Customer's approval of new Usage Rates needed to support such additional costs. If Customer does not approve, the SP Entity may require Customer to pay an amount sufficient to maintain a reasonable positive Support Reserve balance or Customer may terminate this Agreement. The SP Entity's payment of Support Costs shall be conditioned upon:
- a) such Support Cost payment being due to an approved provider,
  - b) performance by Customer and approved provider in accordance with the terms of a written agreement for the Support Costs,
  - c) the absence of any pending dispute between the parties to the written agreement for the Support Costs,
  - d) the SP Entity's receipt of the applicable invoice from the approved provider, together with any additional supporting documentation required, and
  - e) certification that the foregoing conditions are satisfactory to Customer, provided to the SP Entity in the applicable written payment notice (a "Support Cost Notice").
- 9.4. *Support Cost Notices.* Each Support Cost Notice will, except to the extent waived by the SP Entity from time to time,
- a) identify the Units subject to the Support Cost,
  - b) include a Customer's certification that Customer has reviewed and approved the Unit work as being properly performed, and
  - c) if the SP Entity is not being directly billed by Approved Contractor,
    - i. identify the amount to be paid by the SP Entity,
    - ii. identify the date on which payment must be paid,
    - iii. provide payment instructions for electronic payment, and
    - iv. be delivered at least 10 business days prior to the date on which the payment must be paid.

10. The Term.

- 10.1. *Commencement of Initial Term.* The Initial Term commences when Customer executes and delivers the applicable Certificate of Acceptance or the Unit(s) have otherwise been deemed accepted in accordance with Section 3.14. The Initial Term and any Additional Terms are set forth in the Service Addendum. If Customer is the Initial Funding Entity, the Initial Term shall be for the period equal to the Unit's remaining Useful Life.
- 10.2. *Renewal/Nonrenewal for Successive Terms.* The Initial Term will automatically extend for successive Additional Terms, unless either Party has given the other Party a written nonrenewal notice at least 30 days prior to the applicable Additional Term. Customer notice of nonrenewal serves as notice for a Customer's termination for convenience of this Agreement.

11. Changes.

- 11.1. *Unused Contingencies.* In the event there are unused Installation contingencies reserves 90 days after a signed CofA, the SP Entity will lower the Customer's Unit(s) Usage Rates by the percentage those funds are calculated to the Unit(s) Actual Cost.
- 11.2. *Inflation Adjustments.* The percentage Eligible for the Index portion of Usage Rates (in which the subject adjustment occurs for only MMC, MMR, or SP Entity administration costs unless specifically stated otherwise) shall change in an amount equal to the percentage in the Price Index from January of the calendar year in which the prior adjustment occurred (or if none, the year of the initial Install Date) through January of the calendar year in which the subject adjustment occurs for the USA Payment.
- 11.3. Prior to any change in Usage Rate(s) due to this Section, 11.3, (a) the effective date for any such change will not be earlier than 30 days following the written notice thereof and (b) Customer will have the right to terminate this Agreement upon written notice before the adjustment takes effect.
- a) *Compliance Costs.* In the event of any change in applicable Laws regarding the Unit(s), the Location or this Agreement, Customer will either (a) promptly pay the full amount of the SP Entity's costs of complying with such change, or (b) agree to an adjustment to the Usage Rates(s) determined by the SP Entity for which the proportional increase may not exceed the percentage represented by such compliance costs relative to the sum of the Unit's Actual Cost.
  - b) *Customer Viability.* During a period where Customer's credit rating or letter opinion becomes speculative by a national credit rating service, the SP Entity may reasonably adjust the Unit's Usage Rates and/or Lowest Expected Use.
  - c) *Usage Rate Reduction Payment.* At Customer's sole option, starting year 4 from the Install Date, the Customer may propose to make an additional payment once a year, (a "Usage Rate Reduction Payment") of no less than 10% and no more than 33% of Unit's Actual Cost. Following receipt of such a proposal for a Usage Rate Reduction Payment, the SP Entity shall provide Customer with updated Usage Rates (contingent on receipt of the Usage Rate Reduction Payment) determined by the SP Entity targeting the Return Limit.
  - d) *Use Adjustments.* Upon annual Customer written request or an annualized Unit's Use over any 3 months of a 12-month period has been or is expected to be less than 67% of the Expected Use of Full Capacity, the SP Entity may adjust the Unit's Usage Rate, Availability and/or Lowest Expected Use to reflect the changed expectations. Where Unit(s) are part of a Rights Fee and the reduction in Unit's Use is material, SP Entity may elect to terminate the Agreement with the Customer subject to Section 14.2.
  - e) *Use Changes.* After NtP, should there be a material change to the use of a Location that was not noticed by the Customer to the SP Entity prior to NtP, such as early termination of a major lease or significant change to the Location's specific purpose, the SP Entity may reasonably amend the Agreement to reflect the change.

12. Limitations on Liability.

- 12.1. TO THE EXTENT PERMITTED UNDER APPLICABLE FEDERAL LAWS AND LAWS OF VENUE STATE, NEITHER THE SP ENTITY NOR ITS RELATED PARTIES SHALL BE HELD LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL

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DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR HARM TO REPUTATION) ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT.

12.2 TO THE EXTENT PERMITTED UNDER APPLICABLE FEDERAL LAWS AND LAWS OF VENUE STATE, THE SP ENTITY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT SHALL NOT EXCEED THE TOTAL USA PAYMENTS ACTUALLY PAID TO THE SP ENTITY UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE DATE ON WHICH SUCH LIABILITY WAS CREATED. The Usage Rates set forth in this Agreement reflect, and are dependent upon, the foregoing limitations of liability.

12.3 *Warranties*

- a) To the extent permitted under applicable federal laws and laws of Venue State, the SP Entity disclaims and makes no representation or warranty, either express or implied, as to the fitness for a particular use or otherwise, quality, design, condition, capacity, suitability, merchantability or performance of the Unit or the services. Each Unit is provided "as is." Customer accordingly agrees not to assert any claim or offset whatsoever against the SP Entity based thereon.
- b) To the extent permitted under applicable federal laws and laws of Venue State, once Units have been commissioned at the Customer's Location, Customer will be solely responsible for compliance of the Units under applicable Laws, Customer standards and policies, or any other applicable requirements and hereby assumes and will bear the entire risk of loss and damage to the Unit(s) from any cause whatsoever, regardless of whether the loss is insured. In the event of loss or damage to the Unit(s), Customer, at the option of the SP Entity, will (a) repair or replace the same to restore the Unit(s) to good condition and working order, or (b) replace the same, with like property of the same or greater quality and functionality.

12.4. Notwithstanding any provision to the contrary, the terms of this Section 12 shall survive any termination of this Agreement, regardless of cause or purpose.

13. Default: Remedies.

13.1 *Payment Default.* If a Party fails to pay any undisputed material amount due and payable under this Agreement within 30 days of its due date (a "Payment Default") and fails to cure such Payment Default within 10 business days of written notice thereof, then the other Party may terminate this Agreement immediately upon written notice to the Party in Payment Default.

13.2 *Performance Default.* If a Party fails to substantially perform any other material obligation under this Agreement (a "Performance Default") and fails to cure such Performance Default within 10 business days of written notice thereof, the non-defaulting Party may immediately terminate this Agreement.

13.3 *Exclusive Remedies.* The remedies expressly provided in this Agreement are the sole and exclusive remedies of the Parties in connection with breaches of this Agreement, provided that the Parties will at all times maintain the right to not extend this Agreement at the end of the Initial Term or Additional Term, as applicable, and further provided that the foregoing remedies are in addition to any late fees and accrual of interest expressly provided elsewhere in this Agreement.

14. Obligations Following Termination.

14.1 *Disposition upon Termination.* Except to the extent otherwise required in this Section 14, upon a termination of this Agreement for any reason, Customer will immediately (a) if this Agreement expressly provides that Customer has a "Right of Return" ("RoR"), (where the Certificate of Acceptance has been fully executed and all USA Payments have been received by the SP Entity), to uninstall and deliver all Unit(s) and all property of the SP Entity in Customer's possession or control, to locations identified by the SP Entity but no further than the Unit(s) manufacturer's closest reconditioning center, at Customer's sole expense, in undiminished performance or aesthetics from initial installation, using manufacture compliant packaging and documentation sufficient for individual resale, within 10 business days, or (b) have Disposition of Unit(s) according to selection in Addendum(s) to Customer within 45 business days as provided in Section 14.2, 14.3, or 14.4 below, as applicable and execute a General Release.

14.2 *Termination.* Customer shall pay the aggregate of any Deferred USA Payments plus:

- a) *Lease Addendums.* Dispositions of the SP Entity owned Unit(s) to the Customer shall be on an "AS-IS", "WHERE-IS", "WITH ALL FAULTS", and "WITHOUT WARRANTY OF ANY KIND" basis from the SP Entity. Customer will receive rights to Unit warranties and Unit Maintenance Agreements. Unless the Service Addendum provides a fixed Disposition Fee schedule, Customer shall pay a "Disposition Fee" for the Disposition of the Unit(s) equal to \$1 plus

- i the Unit's Actual Costs not covered by the Support Reserve multiplied by the fraction represented by the Unit's (i) Remaining Useful Life divided by (ii) Remaining Useful Life plus its Qualified Usage for all Unit(s) that have a Useful Life;

- ii in lieu of Section 14.2(a)(i), either Party may elect a depreciated cost of Unit's Actual Cost - Total depreciation from using the Excel formula of DDB (Unit's Actual Cost, 0, Useful Life, Useful Life - current age) where current age is the minimum of Useful Life and # of completed 12 months from Unit's CoA.

- b) *Rights Fees and Lease Addendums.* Customer shall pay the aggregate of any Unredeemed Disbursements.

14.3 *Unit Disposition upon Customer Default.* In connection with a termination by the SP Entity for an uncured Payment Default or Performance Default by Customer (and in lieu of any uninstallation and delivery of the Unit(s) otherwise contemplated by this Agreement), Disposition to Customer will occur for all Service Addendums covered by this Agreement as provided in Section 14.2 above with reaching the Return Limit being considered an SP Entity cost for purposes of calculating the Unit(s) Actual Cost.

14.4 *Unit Disposition upon Other SP Entity Termination.* Subject to and without limiting any other provision providing for the Disposition of the Unit(s) on different terms, upon a termination of this Agreement by the SP Entity without cause, Customer will receive Disposition of any affected Unit(s) funded by the SP Entity (in lieu of any uninstallation, removal or collection of the Unit(s) otherwise contemplated by this Agreement) on an "AS-IS", "WHERE-IS", "WITH ALL FAULTS", and "WITHOUT WARRANTY OF ANY KIND" basis for a Disposition Fee of \$1.00, if so elected in writing by the SP Entity in its sole discretion.

14.5 *Other Continuing Obligations.* For clarity, no termination of this Agreement will relieve Customer's obligation to pay all USA Payments through the date of termination, incur and pay additional USA Payments if Usage continues, any other charge(s) that Customer has incurred under the Agreement, applicable Customer's indemnification obligations under this Agreement, or the SP Entity's obligation to pay amounts due to Customer prior to termination.

14.6 *Termination of Further Payment Obligations.* Upon a termination of this Agreement, the SP Entity will not be liable for payment of any installation, material, freight, restocking fees, cancellation charges, warranty, permits and maintenance cost or other costs not actually performed prior to such termination.

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- 14.7. **Reserve Surplus.** To the extent the Support Reserve has a positive balance upon a termination of this Agreement, such amount shall first be applied to satisfy any unpaid obligations of Customer to the SP Entity and thereafter any remaining amount shall be distributed by the SP Entity to Customer.
- 14.8. **Offsets.** The Customer agrees the Disposition Fee may only be changed as a direct result of applying of a SP Entity confirmed Customer overpayment of a USA Payment and otherwise is not subject to any withholding, set-off, abatement, reduction or other defense at law or equity.
15. **Dispute Resolution; Governing Law.**
- 15.1. **Governing Law; Jurisdiction.** The laws of the Dispute Resolution State will govern the terms of this Agreement without giving effect to conflict of laws principles. Subject to Section 15.2 below, each Party consents to the exclusive jurisdiction of the federal courts in the Dispute Resolution State and agrees that the exclusive venue of such courts is convenient, proper and is an integral part of this Agreement. Each Party will bear its own costs for any disputes arising under this Agreement, provided that a prevailing Party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such Party may be entitled.
- 15.2. **Arbitration.** For Customers that are not Governmental Entities any claim or dispute directly or indirectly arising from or relating to this Agreement or any related actions or omissions that are not claims of equitable relief or claims of provisional remedy shall be subject to arbitration in the Dispute Resolution State. The arbitration shall be administered by a JAMS Neutral and in accordance with JAMS comprehensive rules and procedures. Judgment on any award rendered in such arbitration shall be binding upon the Parties and may be entered in any court having jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. **THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO LITIGATE MATTERS IN COURT, INCLUDING ANY RIGHTS TO TRIAL BY JURY.** This paragraph does not apply if Customer is a Governmental Entity, or to a claim for a provisional remedy or equitable relief.
- 15.3. **Unit Stewardship.** While there is an outstanding Disposition Fee or USA Payment that are due to the SP Entity, regardless of any outstanding dispute, the Customer agrees to prevent all usage of the involved Unit(s), protect them from harm, perform timely MMC and provide reasonable access by which the SP Entity can periodically confirm and take all necessary actions to cure Customer non-performance of such in SP Entity's sole discretion. All impact due to unavailability of Units(s) for their usage shall be solely the Customer's responsibility.
16. **SP Entity Agent.** The Parties acknowledge and agree that, unless otherwise directed in writing by the SP Entity, the SP Entity has authorized SP to give and receive notices, invoice, and collect payments, make SP Entity decisions contemplated by this Agreement, give instructions contemplated by this Agreement, and take SP Entity actions contemplated by this Agreement.
17. **Nature of Agreement.** The Parties do not intend this Agreement to convey control of the right to use the Units in an exchange or exchange-like transaction. The SP Entity determines the Unit's nature and manner of use.
18. **Representations.** Each Party warrants that this MUSA is valid, binding, and enforceable against it in accordance with its express terms. Customer warrants that this MUSA has been duly authorized for execution and performance in accordance with applicable Laws and with any articles, charter or other organizational documents or authorities applicable to Customer. Following the full execution of the applicable Notice to Proceed, each Party further warrants that the applicable Service Addendum and Notice to Proceed are valid, binding, and enforceable against it in accordance with its express terms, and Customer warrants that the same have been duly authorized for execution and performance in accordance with applicable Laws and with any articles, charter or other organizational documents or authorities applicable to Customer. The same warranties shall apply to any change order or Certificate of Acceptance signed by the Customer thereafter. Each Party further warrants that no re-characterization or other change in meaning or effect from what is stated in the Agreement is permitted.
19. **Taxes and Fees.** Customer shall be solely responsible and liable for (either by direct payment or by reimbursement of amounts paid by the SP Entity) all Taxes and Fees.
20. **Intellectual Property.** As between the Parties, each Party shall solely retain all their copyrights, trade secrets, patents and other intellectual property rights owned, held, licensed, or developed. Nothing in the USA Service or any Services shall be deemed a "work for hire".
21. **Force Majeure.** Except as expressly otherwise provided, neither Party shall be liable to the other to the extent it is unable to perform its obligations under the Agreement due to a Force Majeure Event.
22. **Entire Agreement; Amendment.** This Agreement, including these General Terms and any other incorporated exhibits and riders, completely and exclusively constitutes the entire understanding of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. Except as otherwise specified in this Agreement, this Agreement may be modified only by a document signed by both Parties, and no obligation or duties shall be implied, because such implication would be contrary to the Parties' intention to have their entire agreement expressed in writing.
23. **Agreement Transfer.** This Agreement may not be transferred, in whole or in part, by any Party without the other Party's written consent. In the event of a permitted transfer of this Agreement, references to the assigning Party shall be deemed to refer to the permitted transferee, except to the extent the applicable language or context require otherwise.
24. **Non-Profit Customer.** If Customer is a non-profit entity, Customer will either terminate the related Agreements or obtain SP Entity's prior approval to a Location change of ownership or a Customer change of control.
25. **Severability; Interpretation.** If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity will not render the Agreement unenforceable or invalid as a whole; provided that each provision that is so found to be unenforceable or invalid because of the amount or size of the burden or benefit shall be automatically reduced to the extent and by such amount such that the burden or benefit becomes enforceable and valid, and, in particular, the amount or size of any such burden or benefit provision found to be so invalid or unenforceable shall be read, notwithstanding any other provision of this Agreement; as if such provision read "to the maximum extent permitted by applicable law". The section headings in this Agreement are only for convenience of reference and are not to be considered in the interpretation of this Agreement's provisions.
26. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all associated rights are intended for the sole benefit of the Parties and will not imply or create any rights on the part of, or obligations to, any third-party.
27. **Marketing.** Until Termination of all Agreements, SP may use Customer's logo and name in connection with SP's advertising and marketing.
28. **Notices.** All notices shall be sent in writing to each Party's address and email address listed in this Agreement, or as subsequently updated by written notice.

## Sustainability as a Service®

**Glossary.** Capitalized terms not otherwise defined in this Agreement have the following corresponding meanings:

- “Administration Fee”** means the SP monthly fee as specified in the Service Addendum(s) to be added upon 1<sup>st</sup> CoA to the USA Payments as an account administration fee.
- “Agreement”** means this written agreement between Customer and the SP Entity comprised of each combination of these General Terms, the applicable (Service Addendum(s), Notice to Proceed(s), change orders(s) and Certificate of Acceptance(s)) each of which controls, supersedes and restates the prior as herein set forth.
- “Assignment”** means the transfer and acquisition of ownership.
- “Availability”** A charge dependent on the Unit being available for Customer use, excluding scheduled maintenance, where the Unit materially meets the vendor performance criteria. Availability equals cost of Units’ associated Taxes and Fees, reporting, monitoring plus Availability Rate \* # of Availability Units.
- “Availability Rate”** A charge per Availability Unit, as determined in the Service Addendum.
- “Availability Unit”** specifies, as determined in the Service Addendum, what measurement the Availability Rate is pricing for the Unit (i.e., hour / day / month).
- “Approved Contractor”** means a qualified and licensed contractor identified as an “Approved Contractor” on the Service Addendum. Customer may add an Approved Contractor with the written consent of the SP Entity.
- “Approved MMC Provider(s)”** means a qualified and licensed contractor identified as an “Approved MMC Provider” on the Service Addendum. Customer may add an Approved MMC Provider with the written consent of the SP Entity.
- “Capacity Base”** means the greater of zero or the result of the Lowest Expected Use of Full Capacity times the month’s proration of the Unit’s yearly Full Capacity and then subtracting the current month’s Unit Use.
- “Claim”** means any claim, loss, liability (including negligence, tort, and strict liability), damages, penalty, equitable relief, judgment, suit and any legal proceeding, and all costs and expenses incurred or suffered in connection therewith (including reasonable attorneys’ fees and expert fees).
- “Connect Fee”** means the amount charged to Customer upon Trigger, as defined in the Service Addendum, for Unit(s) use.
- “Deferred Catchup”** means the amount of outstanding Deferred USA Payment amounts divided by remaining months of Useful Life as determined by SP Entity unless otherwise specified in the Service Addendum.
- “Design Multiplier”** means the increase specified in the Service Addendum of Estimated Useful Life due to design, engineering, monitoring, upgrading, updating, environmental, care or usage.
- “Direct Third-Party Costs”** means the direct third-party out-of-pocket costs pursuant to Vendor Contracts complying with the terms of this Agreement but excludes Customer’s internal costs.
- “Disposition”** means the selection in the Service Addendum of either a Sole Use License or an Assignment upon termination.
- “Dispute Resolution State”** means Arizona unless Customer is a Governmental Entity, in which case will mean the Location State.
- “Estimated Useful Life”** means the estimated useful life of the Units as set forth under the heading “Est. Useful Life” in the Service Addendum.
- “Force Majeure Event”** means any event, circumstance, series of events or set of circumstances beyond the reasonable control of, and caused without the fault or negligence of, the Party claiming, “Force Majeure Event,” such as acts of terrorism, war, riot, strike, explosion, fire, lightning, earthquake, floods, hurricanes, tropical storms, cyber-attack, natural disaster or the unavailability of electricity, gas or other utility services or suppliers on commercially reasonable terms.
- “General Release”** means that to the extent permitted under applicable federal laws and laws of Venue State, a general release of all claims and liabilities against the SP Entity that is in form and substance satisfactory to the SP Entity (including a waiver of California Civil Code Section 1542 and any similar other law of any jurisdiction, if applicable), which could otherwise, if not waived, limit or adversely affect the effectiveness of a release of unknown or misunderstood claims or causes of action, whether known or unknown, whether absolute, contingent, inchoate or otherwise characterized, and whether liquidated or unliquidated.
- “Governmental Entity”** means any state, county, or municipality, or any federal, state, county or local governmental department or agency.
- “IaaS”** means infrastructure as an investment by the SP Entity where the Customer uses the investment proceeds to acquire and own Unit(s) and the investment returns for the SP Entity are generated through the Service Addendum.
- “IaaSU”** means infrastructure as a utility where the Unit(s) identified in the Service Addendum have their MMR and MMC managed by the SP Entity.
- “Incentive”** means any government sourced and funded: incentive, promotion, credit, or subsidy which the Customer qualifies.
- “Initial Funding Entity”** means source of funds for Service Addendum Actual Cost incurred prior to Certificate of Completion.
- “Installation”** means the installation of the Units and the Location(s) pursuant to the Installation Agreement complying with the terms of this Agreement.
- “Law”** means any applicable federal, state, local or other law, rule, regulation, ordinance, zoning requirement or other legal requirement.
- “Lien”** means any mortgage, pledge, lien, charge, security interest, encumbrance, or other claim of any nature.
- “Lowest Expected Use”** defaults to Expected Use when value is zero, N/A or undefined on the Service Addendum.
- “Material MMC Cost Increase”** means any increase in an Approved MMC Provider’s pricing or rates for performance of the relevant Unit care by more than 5% over the lesser of any 12-month period or the time since the last Material MMC Cost Increase.
- “Minor Maintenance / Care”** and **“MMC”** means the performance of warranty services, maintenance, repairs, updates, and replacements with respect to the Unit(s) for purpose of (i) cleaning, maintaining aesthetics, or routine warranty service or care, (ii) restoring Unit(s) to a State of Good Repair, (iii) performing service recommended or necessary to maintain a Unit in good working order, or (iv) other similar purposes.
- “Major Maintenance / Renewal”** and **“MMR”** means a replacement, major overhaul, substitution, or material upgrade of the Unit(s) from time to time, subject to the terms of this Agreement, that is not performed for the purposes of MMC.
- “Notice to Proceed”** or **“NTP”** means a written and signed notice from Customer and the SP Entity stating that SP Entity funded Unit(s) may occur and that the Installation may begin, subject to the terms of this Agreement and Service Addendum. Terms of the NTP takes precedence.
- “Operate”** means to use and have stewardship over the Unit(s) and any interdependent systems (a) in accordance with the applicable owner’s manual, manufacturer guidelines or other similar document(s) provided in connection with the systems, (b) in compliance with all Laws relating to possession, operation or use of the Unit(s), and (c) in such a manner so as to ensure Unit(s) (i) remain eligible without exception for the applicable warranties, warranty agreements and insurance coverages, and (ii) stay reliable, safe, and effective.
- “Owner’s Representative”** provides periodic reporting on Unit(s) state of good repair and needs for MMC and MMR, facilitates the exchange of documentation between Customer and Approved Vendors, identifies Customer requested milestones, disperses Customer authorized payments, and develops strong and trusted relationships between all stakeholders.
- “Party”** means Customer, SP, or the SP Entity, as applicable, and **“Parties”** means Customer, SP, and the SP Entity together.
- “Prompt Payment Act”** means laws that require the timely payment by Government Entities of valid and proper invoices.
- “Qualified Usage”** means any period by which SP Entity’s capital accounts used to fund the Unit decreases due to Unit USA Payments.
- “Related Parties”** means any officer, director, employee, partner, member, manager, contractor, or agent, or any affiliate or other person or entity whose relationship to a Party is such as to create any vicarious, joint, or derivative liability or obligation or such as to subject the Party to any claim from such person or entity for equitable or implied indemnity or contribution.



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- “**Remaining Useful Life**” means the remaining quantity of Useful Life available as determined by a third party selected by SP. Upon written notice to the Customer of SP’s elected determination, the Customer shall have 5 business days to veto the determination by providing in writing specific reasons that are reasonably incurable, upon which SP Entity shall obtain a new determination.
- “**Renewed Units**” means those Units that are the result of an MMR event.
- “**Return Limit**” means the 1 Year US Libor Rate at time of Unit(s) installation plus the amount expressly stated in the Service Addendum Return Limit or 10% when not defined. This value is the maximum SP Entity capital providers may in aggregate receive as a rate of return on Unit(s) Actual Cost as derived from the Unit(s) Usage Fees. Upon a Unit(s) MMR installation event, the SP Entity will adjust the Unit(s) Usage Rates to comply with this limit.
- “**Rights Fee**” An upfront fee paid to Customer for SP Entity to receive limited but exclusive usage rights during the Units remaining Useful Life. SP Entity usage right is for full control of Unit(s) access and recipient of associated revenues without disrupting Units existing public services should Customer be in USA Payment Default until cured. In consideration for this fee, Customer will pay the USA Payments defined by the involved Service Addendum(s). Unit(s) part of usage right are subject to all MMR and MMC obligations.
- “**Scope Contingency**” means Customer pre-approval of possible cost increases due to increase in number of Unit(s) or Installation scope needed to accomplish the Project prior to a CoFA for inclusion in a Usage Rate increase calculation.
- “**Service Addendum Actual Costs**” means the cumulative Unit(s) Actual Costs plus Unredeemed Disbursements.
- “**SP Suggested**” means recommended monthly reserves SP Entity has estimated to cover possible future MMR and MMC costs.
- “**Start Date**” means the date from which Customer’s Notice to Proceed is fully executed.
- “**State of Good Repair**” means Title 49 CFR § 625.17, a condition sufficient for the asset to operate reliably, safely and at performance targets specified in Service Addendum and where undefined, from Unit(s) manufacturer specifications.
- “**Supply Chain Contingency**” means Customer pre-approval of possible increases in costs from providers of the Unit(s), Contractor(s), or MMC provider(s) needed to accomplish the Project prior to a CoFA for inclusion in a Usage Rate increase calculation.
- “**Support Reserves**” means amounts reserved by the SP Entity for the payment of Unit MMC and MMR Costs, increased by the portion of each USA Payment allocated to the Unit MMC Reserve and MMR Reserve as set forth on the Service Addendum and/or the Notice to Proceed and decreased by the amount of each associated Support Cost paid by the SP Entity.
- “**Taxes and Fees**” means all taxes, citations, fines, fees, permits, and other governmental or SP requirements (including any related penalties, interest, origination, Owner’s Representative, developer fees and asset management fees) relating to any included Units, or this Agreement (other than income taxes).
- “**Unit’s Actual Cost**” means those cumulative laaU related costs, such as project, service, taxes, fees, capital and SP Entity costs or financial obligations, that have not been reimbursed by either Customer or Support Reserves which have been incurred directly or indirectly by SP and the SP Entity. These costs will be reasonably allocated by the SP Entity.
- “**Unredeemed Disbursement**” means a lump sum amount when combined with Taxes and Fees, cash disbursements to the Customer for Rights Fee or laaU, and the accumulated monthly cash flow to SP Entity members, yields a total member return of no less the Return Limit minus 150 basis points.
- “**Useful Life**” means the Unit(s) quantity of time or usage, as determined by the Estimated Useful Life times the Design Multiplier, both of which are specified in the Service Addendum, which the Parties hereby agree are reasonable.
- “**Usage**” means a Units’ Use, but limited to the aggregate Unit Use being less than aggregate Unit Maximum Expected Usage since its Install Date, multiplied by its Usage Rate as provided for in the Service Addendum.
- “**Usage Rate**” is the cost of using a Unit per Usage Unit, as determined in the Service Addendum plus proration of any Scope or Supply Change Contingencies used. This cost includes consideration the Customer considers is reasonable and satisfactory to compensate the Customer for Unit(s) being installed on their property for the purpose of generating USA Payments.
- “**Usage Unit**” defines what is being measured to determine Unit Use of an individual Unit (i.e. Hour / Passenger / Gallon / MBTU / Kwh / Student Day / Occupancy / Connection / MGID / etc.).
- “**Unit Use**” is the quantity of Usage Units used plus the quantities’ annual standard deviation when specified in the Service Addendum.
- “**Venue State**” means the State of Arizona unless Customer is a Governmental Entity, in which case the Venue State will mean the Location State.



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**Exhibit 2**  
**Service Addendum**

**This Document.** This document, Ref #1186-003, ("Service Addendum") is entered into as of the Effective Date set forth below by and between the City of Ville Platte, LA ("Customer") and SP Ville Platte WWTP, LLC ("SP Entity").

**General Terms.** The "General Terms" referred to herein are those General Terms set forth in Exhibit 1 to that certain Cooperative Endeavor Agreement (the "CEA"), dated as of June 27, 2022 between Sustainability Partners, LLC ("SP") and Customer, in the form attached thereto on the effective date of the CEA, without giving effect to any amendments, waivers, or any other modifications thereto. The "Notice to Proceed" and the "Certificate of Acceptance" referred to herein are those attached to the CEA as Exhibit 3 and Exhibit 4, without giving effect to any amendments, waivers, or any other modifications thereto.

**This Agreement.** Each unique combination of General Terms, Service Addendum, Notice to Proceed and Certificate of Acceptance constitutes a standalone binding agreement between Customer and SP Entity. Capitalized terms not defined in this Service Addendum have the meanings given in the General Terms.

Other than a Rights Fee or laal, this Addendum is limited to the design, engineering, permitting, repair, maintenance, remodeling, renovation, modernization, or construction of an existing facility at the Location and does not involve a change or increase in the size, type, or extent of the facility.

The "LOCATION". State: LA

The City of Ville Platte

Amount:	\$9,000,000	Trigger:	Executed Certificate of Acceptance	Type (Rights Fee/Connect Fee/laal):	Rights Fee
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The "USA SERVICE"

Unit "Id #"	Description of USA Service Components (the "Units")
* A *	City of Ville Platte, LA Water and Sewer System

**The Term**

"Initial Term":	1	Month/Years	M	"Additional Term":	1	Mo/Yrs.	M
*(If Customer is the Initial Funding Entity, the Initial Term is determined based on Section 10.1)							

**USA PAYMENT CALCULATION and DEFINITIONS**

"USA Payment"	is the total of Unit(s) * (Usage + Capacity + Availability) + MMC/MMR Reserves + Deferred Catchup
"Capacity"	is Capacity Base * Usage Rate
Utility charge or revenue share? (U/R)	R   If R, revenue source: Customer monthly gross revenue

Unit Id #	SP Initial Funding Entity?	Rights Fee?	Full Capacity/Revenue/Per Month	How Usage Unit will be Measured	Usage Unit	Usage Rate	Term
* A *	Yes	Yes	\$666,667	The monthly gross Operating Revenue of Ville Platte's Utility Fund, as reported by the City of Ville Platte. Customer will provide its monthly statement of Utility Fund revenues to the SP Entity.	Sum of the Gross Monthly Operating Revenue of the City's Utility Fund	15.95%	30 Years

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"Expected Use" of Full Capacity (monthly):	= 61.3% (\$408,333)	"Lowest Expected Use" of Full Capacity (monthly) and is subject to a 2% annual increase:	= 55% (\$366,667)
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Customer's signatory is authorized to approve up to the following for increases to the Usage Rate:

Scope Contingency:	= N/A	Underwriting Contingency:	= N/A	Supply Chain Contingency:	= N/A
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"Price Index"

"Price Index" (select one)	= Other	U.S. CPI - All Urban Consumers, U.S. City Average (CUUR000SA0)	
		U.S. PPI - Commercial machinery repair & maintenance (PCU81138113)	
		Other	2.00%
Lowest Expected Use "% Eligible for Index"	= 100%	Credited to:	N/A

INSTALLATION MATTERS

"Installation Limit":	N/A	"Completion Target":	N/A	Monthly "Carrying Charge":	0.85%
Rates include contingencies of:	N/A	Installation	= N/A	Materials	= N/A

Approved Installation Contractors: Contracting Party shall be SP Entity or Customer (S/C) S

N/A

Approved MMC – MMR Providers: Contracting Party shall be SP Entity or Customer (S/C) S

N/A

OTHER APPLICABLE TERMS

	Actual	Suggested				
MMC Reserve	N/A	N/A	Per (Month/Year)	M	Starting month # after Install Date	N/A
MMR Reserve	N/A	N/A	Per (Month/Year)	M	Starting month # after Install Date	N/A
Defer USA Payments by:	0%		Defer monthly Usage over:	N/A	# of months being deferred:	N/A
# of months to spread Deferred Catchup over:	N/A		Starting month # for Deferred Catchup:	N/A	plus the Unit's annual monthly standard deviation to Unit Use	Yes
Disposition:	Upon termination perform Assignment of ownership or grant Sole Use License? (A/L)					N/A
Self-Install:	Has Customer opted to self-install the USA Service itself? Yes/No					N/A
MMC Agreement:	Will Customer source and contract for Unit maintenance and renewal services. Yes/No					N/A
Taxes and Fees	Taxes and Fees direct bill or add to applicable Usage Rates? Direct/Usage					Direct
Right of Return	Does Customer have a RoR (per Section 14.1 of the General Terms)?					N/A
Return Limit	10%	If RoR is Yes, then # of months after the USA Start Date the RoR applies to:				N/A

**Additional Terms:** The following terms shall also control over any conflicting terms in the Contract:

1. The Louisiana Constitution of 1974, as amended, in Article VII, Section 14(C), provides that for a public purpose, the state and its political subdivisions may engage in cooperative endeavors with each other and with any public or private association, corporation or individual.

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2. The Louisiana Constitution of 1974, as amended, in Article IX, Section 1 provides that the natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.
3. The Rights Fee enables the improvements to the Customer's Water and Sewer System by removing the encumbrances thereon and comports with the Customer's governmental purpose for which the Customer has the legal authority to pursue.
4. For each fiscal year, to the extent the audited financial statements reflect a combined Operating Revenue within the Utility Fund that differs from the sum of the monthly values provided by the Customer, a true up shall be performed to adjust the next 12 month revenue share such that the difference from the preceding year shall be made up in equal increments over the next 12 month period.
5. The minimum Useful Life for all determinations involving the Units/Rights Fee shall be 30 years.
6. Payment of the Rights Fee will occur contemporaneously with executing the Certificate of Acceptance for the Rights Fee.

Effective Date: June 21, 2022

Customer:

City of Ville Platte, LA

By: 

Name: Jennifer Vidrine

Title: Mayor

SP Entity:

SP Ville Platte WWTP, LLC

By: Sustainability Partners Services LLC, its Manager

By: 

Name: Adam T. Cain

Title: COO & General Counsel



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**Exhibit 2**

**Service Addendum**

**This Document.** This document, Ref # 1186-002 (“Service Addendum”) is entered into as of the Effective Date set forth below by and between the City of Ville Platte, LA (“Customer”) and SP Ville Platte WWTP, LLC (“SP Entity”).

**General Terms.** The “General Terms” referred to herein are those General Terms set forth in Exhibit 1 to that certain Cooperative Endeavor Agreement (the “CEA”), dated as of June 21, 2022 between Sustainability Partners, LLC (“SP”) and Customer, in the form attached thereto on the effective date of the CEA, without giving effect to any amendments, waivers, or any other modifications thereto. The “Notice to Proceed” and the “Certificate of Acceptance” referred to herein are those attached to the CEA as Exhibit 3 and Exhibit 4, without giving effect to any amendments, waivers, or any other modifications thereto.

**The Agreement.** Each unique combination of General Terms, Service Addendum, Notice to Proceed and Certificate of Acceptance constitutes a standalone binding agreement between Customer and the SP Entity. Capitalized terms not defined in this Service Addendum have the meanings given in the General Terms.

Other than a Rights Fee, this Addendum is limited to the design, engineering, permitting, repair, maintenance, remodeling, renovation, modernization, or construction of an existing facility at the Location and does not involve a change or increase in the size, type, or extent of the facility.

The “LOCATION” State: LA

City of Ville Platte, 126 East Main St., Ville Platte, LA 70586

Rights Fee:	Amount:	N/A	Funding Condition:	N/A
Connect Fee:	Amount:	N/A	Billing Condition:	N/A

The “USA SERVICE”

Unit “ID #”	Quantity	Description of USA Service Components (the “Units”)
*A*	3	Influent Pumps and Controls-15
*B*	1	New Mechanical Bar Screen
*C*	1	New Grit Removal System
*D*	1	Bar Screenings and Washer and Compacter
*E*	2	Scum Pump Station
*F*	3	RAS Pumps
*G*	2	WAS Pumps
*H*	2	New Aeration System with Control Panels
*I*	2	Final Clarifiers - Equipment and Controls
*J*	1	RAS/WAS Pumps Controls and VFDS
*K*	1	Screw Press, Conveyor System & Polymer System
*L*	1	Chlorination Dechlorination Equipment
*M*	2	Structural Concrete
*N*	2	Base Slab Concrete
*O*	1	Yard Piping and Piping Modifications
*P*	1	RAS/WAS Piping

The Term

“Initial Term”:	1	Month/Years	M	“Additional Term”:	1	Mo/Yrs.	M
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USA PAYMENT CALCULATION and DEFINITIONS			
"USA Payment"	is the total of Unit(s) * (Usage + Capacity + Availability) + MMC/MMR Reserves + Deferred Catchup		
"Capacity"	is Capacity Base * Usage Rate		
Utility Charge or Revenue Share? (U/R)	U	If R, Revenue Source:	N/A

Unit Id #	SP Initial Funding Entity?	Rights Fee?	"Full Capacity"	How Usage Unit will be Measured	Usage Unit	Usage Rate (months 1 to 60)	Usage Rate (after 60 months)	Availability		Months RoR	"Est. Useful Life"
								Unit	Rate		
* A *	Yes	No	3,500	Total number of monthly sewer connections	Per sewer connection	\$0.258	\$0.299	N/A	N/A	N/A	TBD at COA
* B *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$0.915	\$1.061	N/A	N/A	N/A	TBD at COA
* C *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$0.799	\$0.927	N/A	N/A	N/A	TBD at COA
* D *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$0.507	\$0.588	N/A	N/A	N/A	TBD at COA
* E *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$0.194	\$0.225	N/A	N/A	N/A	TBD at COA
* F *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$0.158	\$0.184	N/A	N/A	N/A	TBD at COA
* G *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$0.114	\$0.133	N/A	N/A	N/A	TBD at COA
* H *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$1.061	\$1.230	N/A	N/A	N/A	TBD at COA
* I *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$1.410	\$1.635	N/A	N/A	N/A	TBD at COA
* J *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$0.509	\$0.590	N/A	N/A	N/A	TBD at COA
* K *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$1.744	\$2.022	N/A	N/A	N/A	TBD at COA
* L *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$1.422	\$1.649	N/A	N/A	N/A	TBD at COA
* M *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$4.820	\$5.588	N/A	N/A	N/A	TBD at COA
* N *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$2.166	\$2.512	N/A	N/A	N/A	TBD at COA
* O *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$3.249	\$3.767	N/A	N/A	N/A	TBD at COA
* P *	Yes	No	3,500	Same as Id #A	Same as Id #A	\$2.166	\$2.512	N/A	N/A	N/A	TBD at COA

"Expected Use" of Full Capacity:	=	76.1%	"Lowest Expected Use" of Full Capacity:	=	70%
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Customer's signatory is authorized to approve up to the following for increases to the Usage Rate:

Scope Contingency:	=	5%	Underwriting Contingency:	=	5%	Supply Chain Contingency:	=	5%
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"Price Index"

USA Payment "% Eligible for Index"	=	100% of Usage	Credited to:	Usage in USA Payment
(select one)	=	Other	U.S. CPI - All Urban Consumers, U.S. City Average (CUUR0000SA0)	U.S. PPI - Commercial machinery repair & maintenance (PCUR1138113)
			Other =	3% annually commencing 60 months after the date of Certificate of Acceptance

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**INSTALLATION MATTERS**

"Installation Limit":	\$3,279,995	"Completion Target": 22 - Months	Monthly "Carrying Charge": 0.85%
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**Approved Installation Contractors: Contracting Party shall be SP Entity or Customer (S/C) S**

Manchac Consulting Group, Inc.	
--------------------------------	--

**Approved MMC – MMR Providers: Contracting Party shall be SP Entity or Customer (S/C) S**

Manchac Consulting Group, Inc.	Trek
--------------------------------	------

**OTHER APPLICABLE TERMS**

	Actual	Suggested				
<b>MMC Reserve</b>	TBD at COA	TBD at COA	Per (Month/Year)	M	Starting month # after Install Date	1
<b>MMR Reserve</b>	TBD at COA	TBD at COA	Per (Month/Year)	M	Starting month # after Install Date	1
Defer USA Payments by:	0%	Defer monthly Usage over:	N/A	# of months being deferred:	N/A	
# of months to spread Deferred Catchup over:	N/A	Starting month # for Deferred Catchup:	N/A	Add standard deviation to Unit Use	Yes	

<b>Disposition:</b>	Upon termination perform Assignment of ownership or grant Sole Use License? (A/L)		A
<b>Self-Install:</b>	Has Customer opted to self-install the USA Service itself? Yes/No		No
<b>MMC Agreement:</b>	Will Customer source and contract for Unit maintenance and renewal services. Yes/No		No
<b>Taxes and Fees</b>	Taxes and Fees direct bill or add to applicable Usage Rates? Direct/Usage		Usage
<b>Right of Return</b>	Does Customer have a RoR (per Section 14.1 of the General Terms)?		No
<b>Return Limit</b>	10%	If RoR is Yes, then # of months after the USA Start Date the RoR applies to:	N/A

**Additional Terms: The following terms shall also control over any conflicting terms in the Contract:**

1. The Louisiana Constitution of 1974, as amended, in Article VII, Section 14(C), provides that for a public purpose, the state and its political subdivisions may engage in cooperative endeavors with each other and with any public or private association, corporation or individual.
2. The Louisiana Constitution of 1974, as amended, in Article IX, Section 1 provides that the natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.
3. The USA Payments are for a public purpose that comports with the Customer's governmental purpose, which the Customer has the legal authority to pursue.
4. The USA Payments are not gratuitous because the Customer is paying for significant improvements to the Location's Waste Water Treatment plant equipment upgrades.
5. As set forth in rate table in this Service Addendum, there is a Usage Rate for each of the Units for the first 60 months after Certificate of Acceptance, and an increased Usage Rate for each of the Units after 60 months.
6. As set forth in the Price Index in this Service Addendum, there is a 3% annual escalator to the Usage payment commencing the 60th month after the date of the Certificate of Acceptance.
7. Pursuant to Section 5.3 of the CEA, the SP Entity will obtain the required property insurance for the Units at a cost of \$1,166 per month, which cost will be added to the Customer's monthly invoice until such time that the Customer is able to add the Units to its own insurance policy in the manner set forth in Section 5.3 of the CEA.

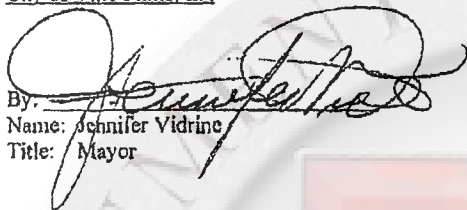
Sustainability as a Service®

- 8. Pursuant to Section 5.3 of the CEA, the SP Entity will obtain the required liability insurance for the Units at a cost of \$84 per month, which cost will be added to the Customer's monthly invoice until such time that the Customer is able to add the Units to its own insurance policy in the manner set forth in Section 5.3 of the CEA.

Effective Date: June 21, 2022

**Customer:**

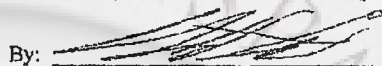
City of Ville Platte, LA

By: 

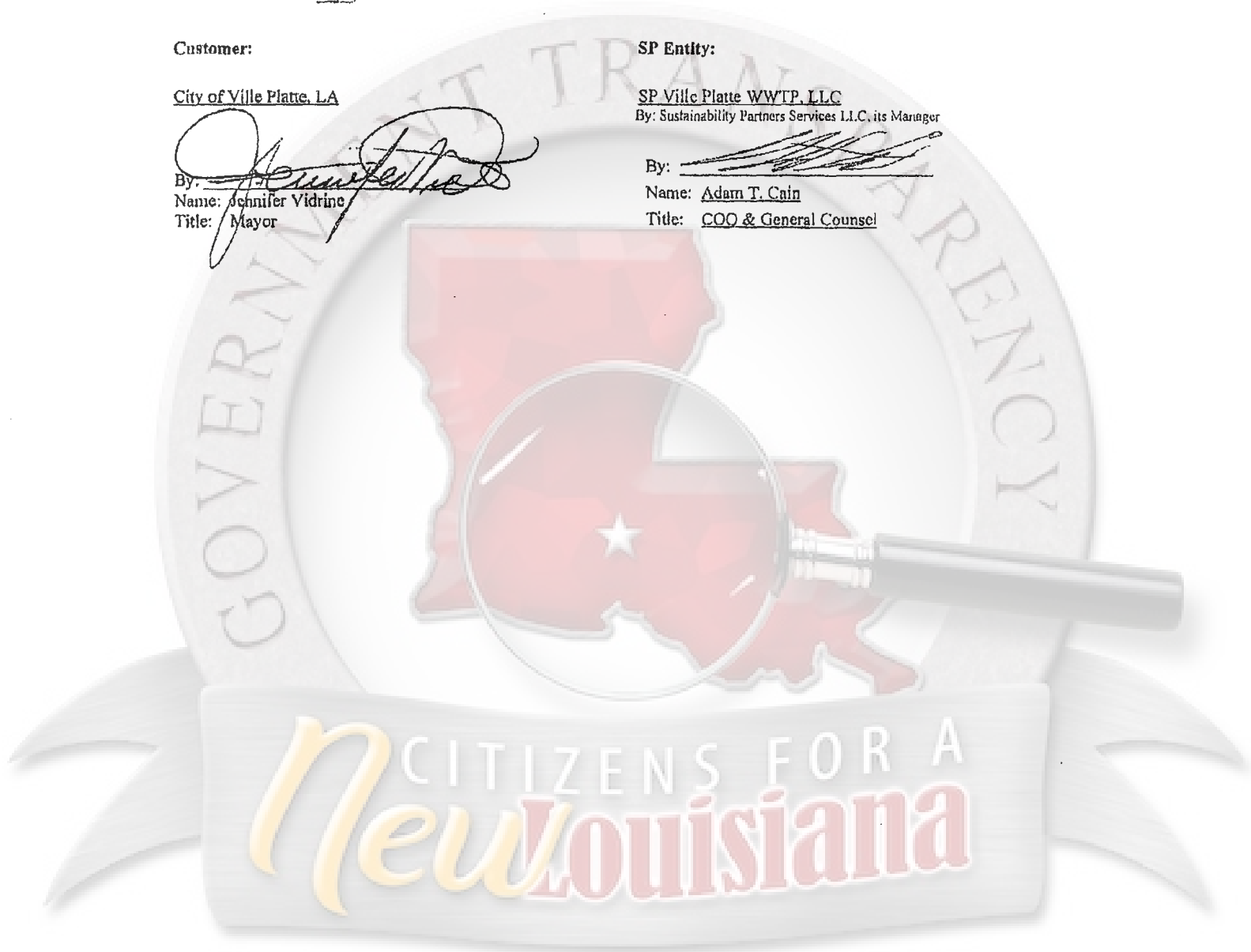
Name: Jennifer Vidrine  
Title: Mayor

**SP Entity:**

SP Ville Platte WWTP, LLC  
By: Sustainability Partners Services L.L.C, its Manager

By: 

Name: Adam T. Cain  
Title: COO & General Counsel





**Exhibit 3**  
**Notice to Proceed**

Service Addendum #: 1186-002  
Effective Date: June 21, 2022  
Location Name: City of Ville Platte Waste Water Treatment Plant  
Location Address: 126 East Main St., Ville Platte, LA 70586

RE: Notice to Proceed

The "Customer" and the "SP Entity" identified at the end of this Notice to Proceed are parties to the above referenced Service Addendum. Capitalized terms not otherwise defined in this Notice to Proceed have the meanings provided in the Service Addendum.

Customer hereby formally notifies and confirms to the SP Entity that, upon the SP Entity's delivery of countersigned copies of this Notice to Proceed:

- (i) Unit(s) identified in the Service Addendum are Units approved by Customer to be installed at
- (ii) the Location;
- (iii) the contractor(s) identified in the Service Addendum are approved contractor(s) for the Installation;
- (iv) the following Vendor Contracts have been reviewed and approved by Customer:
  1. Master Goods and Services Agreement with Manchac Consulting Group, Inc.; and
  2. Project Addendum with Manchac Consulting Group, Inc.
- (v) the Service Addendum identified above, restates and supersedes any prior Service Addendum for the project and is hereby reaffirmed and ratified by the parties hereto;
- (vi) the acquisition of the Unit(s) by the Initial Funding Entity may occur, and the Installation may
- (vii) begin, subject to the terms of the Service Addendum;
- (viii) MMC will be: \$ (determined at Certificate of Acceptance). MMR will be: \$ (determined at Certificate of Acceptance); and
- (ix) Taxes and Fees expressed as % of Unit(s) Actual Cost:

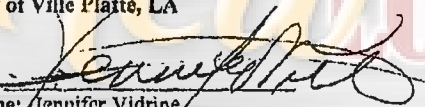
taxes and permits:	TBD	monthly asset mgt. fee:	included	project developer:	included
underwriting:	included	installation owners rep.:	included	origination:	included

Effective Date: June 21, 2022

This Notice to Proceed is hereby issued and accepted:

Customer:


City of Ville Platte, LA

By:   
Name: Jennifer Vidrine  
Title: Mayor

SP Entity:

SP Ville Platte WWTP, LLC

By: Sustainability Partners, LLC, its Manager

By:   
Name: Adam T. Cain  
Title: COO & General Counsel

**Exhibit 3**  
**Notice to Proceed ("NtP")**

June 21, 2022

Notice to Proceed for Service Addendum #: 1186-003

RE: **Notice to Proceed**

The "Customer" and the "SP Entity" identified at the end of this Notice to Proceed are parties to the above referenced Service Addendum. Capitalized terms not otherwise defined in this Notice to Proceed have the meanings provided in the Service Addendum.

Customer hereby formally notifies and confirms to the SP Entity that, upon the SP Entity's delivery of countersigned copies of this Notice to Proceed:

- (i) Unit(s) identified in the Service Addendum are the Units selected and agreed upon by Customer and SP Entity for the Rights Fee;
- (ii) the Service Addendum identified above, restates and supersedes any prior Service Addendum for the project and is hereby reaffirmed and ratified by the parties hereto;
- (iii) Taxes and Fees expressed as % of Unit(s) Actual Cost:

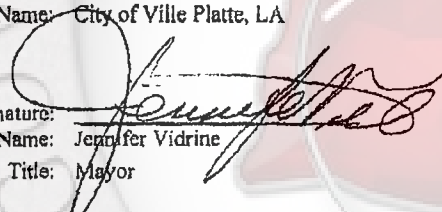
taxes, fees and permits:	0%	SP Entity regulatory compliance per month:	0.7%	treasury:	2%
underwriting:	2%	legal:	2%	origination:	2%

Effective Date: June 21, 2022

This Notice to Proceed is hereby issued and accepted:

**Customer:**

Name: City of Ville Platte, LA

Signature: 

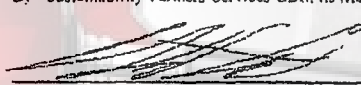
Name: Jennifer Vidrine

Title: Mayor

**SP Entity:**

Name: SP Ville Platte WWTP, LLC

By Sustainability Partners Services LLC, its Manager

Signature: 

Name: Adam Cain

Title: COO & General Counsel

Date: July 15, 2022



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**Exhibit 4**  
**Certificate of Acceptance**

This Document. This document constitutes a "Certificate of Acceptance" corresponding to that certain Service Addendum Ref #1186-003 executed by the undersigned Customer and SP Entity (the "Service Addendum"), which incorporates the General Terms and Conditions attached as Exhibit 1 (the "General Terms") to that certain Cooperative Endeavor Agreement (the "CEA") effective as of June 21, 2022, between Sustainability Partners LLC ("SP") and the undersigned Customer. This document also constitutes an Exhibit 4 with respect to the Service Addendum.

The Agreement. This Certificate of Acceptance is part of the written agreement comprised of the corresponding CEA, Service Addendum, Work Product Approval and Notice to Proceed, constituting a standalone binding agreement (referred to as the "Agreement") with respect to the Unit(s) identified on Schedule A below (the "Accepted Units") that solely and exclusively governs the Accepted Units and matters relating thereto. Capitalized terms not defined in this Certificate of Acceptance have the meanings given in the CEA, Service Addendum, and Notice to Proceed.

Service Addendum No.:	1186-003
Location Name:	City of Ville Platte, LA
Location Address:	126 East Main Street, Ville Platte, LA 70586
Rights Fee Amount:	\$9,000,000

Unit "Id#"	Unit Description	Starting Usage % (0% = New)
* A *	City of Ville Platte, LA Water and Sewer System	50%

- Customer hereby accepts the funding of the Rights Fee in the amount of \$9,000,000, which shall be distributed as follows per the Customer's request:
  - \$8,097,132 to the LDH-Office of Public Health; and
  - \$902,868 to Customer's designated account.
- Customer also agrees that the Unit is operational for the Unit's intended use.

**Customer:**

City of Ville Platte, LA

By: 

Name: Jennifer Vidrine

Title: Mayor

Date: 9/1/22

**SP Entity:**

SP Ville Platte WWTP, LLC

By: Sustainability Partners Services LLC, its Manager

By: 

Name: Adam T. Cain

Title: COO & General Counsel

Date: 9-1-2022



RANDALL M DESHOTEL  
CLERK OF COURT

2023 MAY 10 A 9:05

August 30, 2022



Re: Unauthorized Incurrence of Debt/Cooperative Endeavor Agreements

TO WHOM IT MAY CONCERN:

It has come to our attention that increasingly public entities are utilizing cooperative endeavor agreements (CEAs) or other agreements as a mechanism to fund various capital and operating projects. As used herein, the term "CEA" includes joint ventures, public private partnerships or other similarly designated structures.

The Louisiana Constitution, Article VII, § 8 provides as follows:

**No bonds or other obligations shall be issued or sold by the state, directly or through any state board, agency, or commission, or by any political subdivision of the state, unless prior written approval of the bond commission is obtained.**

Louisiana Revised Statute 39:1401 *et seq.* sets forth the required procedures for public entities to incur debt. These procedures must be followed in order to enter into agreements wherein public entities incur debt; otherwise the agreement shall be null and void and penalties for violations shall be assessed under La. R.S. 39:1410.63 against persons specified therein.

The Attorney General has opined that State Bond Commission approval is not a prerequisite to enter a CEA as long as the obligations of the State, or its political subdivisions, do not constitute debt. AG Op. No. 19-0093. As the Attorney General has also noted, however, debt is "...more than an obligation to pay a sum of money. As defined in the statute, debt is incurred when there is financing." AG Op. No. 05-0039 (citing La. R.S. 39:1405(B)).

Based on the review by our offices, it appears public entities should review these transactions carefully prior to entering into these CEAs. There should be a determination that no debt is incurred without State Bond Commission approval.

In AG Op. No. 19-0093, the CEAs reviewed by the Attorney General were for services, contained non-appropriation clauses, and contained a termination fee that was not mandatory. The CEAs at issue here are not for services but for both the installation of movables, such as water

August 30, 2022

Page 2 of 3

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meters, and for public works projects, such as sewerage systems and railroads. The public entity should determine whether the facts specific to their particular agreement constitute borrowing money to finance the pre-construction and construction costs for public works projects.

Generally, under the financing arrangements of the CEAs we have reviewed, a private company is the sole member and managing partner of an LLC that owns the infrastructure. The political subdivision owns the right of use of the infrastructure and has the obligation to pay the calculated usage fee. The agreements allow for termination without a fee but only to the extent that the infrastructure can be returned. Due to the unfeasibility of returning major infrastructure (as opposed to some movables) this may constitute a “mandatory” termination fee. Finally, there is a question as to whether the non-appropriation clauses in these proposed CEAs relieve the political subdivisions from all obligations under the agreement if funds are not appropriated in the future.

Therefore, when considering whether to enter into such agreements, we would urge you to consult with your attorneys and consider the following in order to determine whether entering into the CEA constitutes incurring of a debt subject to State Bond Commission approval:

1. Whether the CEA provides for, either directly or indirectly, an interest rate (either stated or imputed), finance charge or carrying charge or other similarly designated charges.
2. Whether the CEA has a true non-appropriation clause pursuant to which if the funding for the CEA is impaired the political subdivision may terminate the CEA without penalty or charge.
3. Whether the CEA obligates the political subdivision to exercise authority to raise fees, taxes, charges or assessments to fund the CEA.
4. Whether the CEA has penalties, fees, charges or make-whole provisions for early cancellation, returns of products or other similar provisions upon termination of the CEA.
5. Whether upon termination or expiration, the political subdivision will own the goods and products which are the object of CEA or whether title to those goods and products transfers, reverts or remains vested with the private-party to the CEA.
6. Whether there is any condition that requires granting of a security interest.

It appears to us that if one or more of the above provisions is present, the CEA may constitute the incurrence of debt requiring approval by the State Bond Commission. Any debt incurred without approval by the State Bond Commission would be contrary to Louisiana law and therefore null and void, *ab initio*.

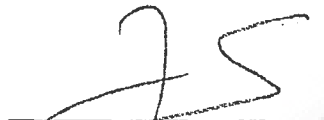
August 30, 2022

Page 3 of 3

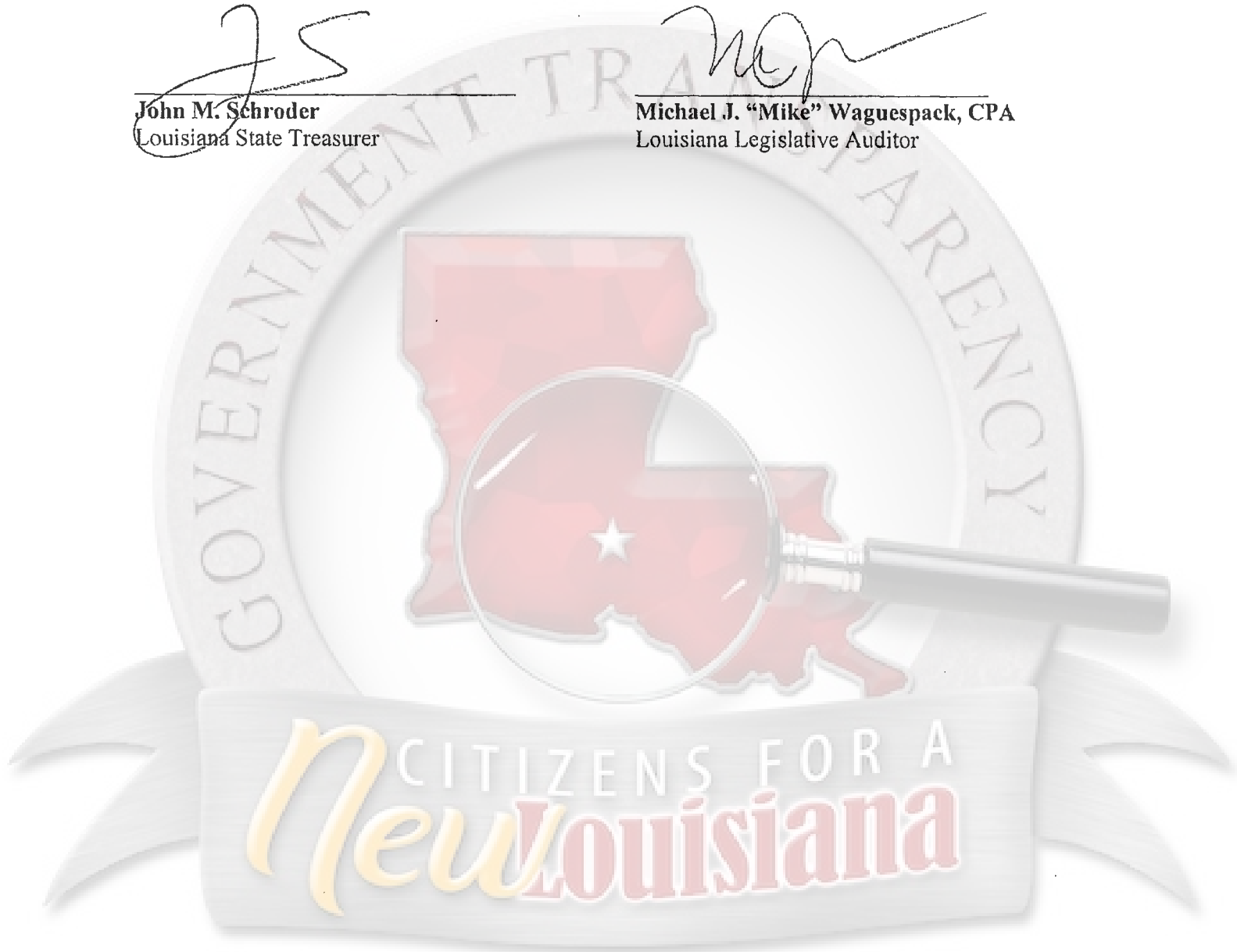
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If you or your counsel wish to have further discussions concerning these CEAs, please contact the office of the Treasurer or the Louisiana Legislative Auditor.

Sincerely,

  
\_\_\_\_\_  
**John M. Schroder**  
Louisiana State Treasurer

  
\_\_\_\_\_  
**Michael J. "Mike" Waguespack, CPA**  
Louisiana Legislative Auditor



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**CITY OF VILLE PLATTE**

**Plaintiff,**

**VERSUS**

**SP VILLE PLATTE WWTP, LLC**

**Defendants.**

**CIVIL ACTION NO:**

**JUDGE:**

**MAGISTRATE JUDGE:**

**CERTIFICATE OF FILING**  
**STATE COURT NOTICE OF REMOVAL**

STATE OF LOUISIANA

PARISH OF LAFAYETTE

The undersigned attorney certifies that on June 16, 2023, defendant, SP Ville Platte WWTP, LLC filed with the Clerk of Court for the 13<sup>th</sup> Judicial District Court, Evangeline Parish, Louisiana, a State Court Notice of Removal, a copy of which is attached.

Respectfully submitted,

/s/ Donald W. Washington

Donald W. Washington (Bar No. 21402)

Gary J. Russo (Bar No. 10828)

Casey L. Thibodeaux (Bar No. 40530)

JONES WALKER LLP

600 Jefferson Street, Suite 1600

Lafayette, LA 70501

Telephone: 337-593-7600

Facsimile: 337-593-7601

Emails: [dwwashington@joneswalker.com](mailto:dwwashington@joneswalker.com)

[grusso@joneswalker.com](mailto:grusso@joneswalker.com)

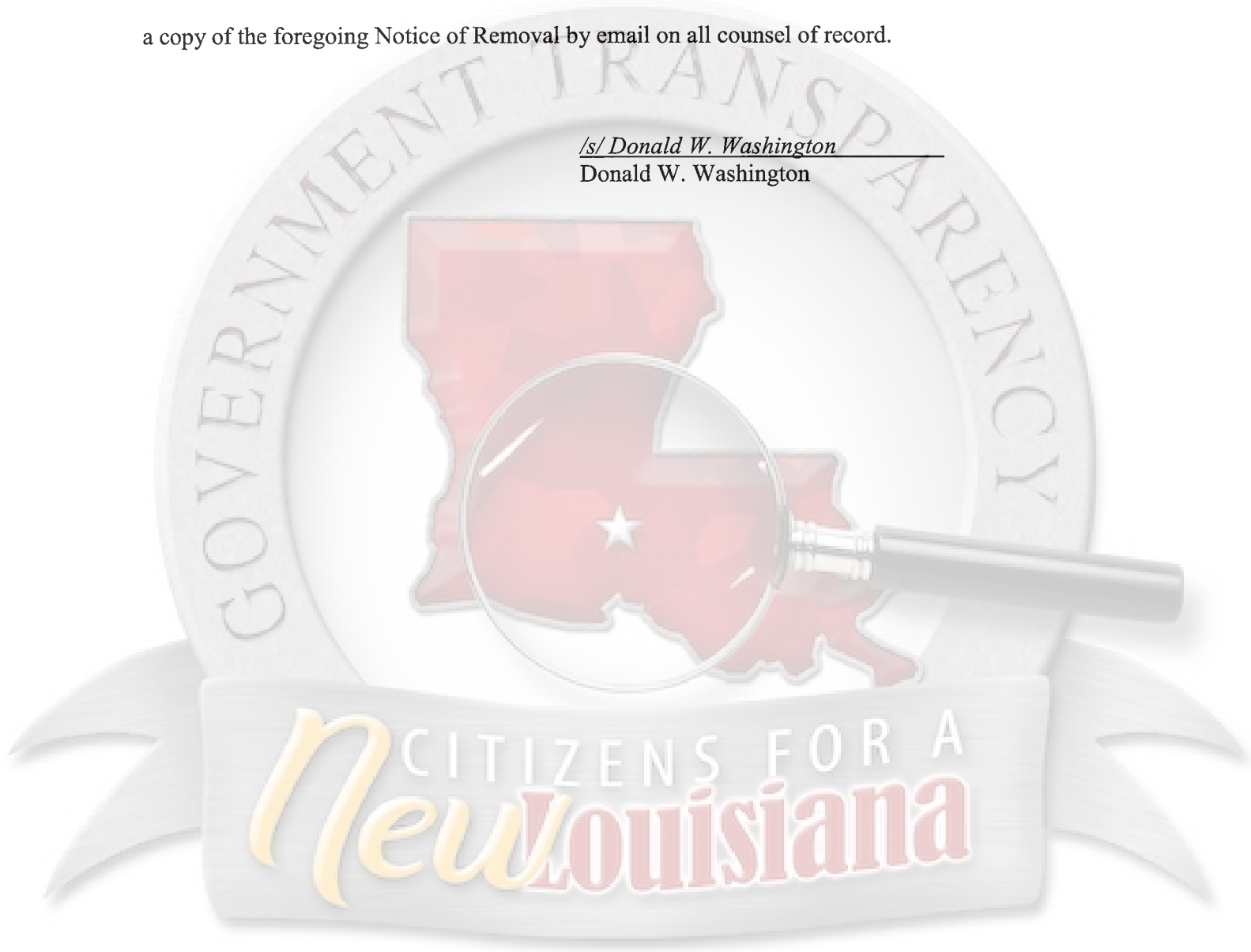
[calthibodeaux@joneswalker.com](mailto:calthibodeaux@joneswalker.com)

***Attorneys for SP Ville Platte WWTP, LLC***

**CERTIFICATE**

The undersigned hereby certifies that on the 16<sup>th</sup> day of June, 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send notice of electronic filing to all counsel registered for electronic service. I further certify that I have served a copy of the foregoing Notice of Removal by email on all counsel of record.

/s/ Donald W. Washington  
Donald W. Washington





**NOTICE OF SERVICE**

CITY OF VILLE PLATTE

Vs.

SP VILLE PLATTE WWTP LLC



Case: 00080653  
Division: A  
13th Judicial District Court  
Parish of Evangeline  
State of Louisiana

To: CHRISTOPHER M LUDEAU  
CHRISTOPHER M. LUDEAU  
P.O. BOX 526  
516 W MAGNOLIA ST  
VILLE PLATTE, LA 70586

Date of Service: WEDNESDAY, MAY 17, 2023

Person Served: SP WWTP LLC THROUGH AGENTS INC

Personal/Domiciliary: DEPARTMENTAL SERVICE

Pleading Served: CITATION FOR PETITION FOR DECLARATORY JUDGEMNT AND INJUNCTIVE RELIEF

Issued by the Clerk of Court on MAY 25, 2023.

*Handwritten signature: Howard M. See*

Deputy Clerk of Court



13113

CITATION FOR PETITION

CITY OF VILLE PLATTE

Versus

SP VILLE PLATTE WWTP LLC

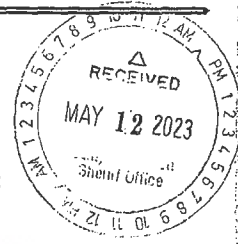
20



M. DESHOTEL  
CLERK OF COURT  
MAY 25 A 11: 03

Case: 00080653  
Division: A  
13<sup>th</sup> Judicial District Court  
Parish of Evangeline  
State of Louisiana

To: SP WWTP, LLC  
THRU REGISTERED AGENTS INC  
201 RUE BEAUREGARD STE 202  
LAFAYETTE, LA 70508



You are named as a defendant in the above captioned matter. Attached to this citation is a:

- Certified Copy of Original Petition
- Certified Copy of Amended Petition
- Discovery Request

You must either comply with the demand contained in the petition or make an appearance either by filing an answer or other pleading in the 13<sup>th</sup> Judicial District Court located at 200 Court St., Suite 104, Ville Platte, LA 70586 within the delay provided in Article 1001 of the Louisiana Code of Civil Procedure under penalty of default.

Article 1151 of the Louisiana Code of Civil Procedure provides in pertinent part:

A defendant shall plead in response to an Amended Petition within the time remaining for pleading to the Original Pleading or with ten (10) days after service of the Amended Petition, whichever period is longer, unless the time is extended under Article 1001.

Article 1001 of the Louisiana Code of Civil Procedure states:

- A. A defendant shall file his answer within **twenty-one (21) days** after service of Citation upon him, except as otherwise provided by law. If the plaintiff files and serves a Discovery Request with his Petition, the defendant shall file his answer to the petition within **thirty (30) days** after service of the amended petition.
- B. When an Exception is filed prior to Answer and is overruled or referred to the merits, or is sustained and an Amendment of the Petition ordered, the Answer shall be filed within fifteen (15) days after the exception is overruled or referred to the merits, or fifteen (15) days after service of the Amended Petition.
- C. The Court may grant additional time for answering.

THE CLERK OF COURT'S STAFF CANNOT PROVIDE LEGAL ADVICE.

This Citation was issued by the Clerk for the Court for the 13<sup>th</sup> Judicial District Court, Parish of Evangeline, on the 10TH day of MAY, 2023.

*Charity Vignat*

Deputy Clerk of Court

Requested by Attorney:  
CHRISTOPHER M. LUDEAU  
PETITION FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF, EXHIBITS

Service Information

0900

Received on the 12 day of May, 2023 and on the 17 day of May, 2023  
served the above-named party as follows:

Personal Service on the party herein named Emily  
Domiciliary Service or Departmental Service on the party herein named by leaving the same at his/her domicile in the parish in the hands of \_\_\_\_\_, a person apparently over the age of seventeen years, living and residing in said domicile and whose name and other facts connected with this service, I learned by interrogating the said person, said party herein being absent from his/her residence at the time of said service.

Returned: Parish of LaFayette this 17 day of May, 2023

Service \$ 30 M-3.90

Total \$ 33.90

By: *Emily Lail*  
Deputy Sheriff

L.P.S.O. Badge# 12994

RETURN TO CLERK ACTUAL SERVICE MILEAGE: 6.0

CITATION FOR PETITION

CITY OF VILLE PLATTE

Versus

SP VILLE PLATTE WWTP LLC



Case: 00080653
Division: A
13th Judicial District Court
Parish of Evangeline
State of Louisiana

To: SP WWTP, LLC
THRU REGISTERED AGENTS INC
201 RUE BEAUREGARD STE 202
LAFAYETTE, LA 70508

You are named as a defendant in the above captioned matter. Attached to this citation is a:

- [X] Certified Copy of Original Petition
[ ] Certified Copy of Amended Petition
[ ] Discovery Request

You must either comply with the demand contained in the petition or make an appearance either by filing an answer or other pleading in the 13th Judicial District Court located at 200 Court St., Suite 104, Ville Platte, LA 70586 within the delay provided in Article 1001 of the Louisiana Code of Civil Procedure under penalty of default.

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Article 1001 of the Louisiana Code of Civil Procedure states:

- A. A defendant shall file his answer within twenty-one (21) days after service of Citation upon him, except as otherwise provided by law. If the plaintiff files and serves a Discovery Request with his Petition, the defendant shall file his answer to the petition within thirty (30) days after service of the amended petition.
B. When an Exception is filed prior to Answer and is overruled or referred to the merits, or is sustained and an Amendment of the Petition ordered, the Answer shall be filed within fifteen (15) days after the exception is overruled or referred to the merits, or fifteen (15) days after service of the Amended Petition.
C. The Court may grant additional time for answering.

THE CLERK OF COURT'S STAFF CANNOT PROVIDE LEGAL ADVICE.

This Citation was issued by the Clerk for the Court for the 13th Judicial District Court, Parish of Evangeline, on the 10TH day of MAY, 2023.

Christy Vignat

Deputy Clerk of Court

Requested by Attorney: CHRISTOPHER M. LUDEAU
PETITION FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF, EXHIBITS

Service Information

Received on the \_\_\_ day of \_\_\_, 20\_\_\_ and on the \_\_\_ day of \_\_\_, 20\_\_\_ served the above-named party as follows:

Personal Service on the party herein named \_\_\_
Domiciliary Service or Departmental Service on the party herein named by leaving the same at his/her domicile in the parish in the hands of \_\_\_, a person apparently over the age of seventeen years, living and residing in said domicile and whose name and other facts connected with this service, I learned by interrogating the said person, said party herein being absent from his/her residence at the time of said service.

Returned: Parish of \_\_\_ this \_\_\_ day of \_\_\_, 20\_\_\_

Service \$ \_\_\_

Total \$ \_\_\_

By: \_\_\_
Deputy Sheriff