

December 21, 2015

BE IT REMEMBERED that the Board of Commissioners of Montgomery County, Tennessee, met in a special called session on Monday, December 21, 2015, at 6:00 P.M. at the Montgomery County Courthouse. Present and presiding the Hon. Jim Durrett, County Mayor (Chairman). Also present, Jeff Truitt, Chief of Staff, Kellie A. Jackson, County Clerk, John Smith, Chief Deputy Sheriff, Tim Harvey, County Attorney, Jeff Taylor, Director of Accounts and Budgets, and the following Commissioners:

Jerry Allbert	Robert Gibbs	Robert Nichols
Ed Baggett	Monroe Gildersleeve	Wallace Redd
Martha Brockman	David Harper	Mark Riggins
Brandon Butts	Arnold Hodges	Larry Rocconi
Joe L. Creek	Jason A. Hodges	Ron J. Sokol
John M. Gannon	Garland Johnson	Audrey Tooley
John M. Genis	Charles Keene	Tommy Vallejos

PRESENT: 21

ABSENT: None

When and where the following proceedings were had and entered of record, to-wit:

**AGENDA – DECEMBER 21, 2015**

**SPECIAL CALLED MEETING**

**BOARD OF COMMISSIONERS**

**CALL TO ORDER** - Sheriff John Fuson

**PLEDGE OF ALLEGIANCE**

**INVOCATION** – Chaplain Joe Creek

**RESOLUTION**

**15-12-6:** Resolution Approving a Development Agreement Between the Industrial Development Board of Montgomery County, Tennessee; Montgomery County, Tennessee; the City of Clarksville, Tennessee; and an Industrial Project Company, to Establish a Facility in the Commerce Park (1000 Solar Way)

**UNFINISHED BUSINESS**

**ADJOURN**

**RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE  
INDUSTRIAL DEVELOPMENT BOARD OF MONTGOMERY COUNTY, TENNESSEE;  
MONTGOMERY COUNTY, TENNESSEE; THE CITY OF CLARKSVILLE, TENNESSEE;  
AND AN INDUSTRIAL PROJECT COMPANY, TO ESTABLISH A FACILITY  
IN THE COMMERCE PARK (1000 SOLAR WAY)**

**WHEREAS**, the Montgomery County Board of Commissioners deems job opportunity and the promotion of economic growth to be in the best interest of the citizens of Montgomery County; and

**WHEREAS**, an industrial project company (the "Company") has indicated its desire to locate within the Commerce Park (1000 Solar Way) to engage in industrial development by constructing, improving and/or modifying new and/or existing buildings and infrastructure in connection with the Company's operations, and

**WHEREAS**, the Company further wishes to employ a workforce of employees and to invest in and utilize infrastructure in connection with the construction and operation of a facility at the site, in multiple Phases and over a number of years; and

**WHEREAS**, the Company has proposed a Development Agreement to facilitate access to certain natural gas, water, and wastewater utility services for the facility at the site; and

**WHEREAS**, this Board of County Commissioners finds it is in the best interest of the citizens of Montgomery County, that Montgomery County Government enter into this Development Agreement with the City of Clarksville, the Industrial Development Board of Montgomery County, Tennessee and the Company to create economic opportunities.

**NOW, THEREFORE, BE IT RESOLVED** by the Montgomery County Board of Commissioners assembled in Regular Session on this 21st day of December, 2015, that the County Mayor is authorized to enter into and execute the Development Agreement between Montgomery County, Tennessee, the City of Clarksville, Tennessee, the Industrial Development Board of Montgomery County, Tennessee, and the Company.

**Duly passed and approved this 21st day of December, 2015.**



Sponsor

Michael J. Grooms

Commissioner

Michael J. Grooms

Approved

Jim Sumner  
County Mayor

Attest

Kellee A. Jackson  
County Clerk

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**DEVELOPMENT AGREEMENT**

**BY AND AMONG**

**MONTGOMERY COUNTY, TENNESSEE, THE CITY OF CLARKSVILLE,  
TENNESSEE, THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF  
MONTGOMERY, TENNESSEE, AND FOXMAN LLC**

**DECEMBER 21, 2015**

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**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (this “Agreement”) is hereby made and entered into as of the 21st day of December, 2015, by and among **FOXMAN LLC**, a Delaware limited liability company, or its assigns (the “Company”) and **MONTGOMERY COUNTY, TENNESSEE** (the “County”), **THE CITY OF CLARKSVILLE, TENNESSEE** (the “City”) and **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF MONTGOMERY, TENNESSEE** ((the “IDB”); with the IDB, the County, and the City hereafter individually referred to as an “Authority” and collectively referred to as the “Authorities”).

**RECITALS**

**WHEREAS**, the Authorities enthusiastically support and encourage economic development;

**WHEREAS**, the Company wishes to engage in industrial development by constructing, improving and/or modifying new and/or existing buildings and infrastructure in connection with Company’s operations (each or collectively, the “Facility”) at the Project Site as defined below; and

**WHEREAS**, the Company further wishes to employ a workforce of employees and to invest in significant infrastructure in connection with the construction and operation of the Facility at the Project Site, in multiple Phases and over a number of years (collectively, the “Project”); and

**WHEREAS**, based, among other things, on the obligations of the Authorities set forth in this Agreement, the Company wishes to locate the Facility at the Project Site; and

**WHEREAS**, the Company wishes to have access to certain natural gas, water, and wastewater utility services from the Authorities at the Project Site; and

**WHEREAS**, the location of the Facility in the County is expected to stimulate the local economy, promote business and result in the creation of jobs in Montgomery County, which constitute a material part of the basis for the Authorities’ entering into this Agreement; and

**WHEREAS**, the Authorities are desirous of having the Company undertake the Project and the Parties hereto are desirous of having such proposals set forth in a valid, binding and enforceable agreement to provide the framework for establishing a working relationship among the Authorities and the Company in connection with the Project and its possible future growth based in part on expanded infrastructure and Authorities’ collective services; and

**WHEREAS**, on the Effective Date (as defined herein) the commitments contained in this Agreement shall become legally binding obligations of the Authorities, which commitments are made in consideration for the Company’s decision to undertake the Project and to pay certain costs associated therewith as set forth herein.

**AGREEMENT**

**NOW, THEREFORE**, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

**“Additional Properties”** shall have the meaning set forth in Article 8.

**“Additional Land Conveyances”** shall have the meaning set forth in Article 8.

**“Affiliate”** means any entity that now or in the future, directly or indirectly controls, is controlled with or by or is under common control with a party. For purposes of the foregoing, “control” means, with respect to: (a) a U.S. corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof or, (b) a non-U.S. corporation, if the voting power to elect directors thereof is less than fifty percent (50%), the maximum amount allowed by applicable law; and (c) any other entity, fifty percent (50%) or more ownership interest in said entity, or the power to direct the management of such entity.

**“Agreement”** shall have the meaning set forth in the preamble to this Agreement.

**“Approval Event”** means (i) any governmental approval not being granted or being materially delayed upon application having been duly made that complies with the requirements for such approval to be granted, or (ii) any governmental approval ceasing to remain in full force and effect, or not being renewed upon application having been duly made that complies with the requirements for such renewal to be granted.

**“Authority” or “Authorities”** shall have the meaning set forth in the preamble to this Agreement.

**“Business Day”** means a day other than a Saturday, Sunday or State or national holiday.

**“Capacity Expansion”** shall have the meaning set forth in Section 6.7(f).

**“Capacity Expansion Agreement”** shall have the meaning set forth in Section 6.8(d).

**“City”** shall have the meaning set forth in the preamble to this Agreement. For purposes of this Agreement, the City shall include Clarksville Utilities.

**“Company”** shall have the meaning set forth in the preamble to this Agreement.

**“Company Notice”** shall have the meaning set forth in Section 6.7(f).



**“Consents”** means all federal, State or local permits, approvals, licenses or consents necessary to develop, construct and operate the Project. Such Consents include but are not limited to grading permit(s), demolition permits, building permits, amendments to flood plain map, air and water quality permits and site plan approval.

**“Contingencies”** shall have the meaning set forth in Section 7.3.

**“County”** shall have the meaning set forth in the preamble to this Agreement.

**“Defaulting Party”** shall have the meaning set forth in Section 9.1(a).

**“Easements and Land Acquisitions”** shall have the meaning set forth in Section 6.13.

**“Effective Date”** means the later date of any of the following: (i) the date on which the last of the parties shall have executed this Agreement, and (ii) the date on which this Agreement has been approved by each of the Authorities.

**“Engineer of Record”** means the engineer designated in any contract between the City and any contractor for the construction or improvement of any Capacity Expansion infrastructure pursuant to this Agreement, with such designation subject to Company approval, which shall not be unreasonably withheld, or, in the event an engineer has not yet been engaged by the City for the Capacity Expansion, the Chief Utility Engineer of the City, until such time as the City has engaged an engineer for the Capacity Expansion.

**“Engineering Submission”** shall have the meaning set forth in Section 6.8(c).

**“Event of Default”** shall have the meaning set forth in Section 9.1.

**“Expansion Costs”** shall have the meaning set forth in Section 6.9(a).

**“Facility”** shall have the meaning set forth in the second WHEREAS clause of this Agreement.

**“Force Majeure”** means an act, cause or occurrence which: (i) delays or prevents a party from timely performing its obligations under this Agreement; (ii) arises outside the control of the party hereto who has the affected obligation; (iii) cannot be prevented by such party's exercise of due care, prudence and diligence; and (iv) is not the result of the willful misconduct or negligent act or omission of such party (or its subcontractors or agents). A party asserting that the Force Majeure delays or prevents timely performance shall have the duty to mitigate the Force Majeure's effects. Such affected party shall provide prompt written notice of the occurrence of a Force Majeure event to the other parties and shall have its time for performance extended only to the extent that, and only for so long as, the Force Majeure either: (i) actually delays or prevents timely performance, if such party properly exercises its duty to mitigate; or (ii) would have delayed or prevented timely performance if such party properly had exercised its duty to mitigate but failed to do so.

**“Government Action”** shall have the meaning in Section 10.15(b).

**"IDB"** shall have the meaning set forth in the preamble to this Agreement.

**"Incremental Demand"** shall have the meaning set forth in Section 6.7(b).

**"Incremental Demand Request"** shall have the meaning set forth in Section 6.7(b).

**"Incremental Reserved Capacity"** shall have the meaning set forth in Section 6.12.

**"Industrial Grant"** shall have the meaning set forth in Section 2.5.

**"Initial Advance"** shall have the meaning set forth in Section 6.8(a).

**"Lender"** shall have the meaning set forth in Section 10.10.

**"Local Project Coordinator"** means a specific individual designated by the IDB and approved by the Company, who shall represent the Authorities in coordinating with the Company regarding the needs and requirements of the Project as set forth in this Agreement so as to ensure compliance by the Authorities with the terms of this Agreement and to enable the Company to meet its obligations under this Agreement.

**"MGD"** shall have the meaning set forth in Section 6.1.

**"Milestone"** or **"Milestones"** shall have the meaning set forth in Section 6.9(b).

**"Milestone Payment Schedule"** shall have the meaning set forth in Section 6.8(f).

**"Natural Gas"** shall have the meaning set forth in Article 6.

**"Natural Gas Service"** means the construction, installation and maintenance of natural gas lines and related facilities, and provision of natural gas service, consistent with the plans and Article 6 hereof, and sufficient to meet the needs of the Company at the Project Site on reasonable efforts basis, now and in the future.

**"Non-Defaulting Party"** shall have the meaning set forth in Section 9.1(a).

**"Non-Disclosure Agreement"** means any agreement by or among any of the Parties to this Agreement and the Company, setting forth the conditions, restrictions and limitations governing any and all disclosures to third parties of information relating to or relevant to this Agreement, including a mutual non-disclosure by and between an Affiliate of the Company and the following entities:

The Industrial Development Board of the County of Montgomery, Tennessee dated January 6, 2015

Montgomery County, Tennessee, dated June 10, 2015

City of Clarksville, Tennessee, dated June 15, 2015

**"Non-Potable Water"** shall have the meaning set forth in Article 6.

**“Parties”** means, collectively, the Authorities and the Company.

**“Party”** means one of the Parties.

**“Peak Demand”** shall mean the single highest daily demand on a system-wide basis for Water as measured by the effluent meter at the Clarksville Water Treatment Plant, the annual average daily flow during the previous twelve (12) month period of Wastewater as measured by the influent meter at the Clarksville Wastewater Treatment Plant, and/or Natural Gas as measured at City gate(s) by applicable flow meters, as applicable, during the previous twelve (12) month period.

**“Permits”** shall have the meaning set forth in Section 3.2.

**“Phase”** or **“Phases”** shall mean additional industrial development improvements by the Company for the operation of its Facility(s) located at the Project Site.

**“Plans”** means all plans, specifications and requirements for the Facility at the Project Site as developed by the Company, its designees, and any architects and engineers employed or retained by the Company, in the Company’s sole discretion.

**“Preliminary Budget”** shall have the meaning set forth in Section 6.8(a).

**“Project”** shall have the meaning set forth in the third WHEREAS clause of this Agreement.

**“Project Milestones”** shall have the meaning set forth in Section 6.8(f).

**“Project Ombudsman”** shall have the meaning set forth in Section 6.17.

**“Project Site”** means the real property located in unincorporated Montgomery County, Tennessee that is presently owned by the IDB and: (i) leased by the IDB to the Company pursuant to the Real Estate Lease, and (ii) a separate portion of which is sub-leased by an entity other than the Company to Airgas Merchant Gases, LLC, which real property comprising the Project Site is described in the attached Exhibit A and is generally depicted as the “subject property” bordered by a dashed yellow line on the map attached as Exhibit B. In addition to the foregoing described real property, the term “Project Site” shall also include all additional land located in the County and acquired by the Company or an Affiliate now or in the future, whether by deed or under one or more long-term leases, easements or similar rights, any portion of which is within the area bordered by a solid blue line on the map attached as Exhibit B, which area extends beyond the boundary of the area marked “subject property.” The term “Project Site,” however, shall not include any land located within the City limits.

**“Public Records Act”** shall mean the Tennessee Public Records Act, T.C.A. §§ 10-7-503 *et seq.*, (1957) as amended.

**“Real Estate Lease”** means that certain Real Estate Lease between the IDB and the Company dated as of December 15, 2015.

**“Reasonable Efforts,”** regardless of whether such term is capitalized, shall mean, with respect to a stated goal, the efforts that a reasonable person in the position of the applicable promisor would use to achieve that goal as expeditiously and completely as possible, consistent with all laws, regulations, and orders to which the promisor is subject and other requirements of this Agreement.

**“Reservation Charge”** shall have the meaning set forth in Section 6.7(d).

**“Road Improvements”** means all necessary and appropriate improvements to the public roads in or around the Project Site as required by the Tennessee Department of Transportation or the County with the Company’s consent, which the Company may not unreasonably withhold, to provide adequate and safe access by public road to the Project Site, including but not limited to access by emergency and fire services, and to handle sufficiently the increased traffic due to the development and operation of the Facility.

**“Sales Agreement”** shall have the meaning set forth in Section 6.8(g).

**“Scheduled Maintenance”** means maintenance that is scheduled and performed by the City following, when reasonably practicable, seven (7) days’ advance written notice to, and in coordination with, the Company so as to avoid or minimize any disruption to the Company’s operations at the Project Site and the Utility Service provided to the Project Site.

**“State”** means the State of Tennessee.

**“Term”** shall have the meaning set forth in Section 2.1.

**“Total Capacity”** shall have the meaning set forth in Section 6.6.

**“Total Natural Gas Capacity”** shall have the meaning set forth in Section 6.4(a).

**“Total Wastewater Capacity”** shall have the meaning set forth in Section 6.2(a).

**“Total Water Capacity”** shall have the meaning set forth in Section 6.1(a).

**“Trade Secret”** shall have the meaning set forth in Section 10.6(a).

**“Trade Secrets Act”** means the Tennessee Uniform Trade Secrets Act, T.C.A. §§47-25-1701 *et seq.*, as amended.

**“Utility Rates”** shall have the meaning set forth in Section 6.11.

**“Utility Service”** or **“Utility Services”** means collectively, the Natural Gas Service, Water Service and Wastewater Service provided by the City, and as set forth in Article 6.

**“Wastewater”** shall have the meaning set forth in Article 6.

**“Wastewater Service”** means the construction, installation and maintenance of sanitary sewer lines and related facilities, and provision of sanitary sewer service, consistent with the

plans and Article 6 hereof and sufficient to meet the needs of the Company at the Project Site on a reasonable efforts basis, now and in the future.

**“Wastewater Service Capacity”** shall have the meaning set forth in Section 6.2(b).

**“Water”** shall have the meaning set forth in Article 6.

**“Water Service”** means the construction, installation and maintenance of potable water lines, water tanks, pumps and related facilities, and provision of water service, consistent with the plans and Article 6 hereof, sufficient in amounts, pressures, and quality to meet the needs of the Company at the Project Site on a reasonable efforts basis, now and in the future. The water quality provided by the City is subject the Tennessee Department of Environment and Conservation requirements.

**“Water Service Capacity”** shall have the meaning set forth in Section 6.1(b).

## **ARTICLE 2**

### **TERM; DESIGNATION OF COORDINATOR; CERTAIN INCENTIVES**

#### **2.1 Term and Termination.**

(a) This Agreement shall commence on the Effective Date and, unless earlier terminated by the Company as permitted under this Agreement, shall continue in effect until neither the Company nor any of its Affiliates, successors or assigns has any leasehold or ownership interest in any portion of the Project Site (the **“Term”**).

(b) The Company may terminate this Agreement at any time upon thirty (30) days prior written notice to the Authorities.

#### **2.2 Local Project Coordinator.**

The Parties hereto agree that it is in the best interests of the Authorities and the Company for the development, design, engineering, construction, equipping and start-up of the Project to proceed within an expeditious timetable and that time is of the essence to achieve the timetable established by the Company. Accordingly, in order for the Project to commence as soon as practicable and to proceed in an orderly and expeditious manner to meet such timetable, the Authorities agree to use reasonable efforts, in cooperation with the Company, by and through the Local Project Coordinator, to assist the Company in implementing and fulfilling the terms and conditions of this Agreement. The Local Project Coordinator shall coordinate the design, engineering and construction of Utility Services with the Project Ombudsman.

#### **2.3 Time of Essence.**

Time is of the essence in the performance of this Agreement.

**2.4 County Engineering and Design Services.**

The County acknowledges and agrees that, to the extent engineering services, design services, and/or traffic studies are necessary in connection with Road Improvements required by the Company for the Project Site, the County shall perform such services in a timely and complete manner at no cost to the Company. The County further acknowledges and agrees that, to the extent engineering and/or design services are necessary in connection with any other improvements required by the Company, except for Utility Services provided by the City, for the Project Site, the County shall perform such services in a timely and complete manner and will charge the Company applicable, reasonable and standard fees similar to other industrial facilities within the County.

**2.5 Industrial Grants.**

To the maximum extent allowed under State law, the Authorities, upon the Company's request, shall cooperate with the Company and assist the Company in obtaining for the benefit of the Project Site, grant funds, either currently available or that may be available in the future, through any State or federal road, fiber optic and/or Water, Wastewater and Natural Gas Infrastructure improvement programs necessary for Road Improvements, fiber optics, Water, Wastewater and Natural Gas Infrastructure, or other infrastructure improvements requested by the Company to meet the needs of the Company at the Project Site (the "Industrial Grant"). The Authorities' obligation in this regard includes using reasonable efforts to prepare and submit in a timely manner all grant applications and associated documentation and agreements necessary for the Company to receive an Industrial Grant. The Company shall reimburse any and all costs incurred by the Authorities associated with assistance provided to the Company in obtaining State or Federal grants, including, without limitation, costs related to applications, administration, required audits, designs and other documentation.

**2.6 Water, Wastewater and Natural Gas.**

At the Company's request, to the extent permitted by law, the Authorities will assist and cooperate with the Company's efforts to obtain all Utility Services sufficient to meet the existing and projected demands of the Company for Natural Gas Service, Water Service and Wastewater Service in connection with the Project as shown on the plans. In connection with the Project, and with respect to activities contemplated herein, the Parties acknowledge that easements, either exclusive or non-exclusive, may be required for the benefit of the Project Site, which easements may be over, under, and across land that is (i) on City or County owned property, (ii) within existing City or County easements, and/or (iii) owned by third parties. The City and County agree to use reasonable efforts to acquire from the State, rights to utilize State easements and rights-of-way identified by the City and the Company as necessary to provide Natural Gas Service, Water Service and Wastewater Service to the Project Site. For the benefit of the Project Site, the City and County agree to grant easements over, under or across land that is owned by the City or County as necessary, at no cost to the Company and at mutually agreeable locations, to enable sufficient Natural Gas Service, Water Service and Wastewater Service to meet the Project needs now and in the future, as further provided in Article 6 hereof.

**ARTICLE 3  
MAKING THE PROJECT SITE SUITABLE**

**3.1 Zoning; Subdivision.**

The County represents to the Company that the Project Site currently is zoned M-2 Industrial. The County covenants and agrees that it will not impose changes to, or additional land use limitations by zoning or similar restrictions on, and that it will not support such zoning or other restriction of, the Project Site during the Term. The City represents that the Project Site is beyond its zoning authority and subdivision regulation.

**3.2 Assistance with Permits.**

(a) To the extent permitted by applicable law and provided the Company has submitted all applications and other required information and documents in a complete and prompt manner, and without the following being deemed to limit or otherwise shorten any time periods prescribed by law, the Authorities shall, as applicable, with respect to the Project: (i) cooperate and assist the Company with respect to its timely filing of all applications for, obtaining and timely renewal of, all applicable permits, licenses, authorizations and approvals (collectively, "Permits") with the Authorities or other government agencies, as applicable; such assistance to include, when applicable, facilitating the timely issuance of all Permits required in connection with site plan approvals and construction permits, all to be issued on a timely basis, and (ii) use reasonable efforts to (A) cause all Permit decisions necessary for the establishment and equipping of the Project to be made as soon as reasonably practicable, and in any event no longer than sixty (60) days (or ninety (90) days if a public hearing is requested) after filing the applicable and materially complete application in accordance with the applicable statutes and regulations, and (B) avoid an Approval Event.

(b) The Company shall comply with land use regulations, codes and laws affecting the acquisition, ownership, use, improvement and development of the Project Site and nothing in this Agreement constitutes an exemption or grant of a variance from such applicable laws. The County and IDB agree, consistent with its regulatory duties and responsibilities, to cooperate with the Company in applying for the requisite and necessary approvals, licenses, permits, variances and permissions for any and all aspects of the development and operation of the Project Site including, by way of illustration and not limitation, approvals, permits, licenses or permissions for excavations, demolitions, traffic control matters, relocation of utilities and easements, height variances, sidewalk approvals, curbing approvals, street approvals and any other necessary activity required in connection with the development and operation of the Project Site.

**3.3 Building Inspection Services.**

The County provides building code inspection services and will require building inspection with respect to the Facility, including any future Phases. The City requires and provides inspection of new Utility Services of commercial and/or industrial facilities within the County. The City of Clarksville Building and Codes Department shall inspect all on site utility work and the Clarksville Gas and Water Department shall inspect all offsite utility work. The

City and the County will charge the Company applicable, reasonable and standard inspection or permit fees similar to other industrial facilities within the County. The County and the City further agree, consistent with its regulatory duties and responsibilities, to (i) cooperate with the Company in completing building and utility inspections in a timely and efficient manner for any and all aspects of the development and operation of the Project Site for which inspection is required, and (ii) utilize its employees in conducting such inspections, and (iii) maintain or contract an adequate staff to accomplish the inspection services so as to avoid outsourcing inspection services, but to the extent outsourcing occurs not to charge the Company more than the applicable, reasonable and standard inspection or permit fees similar to other industrial facilities within the County.

#### **ARTICLE 4 ADDITIONAL CITY AND COUNTY OBLIGATIONS**

In addition to all other obligations of the City hereunder, to the extent permitted by applicable law, the City covenants and agrees that it will not annex, or seek the annexation of, any portion of the Project Site into its city limits, nor impose or attempt to impose any municipal utility gross receipts, franchise (including any franchise fees imposed on the sale of natural gas, water, wastewater or any other utility service), property, sales or use, business license or similar fee or tax on the Company or its Affiliates (or on the seller of taxable services to the Company) at or for the Facility or the Project Site except for fees and charges for Utility Services approved by the Clarksville City Council applicable to other similar industrial customers of Utility Services. The City agrees, through its fire department to provide fire protection to the Project Site at no charge during the Term. The City represents that it holds at least an Insurance Services Office, Inc. public protection classification Class 3 rating designation and will use reasonable efforts to maintain that designation during the Term.

The County shall provide police and ambulance services to the Project Site.

#### **ARTICLE 5 FIBER OPTIC IMPROVEMENTS**

To the full extent permitted by applicable law, regulation or instrument of conveyance, and to the extent the same does not infringe on the rights of existing utility providers, the Authorities agree to grant to the Company (or its Affiliate or any designated third party contractor or vendor), upon request and at no expense to the Company, any and all easements and other access rights over and to all public utility easements over which the applicable Authority has jurisdiction or authority, as necessary to enable the Company (or its Affiliate or any designated third party contractor or vendor) to design, permit, construct and operate at its expense a fiber conduit system including a fiber optic cable and/or similar technology to the Project Site including any future Phases. The City and the Company shall mutually agree on a reasonable location within said easements where the fiber conduit system, including a fiber optic cable and/or similar technology, will be constructed. The Company shall pay any applicable, reasonable and standard fees for any necessary utility relocations or pole attachment fees, which will be no more than those fees assessed to other users within the County.



**ARTICLE 6**  
**WATER, WASTEWATER AND NATURAL GAS**

The City acknowledges that potable water ("Water"), wastewater ("Wastewater") and natural gas ("Natural Gas") infrastructure and supply, capable of meeting the needs of the Project and defined in Article 6 hereto, must exist to allow for the successful development and operation of the Project throughout the Term. The needs of the Project may require that the City cooperate with the Company, should the Company, in its sole discretion, from time to time, request that the following improvements be made by the City, to: (1) allow access to existing and future Water, Wastewater and Natural Gas Services; (2) construct, enhance or upgrade existing or future Water, Wastewater and Natural Gas infrastructure; or (3) any or all of these improvements in any combination to accommodate the Project's initial and future needs throughout the Term. Further, the needs of the Project may require that the City cooperate with the Company for the potential development and construction of infrastructure for a supply of process water, raw water, and/or treated wastewater effluent (collectively, "Non-Potable Water"). The City agrees to use reasonable efforts to supply these services and infrastructure to the Project throughout the Term, and to do so in a manner that: (1) meets the Company's scheduling needs; (2) reduces costs to the Company for infrastructure and supply as much as reasonably practicable; and (3) meets all required design, specification and performance criteria.

Accordingly, the City agrees to collaborate with the Company to evaluate, develop and construct Water, Non-Potable Water, Wastewater and Natural Gas infrastructure facilities that best meet the City's and Company's needs. The City will design and engineer the system or systems that the Company requests, and serve the Company with the requested sources of Water, Non-Potable Water, Wastewater and Natural Gas. The Company may request to change such systems and/or upgrade the facilities to allow for more capacity at any point during the Term.

**6.1     Potable Water.**

(a)     The City represents that, as of the Effective Date, the existing water plant has a rated design capacity that can produce 28 million gallons per day ("MGD") of Water (the "Total Water Capacity"). The City further represents that the average daily demand for Water in 2014 was 15.9 MGD, and the demand for Water on the peak day in 2014 was 22.4 MGD.

(b)     The City agrees to furnish Water Service to the Project from its existing Water system and to make available and supply, for the use of the Project, Water capacity in amounts and as described in Exhibit C (the "Water Service Capacity") at all times, except for a Force Majeure event or Scheduled Maintenance. In the event the Project requires additional volumes of Water, the City will provide incremental volumes under the terms and conditions contained herein.

**6.2     Wastewater.**

(a)     The City represents that, as of the Effective Date, the existing domestic wastewater plant has a rated design capacity for of 25 MGD annual average daily flow of conventional municipal wastewater (the "Total Wastewater Capacity"). The City further represents that the average daily demand for Wastewater in 2014 was 9.25 MGD.

(b) The City agrees to furnish Wastewater Service to the Project from its existing wastewater system and to make available and accept, for the use of the Project, Wastewater capacity in amounts and as described in Exhibit D (the “Wastewater Service Capacity”) at all times, except for a Force Majeure event or Scheduled Maintenance. In the event the Project requires additional volumes of Wastewater, the City will provide incremental volumes under the terms and conditions contained herein.

**6.3 Non-Potable Water.**

The City agrees that it has the authority to provide the Company with Non-Potable Water. The City shall cooperate and work with the Company to develop any grades of Non-Potable Water upon the Company’s request in accordance with Section 6.7 (f).

6.4 **Natural Gas.** The City agrees to furnish Natural Gas Service and to make available and supply, for the use of the Project, Natural Gas Service at all times, except for a Force Majeure event or Scheduled Maintenance, in amounts and as described in a separate Natural Gas Sales Agreement to be negotiated and entered into by the City and the Company. In the event the Project requires additional volumes of Natural Gas, the City will provide incremental volumes under the terms and conditions contained herein and as provided in the Natural Gas Sales Agreement.

**6.5 Service Capacity.**

The Natural Gas Service, the Water Service Capacity and the Wastewater Service Capacity, as applicable, shall hereinafter be referred to collectively as the “Service Capacity.” The City agrees to commit the Service Capacity to the Company for the Project and all future Phases, pursuant to the provisions of this Article 6.

**6.6 Total Capacity.**

The Total Natural Gas Capacity, the Total Water Capacity, and/or the Total Wastewater Capacity, as applicable, shall hereinafter be referred to collectively as the “Total Capacity.”

**6.7 Procedures for Additional Service Capacity and Capacity Expansion.**

(a) From time to time during the Term, the Company may request in writing from the City its then current Peak Demand (as defined above) and then current Total Capacity. Following receipt of such a request from the Company, the City shall respond to the Company in writing within ten (10) Business Days stating its then current Peak Demand and then current Total Capacity.

(b) From time to time during the Term, the Company may notify the City in writing of the Project’s increased future demand for Water, Wastewater, and/or Natural Gas (“Incremental Demand”) as adjusted by any Incremental Reserved Capacity, and request additional volume(s) of Water, Wastewater, and/or Natural Gas (each an “Incremental Demand Request”). The Company’s notification and Incremental Demand Request under this Section 6.7(b) will both be subject to protection as Trade Secrets and to the confidentiality provisions set forth in this Agreement.

(c) Following receipt of an Incremental Demand Request, the City shall respond to the Company in writing within ten (10) Business Days, stating whether the Incremental Demand, when added to the then current Peak Demand, totals less than, greater than, or equals ninety percent (90%) of the then current Total Capacity.

(d) If the Incremental Demand, when added to the then current Peak Demand, totals less than ninety percent (90%) of the then current Total Capacity, the City shall supply the Incremental Demand to the Project. Further, the Company shall have the right at any time upon written notice to the City to reserve all or a portion of the Incremental Demand for its exclusive use at a mutually agreed price per gallon ("Reservation Charge"), as applicable, which price will be based upon the cost of then current Total Capacity, in which case, such Incremental Demand shall be deemed Incremental Reserved Capacity as described in Section 6.12.

(e) If the Incremental Demand, when added to the then current Peak Demand, totals ninety percent (90%) or greater of the then current Total Capacity, the City may either: (i) notify the Company in writing within ten (10) Business Days that a Capacity Expansion (as defined below) is needed to supply the Incremental Demand; or (ii) furnish the Water, Wastewater and/or Natural Gas to the Company to supply the Incremental Demand, and, for a period of eighteen (18) months after the Incremental Demand Request, initiate a Capacity Expansion (as defined below) by submitting written notice to the Company, in which case the Company shall be obligated to work with the City on the Capacity Expansion subject to the conditions set forth in Article 6 of this Agreement.

(f) If the Company determines that it requires, or will require an expansion of any part of the Water, Wastewater or Natural Gas infrastructure, or development of Non-Potable Water infrastructure to ensure the City has sufficient Total Capacity to supply the Incremental Demand (each a "Capacity Expansion"), the Company shall give a notice to the City that includes the amount of the Incremental Demand and the date upon which such Incremental Demand will be needed (each a "Company Notice"). The Company's election to request a Capacity Expansion may be made in the Company's sole discretion and need not be based on actual consumption.

(g) The City acknowledges and agrees that the Company's requests, notices, and other information related to Incremental Demand and Capacity Expansion are protected as Trade Secrets under Section 10.6 of this Agreement and subject to the confidentiality provisions set forth in this Agreement.

#### **6.8 Design, Engineering and Construction of Capacity Expansion.**

If and when a Company Notice is provided to the City, and subject to the terms hereof, the City shall take the following actions:

(a) No later than fifteen (15) Business Days following receipt of the Company Notice, the City shall present to the Company a proposed solution or scenario to address the Company's needs with a Capacity Expansion along with a preliminary projected cost and preliminary schedule estimates for such solution. The Company shall bear full cost of preparing the proposal and accompanying projected budget. If the Company elects to proceed based on the

proposal, then the City shall prepare and deliver to the Company for its approval, a written preliminary budget for estimated expenses the City expects to incur in developing the matters and items set forth in subsection (b) below, applying and using best engineering practices and procedures (as may be revised with the consent of both parties, the "Preliminary Budget"). After the parties come to an agreement on the amount of the Preliminary Budget, the Company shall advance to the City the amount of money agreed upon for the Preliminary Budget, or such prorated amounts as are required pursuant to Section 6.10 hereof (the "Initial Advance"). Upon receipt of an Initial Advance, the City shall commence and expeditiously prosecute the action items in subsection (b) below.

(b) Prepare and deliver to the Company (i) a schedule for completing the Capacity Expansion as soon as reasonably practicable, but no longer than ninety (90) days following receipt of the Initial Advance, which schedule shall include a timeline for design, bidding, and construction, and (ii) appropriate schematic and design plans, specifications, engineering and diagrams for the Capacity Expansion, together with an estimated construction budget for such expansion, to be provided as soon as reasonably practicable but, unless otherwise agreed to by the Parties, no longer than one hundred twenty (120) days following receipt of the Initial Advance. If the City fails to perform, provide or complete the tasks in this subsection (b) to the reasonable satisfaction of the Company, then the Company may demand a refund of the Initial Advance, the City agrees to re-pay such Initial Advance less any cost incurred by the City, and the Capacity Expansion will be null and void.

(c) Prior to commencing construction of the Capacity Expansion, the City shall present its engineering drawings and construction plans to the Company for review. The City will not proceed with construction until the Company gives its written approval to the City. If the Company requests a change to the design, engineering, schedule, plan, or other aspects of the project, the Company will submit an "Engineering Submission." The City agrees to respond to any Engineering Submission made by the Company as soon as reasonably practicable, but no longer than ten (10) Business Days after submission. Approval of said Engineering Submission shall not be unreasonably withheld, delayed or conditioned. If revisions requested by the Company are accepted by the City, the City shall provide a detailed list of accepted changes and a revised Preliminary Budget as soon as reasonably practicable, but no longer than ten (10) Business Days after submission by the Company. The City and the Company acknowledge and agree that the design and engineering information and data prepared by the Company or on its behalf, shall be contained in a separate document and shall be classified as Trade Secrets and shall also be subject to the confidentiality provisions set forth elsewhere in this Agreement.

(d) Following successful completion of the activities in Sections 6.8(a) through (c) above, and pending the Company's decision to continue with the proposed Capacity Expansion project, the Company and the City shall negotiate and enter into a written agreement to set forth the terms and conditions for the Capacity Expansion (the "Capacity Expansion Agreement"), to include, but not be limited to, the scope of the work, timelines, change order process and estimated and projected Milestone Payment Schedules (as hereinafter defined).

(e) Upon execution of the Capacity Expansion Agreement, the City shall complete a competitive bidding process to the extent required by the Clarksville Municipal Code, City Purchasing Policy, and State law and, unless otherwise agreed by the Parties, use reasonable

efforts to complete the process within sixty (60) Business Days after the execution of the Capacity Expansion Agreement.

(f) In conjunction with preparing the Capacity Expansion Agreement, the City shall prepare and deliver to the Company a schedule of milestones ("Project Milestones") along with an estimate of the cost associated with achieving each Project Milestone ("Milestone Payment Schedule"), which shall be adjusted after bid award. The Company must approve the Milestone Payment Schedule, which will be incorporated as a part of the Capacity Expansion Agreement. The process for implementation of the Milestone Payment Schedule is set forth in Section 6.9 hereof.

(g) In the event the Company requests Non-Potable Water service or any expansion of existing Non-Potable Water service capacity, the Parties shall follow the same procedures outlined in Sections 6.7(a) through 6.8(f) above, and the City, in conjunction with preparing a Capacity Expansion Agreement, shall submit to the Company for its approval, a sales contract for the purchase and sale of Non-Potable Water (the "Sales Agreement") between the Company and the City. The Sales Agreement, if agreed upon, will be executed concurrently with the Capacity Expansion Agreement for Non-Potable Water infrastructure. The Sales Agreement shall include, among other information, the rate for the use of Non-Potable Water, the minimum and maximum flows to be provided and such other information as the City and the Company deem appropriate.

(h) Following approval and execution of a Capacity Expansion Agreement and, if applicable, a Sales Agreement, the City shall commence construction of the Capacity Expansion and use reasonable efforts to have the Capacity Expansion completed by the agreed delivery date.

(i) The City shall provide periodic updates to the Company upon request, but no more than on a monthly basis, on the construction progress.

(j) In the case of a Capacity Expansion for Non-Potable Water infrastructure, the City shall construct such system(s) in a good and workmanlike manner and each such system must have adequate pressure, capacity and quality necessary to meet the Company's desired specifications, regardless of the Company's actual use. The City acknowledges and agrees that the design criteria and building standards proposed by the Company, which are Trade Secrets, may exceed standard design and building practices. The City agrees nevertheless to build the requested system to the Company's higher standard.

#### **6.9 Company's Obligation to Pay Costs; Milestone Payments.**

(a) The Company agrees to pay the City a pro rata share of the costs incurred in constructing a Capacity Expansion ("Expansion Costs"). The Company's pro rata share of the Expansion Costs shall be determined as set forth in Section 6.10 hereof. The Expansion Costs shall be inclusive of any and all project related costs, including, without limitation, land acquisition, engineering, surveying, permitting, administrative and attorneys' fees, together with the actual cost of construction as set forth in the construction contract awarded by the City and any change orders thereto. Expansion Costs shall also include project specific, documented costs

incurred by the City with respect to the Capacity Expansion prior to the Company's Notice, if any. The City shall provide expense reports, invoices and similar documentation as may be reasonably requested by the Company to provide confirmation of the City's calculation of the Company's pro rata share of the Expansion Costs.

(b) The Expansion Costs shall be payable in installments, either partially or completely paid in advance for, or paid upon the achievement of, certain milestones related to the design and construction of the Expansion Capacity (each, a "Milestone" and collectively, the "Milestones"), to be set forth in the Milestone Payment Schedule as adjusted after bid award. The designated Engineer of Record acting on behalf of the City shall determine when any such Milestones have been achieved. The Company shall pay the portions of the Expansion Costs associated with achieving each Milestone upon the dates specified in the Milestone Payment Schedule, in the case that prepayment is necessary, or upon the City achieving the Milestones as described in the Milestone Payment Schedule. If the Company prepays a portion of the Expansion Costs for a Milestone, upon achieving that Milestone, the City shall deliver supplemental information to the Company documenting all costs incurred in reaching the associated Milestone and documenting that the Milestone has been achieved. If there are remaining funds from a Milestone Payment and with the Company's consent, unless otherwise agreed to by the parties, the City shall retain such remaining funds and apply the balance of such funds toward future Milestones. At the end of the Expansion Capacity project, Expansion Costs shall be reconciled and any remaining funds that were prepaid by the Company will be immediately returned to the Company. In the event Expansion Costs exceeded Company payments, Company shall immediately pay additional funds required to cover the Expansion Costs.

(c) In the event the City does not meet a Milestone, the City shall provide a detailed recovery schedule setting forth the City's future efforts to expeditiously remedy the delay in the construction of the Milestone. The designated Engineer of Record acting on behalf of the City shall determine when any such Milestones have been achieved. The Company reserves the right to visit, inspect and conduct a formal audit of the site, at any time, for the purpose of insuring that the Milestones have been met or exceeded by the City. The Company may withhold paying further Milestone Payments until such Milestones are completed to the requirements in the Capacity Expansion Agreement.

(d) Each Capacity Expansion Agreement shall require the City, as a prerequisite for payment, to provide lien and claim waivers from its general contractor and, as agreed to by the City and Company, subcontractors and suppliers, in a form approved the Company.

#### **6.10 Computation of Company's Share of Expansion Costs.**

The Company's pro rata share of the Expansion Costs shall be determined by multiplying the total estimated Expansion Costs by a fraction, which fraction shall have as its denominator the rated capacity of the Capacity Expansion and as its numerator the Incremental Demand. If the Capacity Expansion is designed exclusively to accommodate the Incremental Demand, the Expansion Costs shall be paid solely by the Company.

**6.11 Utility Rates.**

(a) For Water, Wastewater and Natural Gas services provided by the City, the City shall charge the Company, and the Company agrees to pay, the lowest industrial rate in effect at the time of usage established by the City for industrial users outside the City limits or, in the case of Natural Gas, the rate established in the Natural Gas Sales Agreement (collectively, the "Utility Rates").

(b) If the City constructs Non-Potable Water infrastructure that is to be used by the Company, then, as a part of the Sales Agreement, the City and the Company shall negotiate in good faith a service rate that reimburses the City for its actual pass-through of all operating costs. The City shall keep accurate records of its operating costs and Utility Rates for any such system and shall provide the Company with a copy of its annual audit upon request by the Company.

(c) The Company may request from the City documentation supporting the analysis and assumptions used by the City to develop the Utility Rates.

**6.12 Incremental Reserved Capacity.**

In consideration for the Company's payment or reimbursement for Capacity Expansion projects, once a Capacity Expansion is completed, the Company shall have exclusive access to the incremental capacity added by the Capacity Expansion (the "Incremental Reserved Capacity") equal to the Incremental Demand associated with the Capacity Expansion. The term Incremental Reserved Capacity shall mean the ability and commitment of the City to produce and/or dispose and treat, as applicable, Water, Sewer, Non-Potable Water and/or Natural Gas and deliver it to or remove it from the Project Site at the daily flow rate and pressure as requested by the Company at all times, except for a Force Majeure event or Scheduled Maintenance. If the Company pays for the Capacity Expansion that is designed exclusively to accommodate the Company's Project, the Incremental Reserved Capacity will be equal to the entire Incremental Demand of the Capacity Expansion project.

**6.13 Acquisition of Easements, Rights-of-Way and Land.**

(a) The City acknowledges that acquisition and use of easements, rights-of-way and land are necessary for the intended use of the Project, including, but not limited to, extension of infrastructure for Water, Non-Potable Water, Wastewater and Natural Gas infrastructure (the "Easements and Land Acquisitions").

(b) Upon request by the Company, and as a result of a need for a Capacity Expansion, the City shall immediately begin acquisition of the Easements and Land Acquisitions required for the Capacity Expansion, including Easements and Land Acquisitions extending from the City's existing affected facility to the Company's designated property line. The City shall ensure that the easements are properly executed by the owners of the land through which the easements extend and that any mortgagees or similar lien holders consent to the easement in order to preserve the easements in the event of a foreclosure or other enforcement action by mortgagees or lien holders. These Easements and Land Acquisitions may be used only as a

public utility corridor, to accommodate all types of Water, Wastewater, Non-Potable and Natural Gas infrastructure that will serve the Company's Project. The City shall use reasonable efforts to secure a public utility corridor in a width commonly obtained for construction of such lines. The Easements and Land Acquisitions constituting the public utility corridor shall include the acquisition by the City of land of sufficient size and appropriate location to allow the construction and use of pumping stations. The City shall approach, communicate and negotiate with landowners, including any owners of railroad rights-of-way through which the lines must pass, to expedite acquisition of the easements, rights-of-way and land between the City's affected facilities and the Company's designated property line.

(c) The City shall provide the Easements and Land Acquisitions for the Water, Wastewater, Non-Potable Water and Natural Gas Infrastructure for the benefit of the Project at no cost to the Company for portions of easements or rights-of-way located on City property, or within City easements, and the City shall use reasonable efforts to ensure that such easements are located within City rights-of-way wherever possible.

(d) The City acknowledges and agrees that the development of the Project may, from time to time throughout the Term, require additional easements or relocation of previously granted easements. The City and the Company shall cooperate in the actions necessary to effect such future easements or relocation of existing easements, including the execution and recording of new or amended easement documents. The City and the Company acknowledge that the location of any easement paid by the Company for the Project shall require the mutual agreement of the City and the Company, but approval of such Project easements shall not be unreasonably withheld, conditioned or delayed and if withheld, the City shall use reasonable efforts to identify an alternative acceptable to the Company.

#### **6.14 Self-Performance.**

(a) Notwithstanding the provisions of Section 6.8 and Section 6.13 hereof, the Company shall have the right, in consultation with and upon the prior written consent of the City, which shall not be unreasonably withheld, at any time the City has failed in any manner to meet any agreed-upon schedules, cost expectations, or to construct such systems to specifications and/or to a quality required by the Capacity Expansion Agreement, to: (i) exercise exclusive control over the design, engineering and construction of a Capacity Expansion (or any new Water, Non-Potable Water, Wastewater and Natural Gas infrastructure system that may be needed at any time including any future Phase) and (ii) obtain the Easements and Land Acquisitions. All designs, plans and specifications for Capacity Expansion shall meet the minimum design criteria of the City and any regulatory authority with jurisdiction and must receive written approval from the City. Among other reasons, the Company may exercise the right to control the building process if the Company determines that it is better positioned to perform the Capacity Expansion or obtain any required Easements and Land Acquisitions for the Capacity Expansion. The City, or its designee, shall have a right to inspect and approve all construction related to the Capacity Expansion.

(b) Should the Company elect to control the construction process for a Capacity Expansion and obtaining of the Easements and Land Acquisitions as aforesaid, upon completion the Company shall transfer title to all City-approved Water, Wastewater and Natural



Gas infrastructure system and attendant Easements and Land Acquisitions related to the Capacity Expansion, to the City.

**6.15 Inspection.**

The Company shall have the right to inspect and review the progress of the construction and development related to a Capacity Expansion. In exercising this right, the Company shall not unreasonably interfere with the construction. The City shall, upon receipt of a request from the Company or its designees, provide the Company with a copy of all schedules of work, construction critical path charts, or similar information contained in the City's contracts with its contractors. The City shall advise the Company in advance of any routine progress meetings or conferences regarding the progress of the construction or unusual problems encountered with respect thereto. The Company, at its election, may be represented at such meetings. The City shall notify the Company in a timely manner of any changes or anticipated changes in the construction schedule and of any unusual problems encountered with respect to the construction.

**6.16 Public Funding Sources; Existing Indentures; Representations; No Assurances.**

(a) At the Company's request, the City agrees to pursue or assist the Company in pursuing any and all available public infrastructure funding for improvements to the City's system to provide for Capacity Expansion. In the event that public funding or grants are secured specifically for the City for a Capacity Expansion for the benefit of the Project, the City agrees to provide to or for the Company, at the Company's request, an amount equal to the cost paid by the Company for the Capacity Expansion or an amount equal to the public funding or grant, whichever is less, either in the form of funding applied directly to the construction of the Capacity Expansion, or other future improvements that would otherwise be incurred by the Company, or in the form of a credit to reserve a portion of the then current Total Capacity, or as a refund of payments already incurred by the Company for the Capacity Expansion, whichever the case may be. In no event shall the City be required to pay any amount to secure any such grant or public funding. Where allowed, the IDB on behalf of the City shall seek grant funds from the State or Authorities to contribute to the Expansion Costs. If an Authority or the State should provide grant funds in connection with the Capacity Expansion prior to construction being commenced, such grant funds will be applied to reduce the total amount of Expansion Costs for the Capacity Expansion.

(b) The execution, delivery and performance of this Agreement by the City will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the City or pursuant to the terms of any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the City is a party or by which any of the assets and property of the City is subject, nor will such action result in any violation of the provisions of any statute or any order, rule or regulation of any governmental authority having jurisdiction over the City or any of its properties or assets, and any consent, approval, authorization, order, registration or qualification of or with any court or any such governmental authority required for the execution, delivery and performance by the City of this Agreement has been obtained and is in full force and effect.

(c) The City is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which either is a party or by which the City is bound.

**6.17 Project Ombudsman.**

No later than five (5) Business Days after the Effective Date, the City shall provide written designation of an authorized single point of contact (the "Project Ombudsman"), who will assist the Company with all Project related issues, transactions, and activities contemplated herein, as necessary, on an ongoing basis. The Project Ombudsman will be responsible for assisting with commitments of the City as described herein; including coordinating with other City employees and other third party representatives, as appropriate, now and in the future, and as may from time to time arise in an administrative, communications and facilitation context. Any written communication (including plans, drawings, site diagrams, Notices, or other documents) delivered by the Company to the Project Ombudsman with respect to the Project shall be deemed delivered to the appropriate representative of the City with respect to such communication. The City also agrees that the Project Ombudsman shall review plan submissions and respond to the Company within ten (10) business days of plan submission, unless another time period is provided elsewhere in this Agreement.

**6.18 Nondisclosure.**

The City understands and acknowledges that it, its agents, employees, independent contractors and others working under or on behalf of the City will have contact with and access to sensitive and confidential information and terms, including design and business information, of the Company which the Company does not wish disclosed to others and which constitute Trade Secrets for purposes of this Agreement, including without limitation all information identified in Sections 6.1, 6.2, 6.4 and 10.6 hereof and all information and materials provided, accessed or otherwise made available in connection therewith, including without limitation all exhibits, schedules and addenda relating thereto. The City understands and agrees that it will occupy a position of trust with the Company and agrees to assume a fiduciary responsibility to the Company to maintain in total confidence such information as contained or referenced in or accessed in connection with this Agreement or otherwise made available to the City, as to the Project and as to the Company's business, and to use any such information obtained only for the benefit of the Company and otherwise to act in all respects as to such information with fidelity solely for the benefit of the Company. The City acknowledges and agrees that it shall be responsible and liable for any and all breaches of this Section 6.18 or any other confidentiality or non-disclosure obligation of the City herein by any of its employees, agents, or contractors.

**ARTICLE 7  
COMPANY'S REPRESENTATIONS**

In consideration of the Authorities providing the incentives described herein, the Company makes the following representations to the Authorities, subject to the Contingencies:

**7.1 Licensing; Compliance with Laws.**

The Company is in good standing, licensed and qualified to do business in the State, all in accordance with State law.

**7.2 No Prohibitions.**

To the Company's actual knowledge, the Company is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, order or judgment to which the Company is bound.

**7.3 Contingencies.**

The Company's obligations to begin performance under this Agreement shall be contingent in the Company's sole discretion upon all of the following conditions ("Contingencies"):

- (a) the nonexistence or nonoccurrence of the following:
  - (i) an event of Force Majeure; a material defect with the Project Site preventing or impairing the Company's intended use of the Project Site, discovered at any time by any Party through due diligence;
  - (ii) litigation, administrative appeals, proceedings or claims of any kind regarding or affecting the issuance of Permits or Consents, development of, or installation or operation of Road Improvements and Water, Wastewater and Natural Gas infrastructure on or to the Project Site; and
  - (iii) other events, actions or circumstances, which reasonably impair or frustrate, or reasonably threaten to impair or frustrate, the efficient use or operation of the Project or the Project Site (including without limitation any Water, Wastewater and Natural Gas infrastructure and any future Phases thereof) or the Company's performance under this Agreement.
- (b) the maintenance of confidentiality as to Trade Secrets by each Authority, to the maximum extent permitted by law, as required under the terms of Section 10.6; and
- (c) IDB has fully and unconditionally approved, executed and delivered the Real Estate Lease, in a form and on terms acceptable to the Company, in its sole discretion.

**7.4 Failure to Meet Contingencies.**

If any of the Contingencies are not met, then the Company may terminate this Agreement. If a Contingency described in Section 7.3 is not met solely due to a Force Majeure event, then, regardless of whether the Company terminates this Agreement, the Authorities responsible for meeting the Contingency shall not be in default under this Agreement.

**ARTICLE 8  
ADDITIONAL PROPERTIES**

The Company may desire to lease and/or acquire additional properties adjacent to or in proximity to the Project Site. IDB shall assist the Company to obtain exclusive use of these additional properties, either through a deed or ground lease that contains an option to purchase the fee simple title thereto, under similar terms and conditions as set forth in the Real Estate Lease. The parcels addressed in this Article 8 include additional IDB-owned properties adjacent to or in proximity to the Project Site as well as additional non-IDB-owned properties adjacent to or in proximity to the Project Site all as generally depicted in Exhibit B.

At the Company's election, IDB and the Company shall work together to identify additional tracts of real property either owned or not owned by IDB but which are located adjacent to or within close proximity to the Project Site, and which may be necessary for the Company's intended development of the Project (the "Additional Properties"). At the Company's election, IDB shall work with the Company to contact any landowners on Additional Properties identified during the term of this Agreement, at the Company's request, and determine such landowner's interest in selling the identified property. At the Company's request, IDB will propose an assignable option agreement to the landowner(s). IDB shall only offer terms or information on the Company's behalf that have been pre-approved by the Company. Subject to the Company's approval, IDB shall execute the option on behalf of IDB and transfer the option agreement to the Company as soon as practicable ("Additional Land Conveyances"). IDB shall not disclose the Company's identity during this process unless pre-approved by the Company. IDB's obligations under this Article 8 shall continue throughout the Term.

8.1 **Amendment to Development Agreement.** Should IDB and the Company execute any easements or Additional Land Conveyances within the area depicted in Exhibit B, this Agreement shall be amended to reflect such acquisition or grant, and that the acquisition or grant of such interest shall become a part of the Project, and be subject to the terms hereof and the benefits derived hereunder to the respective Parties.

**ARTICLE 9  
DEFAULT, REMEDIES**

9.1 **Events of Default.**

The occurrence of any one or more of the following will constitute an event of default ("Event of Default") under this Agreement:

(a) If either Party should fail to perform any of its obligations under this Agreement (a "Defaulting Party") as and when required, which failure continues for a period of thirty (30) calendar days after written notice of such failure by the non-defaulting Party (a "Non-Defaulting Party"). However, if the Defaulting Party's failure to perform its obligations as described in this Section is of the nature that it cannot be cured within the thirty (30) day cure period after such written notice from the Non-Defaulting Party but reasonably could be cured within ninety (90) days, then the Defaulting Party will have additional time as determined by the Non-Defaulting Party in the Non-Defaulting Party's reasonable discretion, in which to cure such

default, provided that the Defaulting Party has diligently commenced to cure such default during the initial thirty (30) day cure period and diligently pursues the cure of such default. However, no such notice or cure periods will apply in the case of any such failure which could, in the Non-Defaulting Party's judgment, absent immediate exercise by the Non-Defaulting Party of a right or remedy under this Agreement, result in irreparable harm to the Non-Defaulting Party or danger to the Project.

(b) The Defaulting Party fails to perform any of its obligations as and when required under any executed written agreements relating to the Project other than this Agreement which failure continues beyond the applicable cure period, if any, specified in that written agreement.

## **9.2 Remedies.**

(a) Upon an Event of Default, the Non-Defaulting Party may exercise any or all of rights and remedies provided by applicable law or equity, including, but not limited to, instituting claims for damages, specific performance, and/or injunctive relief, and the Defaulting Party will pay all costs associated therewith, including reasonable attorneys' fees and costs.

(b) Each right and remedy is distinct from all other rights or remedies under this Agreement or afforded by applicable law or equity, and each will be cumulative and may be exercised concurrently, independently or successively, in any order. The Non-Defaulting Party's exercise of any particular right or remedy will not in any way prevent the Non-Defaulting Party from exercising any other right or remedy available to it. The Non-Defaulting Party may exercise any such remedies from time to time and as often as it chooses.

## **ARTICLE 10 MISCELLANEOUS**

### **10.1 Counterpart Originals.**

This Agreement may be executed in counterparts and in the form of duplicate originals, at least one original of which is being retained by each of the Parties hereto and each of which shall be deemed an original hereof.

### **10.2 Governing Law.**

This Agreement shall be construed in accordance with and governed by the laws of the State of Tennessee.

**10.3 Severability.**

In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In the event any such provision is held to be invalid, illegal or unenforceable, the Parties hereto shall use reasonable efforts to agree on a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

**10.4 Enforceability.**

Should any provision of this Agreement be declared invalid or unenforceable as a matter of law, such invalidity or unenforceability shall not affect or impair the validity or enforceability of any other provision of this Agreement or the remainder of this Agreement as a whole.

**10.5 Notices.**

Any notice required by this Agreement will be deemed properly given if delivered in writing to the address specified below: (a) personally, (b) by recognized overnight courier service, (c) by certified United States Mail, postage prepaid:

**Montgomery County:**

Montgomery County  
c/o Mayor Jim Durrett  
1 Millennium Plaza  
Clarksville, TN 37040

**City of Clarksville:**

City of Clarksville  
% Mayor Kim McMillan  
One Public Square  
Clarksville, TN 37040  
Phone: (931) 645-7444  
Fax: (931) 552-7479  
Email: kim.mcmillan@cityofclarksville.com

**With copies to:**

Clarksville Gas & Water Department  
c/o Pat Hickey, General Manager  
2215 Madison Street  
Clarksville, TN 37043  
Phone: (931) 645-7400  
Email: pat.hickey@cityofclarksville.com

City of Clarksville Department of Law  
c/o Lance Baker, City Attorney  
One Public Square  
Clarksville, TN 37040  
Phone: (931) 553-2475  
Fax: (931) 221-0122  
Email: lance.baker@cityofclarksville.com

IDB:

The Industrial Development Board of the  
County of Montgomery, Tennessee  
25 Jefferson Street, Suite 300  
Clarksville, TN 37040  
Attention: Chairman

With a copy to:

Batson Nolan, PLC  
c/o Richard H. Batson  
121 South Third Street  
Clarksville, TN 37040  
Email: rhbatson@batsonnolan.com

Company:

Foxman LLC  
c/o Corporation Services Company  
2711 Centerville Road, Suite 300  
Wilmington, DE 19808  
Attn: General Counsel

With copies to:

Bass, Berry & Sims PLC  
150 3rd Ave. S., Ste. 2800  
Nashville, TN 37201  
Attn: Stephen J. Jasper  
Phone: (615) 742-7772  
Email: sjasper@bassberry.com

All notices shall be considered to have been given on the earlier of (i) receipt or (ii) three days after the date of mailing or one day after delivery to an overnight carrier as provided herein. Any party to this Agreement desiring to make a change in its address for the purpose of notices

under this Section shall notify the other party of the change of address in the same manner as provided for in this Section for notices.

Notwithstanding the notice requirements as set forth in this Section, the Company and the Authorities acknowledge and agree that for purposes of verifying approvals or instructions from the Company as required or permitted herein relating to various matters pertaining to the Project, the Authorities shall have the right to send by electronic mail or facsimile to the Company any request for such approval or instructions, and the Company shall have the right to send by electronic mail or facsimile to the Authorities the Company's written approval or instructions. Notwithstanding the foregoing, no electronic mail or facsimile shall constitute delivery of notice of default or of termination under this Agreement.

**10.6 Confidentiality; Non-disclosure**

(a) **Trade Secret Protection.** All parties to this Agreement acknowledge and agree that the Company has advised the City and County, and that the City and County understand and agree, that any and all information contained in this Agreement, and/or any related agreement, exhibit, schedule or other writing in whatsoever way related to the Project, are, will be and were submitted in confidence voluntarily by the Company, are competitively sensitive in nature and as such are, and shall be, to the maximum extent provided by law, considered to be "trade secrets" ("Trade Secrets") under the Uniform Trade Secrets Act, Tennessee Code Annotated Sections 47-25-1701 et seq. (the "Trade Secrets Act") and exempt by statute from disclosure under any public records or similar law, including, without limitation, the provisions of Title 10, Chapter 7 of Tennessee Code Annotated (the "Public Records Act"), in that all such information referenced herein is commercially valuable to the Company and constitutes a design, plan, formula, process or device used for the making, preparing or processing of valuable proprietary products resulting from regular and ongoing innovation by the Company. Without limiting the foregoing, the City, County and Company expressly agree that information related to the Company's consumption of energy and utilization of Natural Gas Service, Water Service and Wastewater Service, the amount paid by the Company for Utility Services reserved or consumed from the City in the operation of the Facility, and the terms and information identified in Sections 6.1, 6.2 and 6.4 hereof (together with all information and materials provided, accessed or otherwise made available in connection therewith, including without limitation, all exhibits, schedules and addenda relating thereto) have been identified by the Company as its Trade Secrets and, therefore, shall not be released to a third party under any circumstances without the prior written approval of the Company except pursuant to a valid and enforceable order of a court of competent jurisdiction, the issuance of which the City and County agree to use reasonable efforts to assist the Company in opposing. The City and County understand and agree that the Trade Secrets Act shall be liberally construed in favor of non-disclosure of any Trade Secret to the maximum extent allowed under Tennessee law. The City and County further understand and agree that the Public Records Act shall likewise be construed in favor of non-disclosure of any Trade Secret to the maximum extent allowed under Tennessee law.

Without limiting the foregoing portions of this Section 10.6, the City and County further understand and agree that in addition to being a Trade Secret, any and all information contained in this Agreement, or any related agreement, exhibit, schedule or other writing, contain and are



comprised of proprietary commercial or financial information obtained directly from the Company, which are privileged or confidential in nature, the disclosure of which would be detrimental to the ability of the Company to compete and maintain its place in the industry and as such are further exempt from disclosure under the Public Records Act. Furthermore, the disclosure of this information would be detrimental to the City and County, and to the best interest of the public, in efforts to negotiate agreements regarding future economic development projects. For these reasons, the information contained in this Agreement, or any related agreement, exhibit, schedule or other writing, has been provided and exchanged with the express expectation that it will be maintained by the City and County in a confidential manner.

Accordingly, each party hereto agrees to treat, and to cause its respective officers, directors, employees and agents to treat, as strictly confidential and to limit, to the fullest extent permitted by law, any release of information related to or pertaining to this Agreement or any related agreement, exhibit, schedule, or other writing, its or their terms, and the parties hereto or thereto. Furthermore, the City and County agree that they shall not attach a copy of this Agreement to any public notice or present this Agreement for review in any public forum or provide a copy or disclose the terms or conditions of this Agreement to any third party, except (i) as and when the same may be required by law or by the order of a court of competent jurisdiction (the City and County agreeing to use reasonable efforts to assist the Company in opposing the issuance of such an order), (ii) as may be necessary for the City or County to perform their obligations under this Agreement, or (iii) as part of a press release or announcement issued as agreed upon by the Company and the City and County in an advance writing, which agreement, the Company may, in its absolute and sole discretion, withhold. Before any disclosure is made by the City or County pursuant to clauses (i), (ii) or (iii) above, the City or County, as appropriate, shall provide reasonable advance written notice to the Company and the Company may, to the extent permitted by law, require any third party to which the disclosure will be made to enter into a confidentiality agreement (obligating the third party to keep the terms, conditions and existence of this Agreement confidential).

Specifically, and without limiting the foregoing, the City and County shall provide to the Company, within forty-eight (48) hours of receipt of any public records request for documents relating to this Agreement or the Project, written notice of such public records request and shall indicate in such notice whether or not it intends to comply with such public records request. If the City or County indicate that it intends to provide any documents in response to such public records request, it shall (i) first give the Company thirty (30) days within which to seek a judicial injunction or restraining order before delivering such documents; (ii) delete or otherwise redact any Trade Secrets identified by the Company in written notice provided to the City or County and shall do so with the assistance and/or consultation of the Company, and with the Company's pre-approval of the actual content to be disclosed, and (iii) provide to the Company a copy of any material subsequently disclosed to a third party.

**(b) Disclosure of Information in Civil Actions.** If the City or County is named as a defendant in any civil action commenced to compel the production or disclosure of information related in any way to this Agreement or the Project at any time and (i) the City or County is entitled or required by law to postpone the delivery or disclosure of such information, or (ii) the information sought in the action has been identified by the Company as a Trade Secret of the Company or otherwise privileged or confidential, with any such civil actions hereafter

referred to as an "Action," the City or County shall immediately notify the Company of the commencement of such Action. For purposes of clarity, to qualify as an Action hereunder, the complaint naming the City or County as a defendant must include a request or demand for the City or County to disclose information that has been identified by the Company as a Trade Secret or otherwise privileged or confidential or that the City or County is otherwise prohibited from disclosing under Tennessee law.

The Company agrees to indemnify and hold the City or County, its directors, officers and employees, harmless from and against any and all expenses or damages incurred by the City or County arising from any Action filed in a court of competent jurisdiction. In the event of any such Action, the City or County shall (i) at the cost of the Company, including reasonable attorney fees, vigorously defend the same in consultation with the Company and, upon Company's request, turn over the defense of such Claim to the Company, (ii) keep the Company informed of developments in such litigation and (iii) consult with the Company before taking any position or making any decision that might materially affect the Company's interests in such matter, so long as there is a reasonable basis in law and fact for defending such Action. In determining whether there is a reasonable basis in law and fact for refusing to deliver any record in response to request therefor, the City or County may rely conclusively on the advice of counsel. The Company, at its option and sole discretion, has the right, in lieu of providing indemnification, to choose counsel for the defense of such Action against the City or County, and if the Company chooses to do so, the Company shall be directly responsible for paying the selected counsel's fees. The Company's indemnity obligation hereunder shall not apply in the event of any breach of confidentiality of the Board's obligations pursuant to Section 10.6(a).

(c) **Identification of Documentation.** Company shall mark or clearly stamp for identification all documents delivered to the City or County, or their attorneys, related to the Project or this Agreement deemed by Company to contain Trade Secrets, or to otherwise be treated as confidential, in order for such documents or information to be eligible for the protection set forth herein for Trade Secrets.

(d) **Non-Disclosure Agreements.** The provisions of this Section 10.6 are in addition to and not in lieu of the obligations of the City and County under any non-disclosure agreements entered into by the Company or by any Affiliate of the Company with the City or County, their officers, employees or agents (the "Non-Disclosure Agreements"). The City and County covenant, reaffirm and agree that the terms of such Non-Disclosure Agreements remain in full force and effect during the term of this Agreement.

(e) **Survivability and Applicability.** The provisions of this Section 10.6 shall survive the termination or expiration of this Agreement.

#### **10.7 Cost and Expense.**

The City, County and Company shall each pay its own costs incurred in connection with the Project, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys or approvals, this Agreement or otherwise except as may be otherwise provided in this Agreement.

**10.8 Press Releases.**

The Authorities understand the importance to the Company of keeping matters (including the existence, facts and content) relating to the Project and this Agreement and its exhibits strictly confidential until the Company shall have made a public announcement related to the Project and each of the Authorities shall have received prior written consent from the Company before making its press release related to the content and timing of any public announcement. The Authorities each agree to cooperate and coordinate fully with the Company in connection with all press releases and publications concerning the Project and this Agreement, the content of which shall in each instance be approved by the Company in advance in writing. Nothing herein shall limit, replace or amend the application of the Authorities' ongoing confidentiality obligations contained in Section 10.6.

**10.9 Assignment.**

This Agreement may be assigned by the Company to any Affiliate of the Company, provided that any assignment to an entity described in subsection (b) of the definition of "Affiliate" shall require the prior written consent of the Authorities. In addition, the Company shall have the right to pledge its rights hereunder to any lender in connection with any financing of any of the Project. The Authorities may not assign this Agreement or any rights or benefits hereunder without the prior written consent of the Company.

**10.10 Facilitation of Financing.**

The Company shall have the right to (i) grant a mortgage, deed of trust or other lien in its interest, or to assign its rights, under this Agreement to any entity (the "Lender") which may provide, or participate in providing, financing from time to time for the Facility, Project Site, or any development located thereon, or (ii) execute and deliver an assignment of this Agreement to any person or entity (including without limitation the Lender) in connection with the foreclosure or other exercise of the Lender's rights or remedies as a result of any default by the Company under any financing arrangement.

**10.11 Further Assurances.**

The Authorities agree to use reasonable efforts, consistent with this Agreement, to establish the Project and on an ongoing basis thereafter, including without limitation the obtaining, negotiation, execution and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, licenses or deeds.

**10.12 Section Titles and Headings.**

The section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

**10.13 Survival of Representations and Warrants.**

The representations, warrants and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

**10.14 Number and Gender of Words.**

Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other where appropriate.

**10.15 Authorization.**

(a) Each Party hereto represents that prior to its execution hereof all necessary and required corporate, governmental or other appropriate action, as applicable, including without limitation resolutions of its governing boards or bodies, has been taken to authorize the execution of this Agreement and the performance by such Party of its respective obligations hereunder. Each Party acknowledges and agrees that it is under no other agreement (whether written or oral), the terms of which are or will be violated by such Party executing or performing under this Agreement or the terms of which violate the terms of this Agreement or prevent or inhibit in any way the ability of such Party to perform fully each of its obligations under this Agreement.

(b) Whenever in this Agreement the Authorities have agreed to take action with respect to government operations or decisions within the purview of a government entity, submit text regarding an ordinance for public hearing and vote, or otherwise perform an obligation (collectively, "Government Action"), such Government Action shall be based on the lawful authority of such Authorities, as the case may be, after presentation to it of all necessary information and the conduct of all necessary reviews, public meetings, executive or closed sessions and public hearings. This Agreement shall not be construed to obligate such Party to prejudge an issue or to vote in any particular fashion with respect to a Government Action.

**10.16 Binding Effect.**

This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of the Company and its successors and assigns and shall be binding upon and shall inure to the benefit of the Authorities and their respective successors and assigns and all other agencies, departments, divisions, governmental entities, public corporations and other entities which shall be successors to the Authorities or which shall succeed to or become obligated to perform or become bound by any of the covenants, agreements or obligations hereunder of the Authorities which are Parties hereto.

**10.17 No Joint Liability; No Consequential Damages.**

(a) No Party shall have any liability, whether for damages, any equitable remedy or otherwise, for the default or failure to perform any obligation of any other Party provided, however, that, upon notice to all other Parties, any Authority may take appropriate action to cure any Event of Default in performance by another Authority.

(b) In no event will any Party, or any of its officers, agents or employees, be liable for special, consequential, exemplary or punitive damages arising out of or relating to this Agreement, except for such damages arising from the failure by a Party to comply with its confidentiality obligations hereunder, protect trade secrets as required under the terms of Section 10.6, and to coordinate press releases under the terms of Section 10.8 of this Agreement.

**10.18 No Third-Party Beneficiaries; Relationship of the Parties.**

This Agreement shall not confer any rights or remedies upon any person other than the Parties to this Agreement and their respective successors or permitted assigns. The Authorities and the Company agree that nothing contained in this Agreement, or any act of the Company or of the Authorities, shall be deemed or construed by any of the Parties hereto, or by third persons, to create any relationship of principal and agent, or of a limited or a general partnership or of a joint venture or of any association or relationship between the Company and the Authorities other than as independent contractors in a contract entered into at arm's length. Notwithstanding any of the provisions of this Agreement, it is agreed that the Authorities have no investment or equity interest in the business of the Company, and shall not be liable for any debts of the Company, nor shall the Authorities be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of the Company. No person other than the Parties to this Agreement may directly or indirectly rely upon or enforce the provisions of this Agreement, whether as a third party beneficiary or otherwise.

**10.19 Amendments and Waivers.**

No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and duly signed by an authorized representative of each of the Parties; provided, however, that the City and the Company may amend the provisions of Article 6 one or more times, with only such two Parties approving and executing such amendments(s), and/or create a separately negotiated, approved and executed agreement as to Water Service, Natural Gas Service and Wastewater Service between only such two Parties, at any time after the first Effective Date. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**10.20 Entire Agreement.**

With the exception of any Non-Disclosure Agreements signed by an Authority, which shall remain in full force and effect in accordance with their respective terms, this Agreement and those agreements referenced herein constitute the entire agreement and set forth all of the terms of the understanding between the Parties hereto with respect to the subject matter hereof and may only be waived, changed or modified by an instrument in writing signed by the Authorities and the Company, except as may be otherwise provided by Section 10.19 for amendments to Article 6, which may be executed by the City and Company only.

10.21 **Recitals.** All recitals set forth in the Recitals section starting on the first page of this Agreement are incorporated herein by reference.

(signature pages follow)

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed by their duly authorized officers and their seals to be hereto affixed on the date of the acknowledgment shown below, to be effective as of the day and year first above written.

**MONTGOMERY COUNTY, TENNESSEE**

**By: MONTGOMERY COUNTY BOARD OF COMMISSIONERS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: Chair

Approved:

By: \_\_\_\_\_

Name: Jim Durrett

Its: County Mayor

STATE OF TENNESSEE )

COUNTY OF MONTGOMERY )

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_ and Jim Durrett, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged them to be Chair of the Montgomery County Board of Commissioners and County Mayor of Montgomery County, Tennessee, respectively, the within named bargainors, and that they as such Chair and County Mayor, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of Montgomery County Board of Commissioners for Montgomery County Tennessee, by them as Chair and County Mayor.

Witness my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**CITY OF CLARKSVILLE, TENNESSEE**

By: \_\_\_\_\_

Name: Kim McMillan

Its: Mayor

STATE OF TENNESSEE )

COUNTY OF MONTGOMERY )

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared Kim McMillan, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged her to be the Mayor of City of Clarksville, Tennessee, an \_\_\_\_\_, the within named bargainor, and that she as such Mayor being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the City of Clarksville, Tennessee, by her as such Mayor.

Witness my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



**INDUSTRIAL DEVELOPMENT BOARD OF  
THE COUNTY OF MONTGOMERY,  
TENNESSEE**

By: \_\_\_\_\_

Name: David Chesney

Its: Chairman

STATE OF TENNESSEE )

COUNTY OF MONTGOMERY )

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared David Chesney, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him to be the Chairman of The Industrial Development Board of the County of Montgomery, Tennessee, the within named bargainor, and that he as such Chairman being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of The Industrial Development Board of the County of Montgomery, Tennessee by him as such Chairman.

Witness my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_

**FOXMAN LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its:     Manager

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged him/her to be the Manager of Foxman LLC, the within named bargainor, and that he/she as such Manager being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of Foxman LLC by him/her as such Manager.

Witness my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

Project Site Legal Description

**TRACT 1**

Tract 1 as shown on the survey prepared by Littlejohn, an S&ME company, dated August 27, 2015, job no. 20150309, being described as follows:

A tract of land in the 2<sup>nd</sup> District Montgomery County, Tennessee, such tract being bounded on the north by the southern Right of Way (ROW) of Tylertown Road, on the east by the western ROW of Jim Johnson Road, on the north, south and east by the ROW of Solar Way, on the south by Marvin C. Pitts, as recorded in Volume Book 1078, Page 1058, Register's Office Montgomery County, Tennessee (ROMC), by Dwight Dickson as recorded in Volume Book 557, Page 7, ROMC, by the First Baptist Church of St. Bethlehem Inc., as recorded in Volume book 1096, Page 776, ROMC, on the south and west by Current Farm Partnership, as recorded in Volume book 1482, Page 2287, ROMC, on the west by the Reserve at Oakland Home Owners Association,, as recorded in Volume Book 1212, Page 2903, ROMC, by the Final Plat of the Reserve at Oakland Cluster, Phase III, as recorded in Plat Book F, Page 986, by , by the Final Plat of the Reserve at Oakland Cluster, Phase II, as recorded in Plat Book F, Page 987, by John T. Rochford, as recorded in Volume 1212, Page 2903, ROMC, by the Eliza Tyler Estate, as recorded in Book 39, Page 474, ROMC, by Forest C. and Margie C. Suiter, as recorded in Volume Book 1592, Page 563 and by Dwayne E. Tyler, as recorded in Volume Book 651, Page 408, ROMC. Said Tract 1 being more particularly described as follows:

POINT OF BEGINNING being an iron rod old with a cap marked "weakly", said point being the northwestern corner of the said Dwayne E. Tyler tract and being on the southern ROW of said Tylertown Road; thence with said southern ROW with a curve to the left having an central angle of 68° 33' 29", a radius of 154.45 feet, a length of 184.81 feet and having a chord bearing and distance of N 64° 34' 59" E 173.98 feet to an iron rod new; thence N 30° 28' 38" E 773.45 feet to an iron rod old with a cap marked "weakly"; thence N 71° 59' 05" E 1397.15 feet to an iron rod old with a cap marked "DBS & Assoc."; thence N 72° 11' 47" E 2238.27 feet to an iron rod old with a cap marked "DBS & Assoc."; thence N 72° 10' 45" E 2328.84 feet to an iron rod old with a cap marked "DBS & Assoc."; thence N 72° 10' 08" E 721.37 feet to an iron rod old with a cap marked "DBS & Assoc."; thence N 72° 08' 42" E 808.73 feet to an iron rod new; thence S 86° 23' 57" E 80.48 feet to an iron rod new; thence N 72° 20' 15" E 150.00 feet to an iron rod new; thence S 69° 14' 09" E 60.29 feet to an iron rod new; thence with the western ROW of said Jim Johnson Road S 17° 07' 15" E 341.78 feet to an iron rod new; thence S 00° 38' 27" E 339.38 feet to an iron rod new; thence S 09° 31' 07" W 798.12 feet to an iron rod new; thence S 06° 32' 07" W 250.24 feet to an iron rod new; thence S 11° 48' 23" W 645.74 feet to an iron rod new; thence S 07°

00° 48' W 505.32 feet to an iron rod new; thence S 10° 57' 50" W 300.17 feet to an iron rod new; thence S 04° 09' 20" W 175.64 feet to an iron rod new; thence S 16° 13' 12" W 176.38 feet to an iron rod new; thence S 05° 03' 02" W 501.43 feet to an iron rod new; thence S 00° 02' 28" W 80.92 feet to an iron rod new; thence S 09° 06' 37" W 1178.49 feet to an iron rod new; thence S 10° 04' 08" W 437.63 feet to an iron rod new; thence S 09° 21' 43" W 894.80 feet to an iron rod new; thence S 06° 39' 05" W 538.94 feet to an iron rod new; thence S 38° 24' 55" W 85.90 feet to an iron rod new; thence S 07° 25' 01" W 300.08 feet to an iron rod new; thence S 03° 31' 37" W 148.86 feet to an iron rod new; thence S 21° 26' 02" W 214.00 feet to an iron rod new; thence S 45° 27' 14" W 435.23 feet to an iron rod new; thence S 66° 02' 08" W 299.94 feet to an iron rod new; thence with ROW of said Solar Way with a curve to the left having a central angle of an angle of 45° 38' 52", a radius of 1182.08 feet, a length of 941.77 feet and having a chord bearing and distance of N 59° 50' 20" W 917.06 feet to an iron rod new; thence S 09° 01' 08" W 270.00 feet to an iron rod new; thence S 80° 36' 35" E 170.50 feet to an iron rod new; thence on a curve to the right having a central angle of an angle of 92° 43' 12", a radius of 910.50 feet, a length of 1473.43 feet and having a chord bearing and distance of S 23° 49' 42" E 1317.84 feet to an iron rod new; thence N 67° 28' 05" W 28.24 feet to an iron rod new; thence S 26° 08' 57" W 352.13 feet to a point; thence with the centerline of said Spring Creek N 46° 56' 36" W 80.75 feet to a point; thence N 49° 16' 07" W 154.23 feet to a point; thence N 35° 50' 16" W 245.06 feet to a point; thence N 57° 38' 38" W 177.09 feet to a point; thence N 75° 15' 35" W 64.42 feet to a point thence S 87° 01' 30" W 151.01 feet to a point; thence N 89° 59' 40" W 206.20 feet to a point; thence S 33° 33' 32" W 121.61 feet to a point; thence S 21° 57' 38" W 134.15 feet to a point; thence S 10° 18' 17" W 134.61 feet to a point thence S 29° 22' 10" W 132.53 feet to a point; thence S 37° 27' 29" W 93.03 feet to an iron rod new; thence S 31° 01' 55" W 77.89 feet to a set point; thence S 38° 57' 22" W 114.18 feet to a set point; thence S 72° 18' 37" W 55.91 feet to a point; thence N 57° 20' 29" W 73.82 feet to a point; thence N 33° 50' 28" W 50.40 feet to a point; thence N 06° 15' 27" E 60.40 feet to a point; thence N 31° 47' 59" W 68.26 feet to a point; thence N 54° 23' 01" W 154.05 feet to a point; thence N 81° 42' 51" W 65.50 feet to a point; thence N 66° 53' 47" W 105.43 feet to a point; thence N 78° 32' 49" W 43.91 feet to a point; thence S 82° 24' 39" W 90.46 feet to a point; thence S 56° 55' 03" W 62.37 feet to a point; thence S 39° 55' 26" W 88.41 feet to a point; thence S 36° 56' 09" W 55.77 feet to a point; thence S 15° 57' 40" W 36.33 feet to a point; thence S 06° 41' 48" W 52.95 feet to a point; thence S 42° 35' 56" W 77.96 feet to a point; thence S 62° 25' 12" W 58.36 feet to a point; thence N 86° 06' 05" W 94.75 feet to a point; thence N 84° 01' 15" W 91.42 feet to a point; thence N 80° 40' 34" W 84.07 feet to a point; thence N 76° 47' 34" W 121.15 feet to a point; thence N 85° 51' 28" W 66.28 feet to a point; thence N 79° 40' 41" W 77.10 feet to a point; thence S 88° 46' 17" W 139.19 feet to a point; thence S 84° 15' 09" W 183.12 feet to a point; thence S 88° 03' 52" W 73.51 feet to a point; thence N 79° 05' 18" W 84.21 feet to a point; thence N 60° 38' 30" W 73.15 feet to a point; thence N 34° 51' 42" W 108.05 feet to a point; thence N 69° 19' 30" W 56.43 feet to a point; thence S 61° 00' 42" W 84.28 feet to a point; thence S 34° 34' 17" W

113.80 feet to a point; thence S 20° 51' 18" W 67.16 feet to a point; thence S 01° 52' 07" W 129.17 feet to a point; thence S 55° 46' 07" W 116.88 feet to a point; thence S 13° 12' 31" W 100.28 feet to a point; thence S 63° 46' 43" W 74.40 feet to a point; thence S 89° 32' 58" W 126.52 feet to a point; thence N 81° 56' 10" W 120.74 feet to a point; thence N 89° 55' 12" W 92.75 feet to a point; thence N 79° 36' 38" W 60.77 feet to a point; thence N 50° 51' 20" W 55.23 feet to a point; thence N 27° 26' 21" W 116.74 feet to a point; thence N 17° 08' 23" W 111.55 feet to a point; thence N 03° 02' 39" W 93.77 feet to a point; thence N 08° 13' 34" W 167.08 feet to a point; thence N 17° 58' 07" W 77.50 feet to a point; thence N 26° 33' 52" W 109.15 feet to a point; thence N 53° 42' 25" W 79.10 feet to a point; thence N 47° 26' 47" W 82.49 feet to a point; thence N 41° 56' 41" W 304.03 feet to a point; thence N 62° 12' 56" W 104.72 feet to a point; thence N 51° 20' 23" W 70.17 feet to a point; thence N 16° 39' 14" W 121.66 feet to a point; thence N 07° 18' 16" W 123.64 feet to a point; thence N 08° 16' 31" W 110.73 feet to a point; thence N 18° 50' 34" W 132.63 feet to a point; thence N 24° 10' 11" W 362.51 feet to a point; thence N 70° 13' 56" W 135.49 feet to a point; thence N 84° 20' 56" W 59.56 feet to a point; thence leaving said Creek with the common line of the said Reserve At Oakland Home Owners Association Tract passing through a witness pin at 145.14 feet for a total bearing an distance of N 44° 45' 31" W 751.66 feet to an ½" iron old; thence N 84° 24' 19" W 273.17 feet to an iron rod old with a cap marked "Weakly"; thence with the common lines of the said Reserve at Oakland Cluster Phases II and III N 12° 16' 18" E 1341.28 feet to an iron rod old with a cap marked "Weakly"; thence N 80° 42' 55" W 651.59 feet to an iron rod old with a cap marked "Weakly"; thence with the common line of the said John T. Rockford tract N 12° 02' 10" E 1075.58 feet to iron rod old with a cap marked "Weakly"; thence with the common line of the said Eliza Tyler Estate S 80° 14' 19" E 297.67 feet to an iron rod old with a cap marked "Weakly"; thence N 09° 38' 11" E 1221.34 feet to an iron rod old with a cap marked "Weakly"; thence with the common line of the said Forest C. and Margie C. Suiter and the Dwayne E. Tyler tract N 80° 36' 53" W 503.86 feet to an iron rod old with a cap marked "Weakly"; thence N 09° 57' 08" E 815.23 feet to the point of beginning, containing 57,828,584 square feet or 1,327.56 acres.

Less and except the property shown as the Tract 1 Exception on the survey prepared by Littlejohn, an S&ME company, dated August 27, 2015, job no. 20150309, being described as follows:

A tract of land in the 2nd District Montgomery County, Tennessee, such tract being the United States of America tract as recorded in Volume Book 1334, Page 2233, Register's Office Montgomery County, Tennessee (ROMC) tract being bounded on all sides by the Industrial Development Board of Montgomery County as recorded in Volume Book 708, Page 1897, ROMC. Such tract being more particularly described as follows:

POINT OF COMMENCEMENT being an iron rod old with a cap marked "DBS & Assoc."; thence S 42° 28' 52" E 915.54 feet to the POINT OF BEGINNING being a concrete monument old at the northwestern corner of the herein described

**EXHIBIT B**

Map of Project Site

*EXHIBIT B FOLLOWS THIS PAGE.*

EXHIBIT

KENTUCKY  
TENNESSEE

SUBJECT  
PROPERTY

CITY OF CLARKSVILLE



**EXHIBIT C**

**Water Service Capacity – Protected Trade Secret Information**

1. The City agrees to furnish Water Service Capacity to the Project and to make available and supply to, and for the use of, the Project, [REDACTED] gallons per day at any time, now and in the future at a maximum flow rate of [REDACTED] gallons per minute.
2. Minimum Water pressure at the meter inlet for the Project Site should be at least 70psi

**TRADE SECRETS**

In accordance with Section 10.6(a) of this Agreement, the Company has identified Exhibit C as containing information classified as a Trade Secret under Tennessee's Trade Secrets Act. *See* Tenn. Code Ann. § 42-25-1702(1) *et seq.* The Authorities shall protect such information from disclosure as required by Section 10.6 of this Agreement. For that purpose, this Exhibit C shall remain in a sealed envelope and kept with the original executed Agreement when not being utilized by the City, its staff, or its consultants for the purpose of complying with this Agreement. No copies shall be made of this document. If the City is ever presented with a request to view or copy this Exhibit C, the City shall immediately notify the Company, and the confidentiality requirements and procedures more specifically set forth in Section 10.6 of this Agreement shall govern and be followed by the City and the Company.



**EXHIBIT D**

Wastewater Service Capacity – Protected Trade Secret Information

The City agrees to furnish Wastewater Service Capacity to the Project and to make available and accept, for the use of the Project, [REDACTED] gallons per day wastewater discharge in accordance with federal, state and local requirements (including Industrial Wastewater Pretreatment provisions of the Clarksville Municipal Code) at any time, now and in the future at a maximum flow rate of [REDACTED] gallons per minute.

**TRADE SECRETS**

In accordance with Section 10.6(a) of this Agreement, the Company has identified Exhibit D as containing information classified as a Trade Secret under Tennessee's Trade Secrets Act. *See* Tenn. Code Ann. § 42-25-1702(1) *et seq.* The Authorities shall protect such information from disclosure as required by Section 10.6 of this Agreement. For that purpose, this Exhibit D shall remain in a sealed envelope and kept with the original executed Agreement when not being utilized by the City, its staff, or its consultants for the purpose of complying with this Agreement. No copies shall be made of this document. If the City is ever presented with a request to view or copy this Exhibit D, the City shall immediately notify the Company, and the confidentiality requirements and procedures more specifically set forth in Section 10.6 of this Agreement shall govern and be followed by the City and the Company.

15-12-6

On Motion to Adopt by Commissioner Rocconi, seconded by Commissioner Gannon, the foregoing Resolution was Adopted by the following roll call vote:

District	Commissioner	Vote	District	Commissioner	Vote	District	Commissioner	Vote
1	John M. Gannon	Y	8	Ron J. Sokol	Y	15	David Harper	Y
2	Charles Keene	Y	9	John M. Genis	Y	16	Wallace Redd	Y
3	Ed Baggett	Y	10	Martha Brockman	Y	17	Jason A. Hodges	Y
4	Mark Riggins	Y	11	Joe L. Creek	Y	18	Monroe Gildersleeve	Y
5	Robert Gibbs	Y	12	Robert Nichols	Y	19	Garland Johnson	Y
6	Arnold Hodges	Y	13	Audrey Tooley	Y	20	Jerry Allbert	Y
7	Brandon Butts	Y	14	Tommy Vallejos	Y	21	Larry Rocconi	Y

Ayes - 21   Abstentions - 0   Noes - 0

ABSENT: None