

## WASTEWATER MANAGEMENT SERVICES AGREEMENT

THIS WASTEWATER MANAGEMENT SERVICES AGREEMENT (this "Agreement") is made and entered into as of the 7<sup>th</sup> day of December, 2021, by and between Citizens Energy Management Company, LLC ("Citizens") and the City of Beech Grove, by and through its Department of Public Works (the "City"), each of these a Party, and together collectively the Parties.

### RECITALS

A. The City owns and is responsible for the assets comprising the wastewater system serving customers in and around Beech Grove, Indiana (the "System"), which is depicted in Exhibit A of this Agreement;

B. The City desires to have Citizens provide services in connection with maintenance, repair and planning with respect to the System, as further described herein, for ten (10) years, commencing on the Effective Date, as defined below (Section 4.1);

C. Citizens is agreeable to providing the services described below, pursuant to the other terms and conditions more fully set forth below.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

#### 1. Services.

1.1. Services. During the Term (as defined below, in Section 4.1), and based upon timely payment by the City of the Base Fee (defined below), Citizens will perform those services identified below (the "Services").

1.1.1. Planned Assessments. Citizens shall inspect ten percent (10%) of the collection assets pertaining to the System (the "Collection Assets"), or no greater than twenty-three thousand feet (23,000') per year, utilizing Acoustic Condition Assessment ("ACE"), or substantially equivalent technology if ACE becomes unavailable or obsolete. The precise Collection Assets being inspected each year shall be mutually agreed upon by the Parties on an annual basis.

1.1.2. Planned Cleaning. Citizens shall clean five thousand feet (5,000') of Collection Assets each year, based upon the results of the annual ACE analysis.

1.1.3. Planned CCTV. Citizens shall use closed-circuit television technology ("CCTV") for five thousand feet (5,000') of Collection Assets each year, based upon the results of the annual ACE analysis.

1.1.4. Unplanned Cleaning. Citizens shall clean an additional five thousand feet (5,000'; ten thousand feet (10,000') total with the Services described in Section 1.1.2, above) of Collection Assets each year, as

needed, based upon specific issues or circumstances identified, and specific criteria selected, by mutual agreement of the Parties. For illustrative purposes only, and not as a limitation, such specific circumstances may include a customer complaint or request, areas requiring frequent cleaning, blockages, *etc.*

1.1.5. Planning Support. Citizens will provide the City with assistance in connection with the City's planning and development of its annual capital budget, and the City's operations & maintenance (or "O&M") budget, for operation, expansion and/or maintenance of the System. Specifically, Citizens agrees to prepare for and participate in four (4) meetings with the City annually regarding the City's System-related budget (capital and O&M).

1.1.6. Customer Service Support.

1.1.6.1. Call Center/Dispatch. Citizens shall provide call center and dispatch services to respond to calls and/or concerns from customers of the System related to O&M service needs and related work orders. The City will continue to receive and handle, on its own, customer calls and concerns related to billing for wastewater collection and treatment services provided by the System, and all such customers shall remain customers of the City, and shall not be customers of Citizens.

1.1.6.2. GIS Data. Citizens shall assist the City with updating the City's geographic information system (or "GIS") data. Within the first year of the Agreement, this shall include loading the City's existing System data into the Citizens GIS system, upon receipt by Citizens of the City's data in a format which makes such incorporation possible. In subsequent years of the Agreement, this data will be updated with the assistance of Citizens.

1.2. Additional Services. Citizens agrees to provide the following additional services (the "Additional Services") to the City on a time-and-materials basis, specifically in exchange for actual cost plus fifteen percent (15%), to be charged by Citizens beyond the Base Fee amount.

1.2.1. Additional Cleaning. At the request of the City, Citizens shall clean additional portions of the City's Collection Assets, not contained within the ten thousand feet (10,000') cleaned by Citizens in exchange for the Base Fee, with specific areas and quantities to be selected by mutual agreement of the Parties.

1.2.2. Additional CCTV. At the request of the City, Citizens shall CCTV additional portions of the City's Collection Assets, not contained within the five thousand feet (5,000') CCTV'd by Citizens in exchange for the Base Fee, with specific areas and quantities to be selected by mutual agreement of the Parties

1.2.3. Maintenance Repairs. At the request of the City, Citizens shall provide repair services for Collection Assets identified by the City as needing such repair. For illustrative purposes only, and not as a limitation, such specific repair needs may include damaged or nonfunctioning inlets, pipe segments, *etc.*

1.2.4. Capital Projects. At the request of the City, Citizens shall provide services in connection with capital projects related to the Collection Assets, as identified by the City. For illustrative purposes only, and not as a limitation, such specific capital projects may include installation of mains/main extensions, main replacements, *etc.*

1.2.5. Miscellaneous O&M. At the request of the City, Citizens shall provide O&M services for Collection Assets identified by the City as needing such services. For illustrative purposes only, and not as a limitation, such specific O&M needs may include clearing of roots, setting of plates, *etc.*

1.3. Reporting. Citizens agrees to provide, beginning thirty (30) days after the Effective Date, monthly and year-to-date progress reports to the City, indicating precise quantities of cleaning completed, identification of services provided and costs incurred during the relevant timeframe, and other pertinent information, with precise form and content of the reports to be mutually agreed upon in advance by the Parties.

1.4. Third-Party Service Providers. Citizens is authorized to contract with third-party service providers to perform the Services and Additional Services.

2. City's Ownership of the System.

2.1. City Retains Ownership. For the avoidance of doubt, nothing in this Agreement is intended to, nor shall any portion of this Agreement be interpreted to convey any ownership interest with respect to the System or the Collection Assets to Citizens. The City shall retain at all times ownership of and responsibility for the System and the Collection Assets.

3. Base Fee, Expenses and Invoicing.

3.1. Base Fee. The City will pay Citizens a base fee as compensation for the Services (the "Base Fee") in the amount of Twenty Thousand Dollars (\$20,000.00) per month during the first year of this Agreement. The Base Fee in the subsequent years within the Initial Term of this Agreement (defined below) shall be subject to an annual increase of three percent (3%), as of each anniversary of the Effective Date. Fees for any Renewal Term (including an automatic renewal) shall be negotiated and agreed by the Parties at the time of each such renewal.

3.2. Reimbursable Expenses. In addition to the Base Fee, the City shall reimburse any costs and expense incurred by Citizens that arises out of or relates to the Additional Services (collectively, "Reimbursable Expenses"). Citizens shall include any Reimbursable Expenses on the Invoice that

immediately follows the activity associated with each such expense. Reimbursable Expenses shall include, by agreement of the Parties, time and materials plus fifteen percent (15%).

- 3.3 Invoicing and Payment. The City shall pay the Base Fee in monthly installments. Citizens shall deliver an invoice ("Invoice") to the City reflecting the Base Fee amount due for each month. Any fee for Additional Services and Reimbursable Expenses as described in Section 3.2 shall also be included on each Invoice for the same month. The City shall pay each Invoice within thirty (30) days after receipt thereof. Notwithstanding the foregoing, in the event the City disputes all or any portion of any Invoice in good faith, the City shall within seventeen (17) days prior to the due date for such payment provide written notice regarding the disputed amount and a factual summary outlining the reasons for the dispute (a "Dispute Notice"). Any undisputed amounts of the subject Invoice shall be paid within thirty (30) days of the Dispute Notice. Any undisputed unpaid amounts described herein may be subject to 1.5% annual interest, or no greater than the statutory maximum interest rate available, to the extent payment is not timely submitted to Citizens. The City shall reimburse Citizens for all fees, costs and expenses (including reasonable attorneys' fees) incurred by Citizens to collect unpaid amounts.

4. Term and Termination.

- 4.1. Term. This Agreement shall become effective on MARCH 1, 2022 ("Effective Date") and shall terminate at 12:00 a.m. on the date five years after the Effective Date (the "Initial Term"). Unless either party provides at least ninety (90) days' written notice prior to expiration of the Initial Term or any Renewal Term, the Agreement shall automatically renew for another five (5) year term (each a "Renewal Term"). Collectively, the Initial Term and any Renewal Term shall be the "Term" of this Agreement. JAW  
12/7/21

4.2. Termination for Convenience.

- (a) Citizens or the City may terminate this Agreement for convenience and without cause at any time upon ninety (90) days' prior written notice to the other Party.
- (b) If the City or Citizens exercises its right to terminate this Agreement for convenience, the City shall not be obligated to pay Citizens demobilization costs, termination fees or other costs or expenses associated with such termination, excluding amounts due for Services and Additional Services performed prior to the date of termination.

- 4.3 Termination Upon Sale. If at any point during the Term the System and/or its Collection Assets are sold, or if ownership thereof is otherwise transferred, by the City, such sale or transfer shall also terminate this Agreement as of the date of the closing of such transaction.

5. Indemnification. To the extent permitted by law, the City and Citizens each agree to indemnify, defend, exculpate, and hold harmless the other and their respective officers, trustees, directors, employees and agents, from and against any and all claims, suits and

liabilities of any kind or character, including reasonable attorneys' fees ("Claims"), which result or arise from any negligent acts or omissions of solely the indemnifying party and/or those for which the indemnifying party is solely responsible, including its officers, employees, agents and contractors, arising from or connected with the performance of any of the indemnifying party's duties or obligations under this Agreement. For the avoidance of doubt, the City retains ownership over and responsibility for the System and its Collection Assets, and accordingly the City agrees to indemnify, defend, exculpate and hold harmless Citizens and its affiliated entities, and their respective officers, trustees, directors, employees, agents and contractors (the "Released Parties") from any Claims to the extent related to and/or arising out of such ownership. Notwithstanding the preceding sentence, the provisions of I.C. 34-13-3, as may be amended from time to time, providing for limitations of liability, immunity from liability and other legal protections for governmental entities, shall not be waived or diminished as a result of the above indemnification by the Parties.

6. Limitation of Liability. Citizens shall not be liable to the City and/or third parties for any interruption of wastewater collection and transport or damages resulting from the unavailability of the Collection Assets or System or backups in the System. In no event shall either party be liable to the other Party or third parties for any indirect, special, consequential or incidental damages, including but not limited to lost revenues or profits, interruption of business expenses arising out of or related to interruption of wastewater collection and transport or unavailability of the Collection Assets or System.

7. Independent Contractor Status.

- 7.1. The Parties hereby acknowledge and agree that Citizens shall serve as an independent contractor in the provision of Services or Additional Services in accordance with this Agreement. No acts or assistance given to the City by Citizens shall be construed to alter the independent contractor relationship, and nothing contained in this Agreement shall be construed to place the parties in a relationship of partners, joint venturers, principal and agent, or employer and employee.

- 7.2. Citizens shall not have any right, power or authority to create any obligation, express or implied, or make any representation on behalf of the City, and Citizens shall not hold itself out as having any right, power or authority to create any obligation, express or implied, or to make any representations on behalf of the City, except as otherwise set forth herein and as Citizens may be expressly authorized in advance in writing from time to time by the City, and then only to the extent of such authorization.

8. Miscellaneous.

- 8.1. Construction of Terms. Whenever the singular or plural number, or masculine, feminine or neuter gender, is used herein, it shall equally include the other, and the terms and provisions of this instrument shall be construed accordingly.



8.2. Assignment. Neither party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other party. Notwithstanding the foregoing, assignment of this Agreement by Citizens is permitted without consent from the City if it is to an entity affiliated and/or subject to common ownership with Citizens.

8.3. Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when (a) delivered to the appropriate Party address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, or person as a party may designate by notice to the other parties):

Citizens: Citizens Energy Group  
2020 North Meridian Street  
Indianapolis, IN 46202  
Attn: General Counsel

City: Public Works Department  
City of Beech Grove  
806 Main Street  
Beech Grove, Indiana 46107  
Attn: Director

8.4. Severability. In the event any term or provision of this Agreement is found to be invalid or unenforceable under any applicable federal, state or local law, ordinance, rule or regulation, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law, and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible.

8.5. Headings. The headings in this Agreement are inserted for convenience only and are not to be considered in construction of the provisions hereof.

8.6. Capitalized Terms. Except as noted or otherwise defined in this Agreement, capitalized terms used in this Agreement shall have the meaning ascribed to them in this Agreement.

8.7. Governing Law; Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Indiana. The exclusive venue of any claims or causes of action arising from or relating to transactions pursuant to this Agreement shall be filed in the state court sitting in Marion County, Indiana, or the United States District Court for the Southern District of Indiana, and the parties hereby consent to the exclusive jurisdiction of such courts.

- 8.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument.
- 8.9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and contains all of the agreements between the Parties with respect to this subject matter, and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof. No change or modification, including waiver, of this Agreement shall be valid unless the same be in writing and signed by Citizens and the City.

IN WITNESS WHEREOF, Citizens and the City have entered into this Agreement on the day and year first above written.

CITIZENS:

CITIZENS ENERGY MANAGEMENT  
COMPANY, LLC

By:

Jeffrey A. Willman

Printed:

Jeffrey A. Willman

Its:

Vice President

12/7/21

THE CITY:

CITY OF BEECH GROVE  
PUBLIC WORKS  
DEPARTMENT

By:

Dennis B. Buckley

Printed:

DENNIS B. BUCKLEY

Its:

MAYOR

NOV. 29, 2021





# Exhibit A

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