



**WATER/WASTEWATER OPERATIONS AND  
MAINTENANCE SERVICES AGREEMENT**

**Agreement Number: 715-17-Physical Plant-WWTP**

This Water/Wastewater Operations and Maintenance Services Agreement ("Agreement") is entered into, by and between **Prairie View A&M University**, a member of The Texas A&M University System, an agency of the State of Texas, ("PVAMU"), at P. O. Box 519, MS 1300, Prairie View, Texas 77446-0519, and **INFRAMARK, LLC** ("INFRAMARK"), having its principal place of business located at 2002 West Grand Parkway North, Suite 100, Katy, Texas 77449, collectively referred to as "the Parties".

**WITNESSETH**

WHEREAS, INFRAMARK provides analytical and business management services that support all aspects of water and wastewater treatment solutions including but not limited to, disinfection, instrumentation and filtration technologies, contract operating services and residential metering and

WHEREAS, PVAMU desires to retain INFRAMARK as its exclusive provider for Water/Wastewater Operations and Maintenance Services outlined herein on the terms and conditions set forth herein, and

WHEREAS, INFRAMARK desires to serve as PVAMU's exclusive provider for the services outlined herein on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

**ARTICLE I**  
**TERM and TERMINATION**

1. **Term.** The Original Term of this Agreement shall be effective and commence as of October 8, 2018 (the "Commencement Date"), and shall terminate on October 7, 2023 (the "Termination Date"), unless terminated earlier as provided herein.
2. **Contract Extension.** This Agreement may be extended under the same terms and conditions for two (2) additional five-year terms ("Extension Terms") upon written consent of both Parties. If either party does not desire to extend beyond the Original Term or the then existing Extension Term, the terminating party shall provide the other party one hundred eighty (180) days prior to its expiration (either of the Original Term or any Extension Term.), by delivering written notice to the other party of its intent not to renew the Agreement.
3. **Default and Termination.**
  - (A) In the event of substantial failure by either Party to perform in accordance with the material terms of this Agreement, the non-defaulting Party may immediately terminate this Agreement by written notice provided that the non-defaulting party has first given the defaulting party written notice to cure their default within forty-five (45) days, or thirty (30) days for failure to pay an undisputed invoice when due (such applicable period, "Cure Period") and the defaulting party has not done so. If a default cannot be cured within the Cure Period days, the parties may agree to an extension of the time to cure provided the defaulting party provides reasonable evidence within the Cure Period that it has identified a means to cure and is pursuing it diligently.
  - (B) Either party may, without cause, terminate this Agreement at any time upon giving one hundred eighty (180) days written notice to the other Party. Upon termination pursuant to

this paragraph, INFRAMARK shall be entitled to payment of such amount as shall compensate INFRAMARK for the Services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Agreement, provided INFRAMARK shall deliver to PVAMU all completed, or partially completed, work and any and all documentation or other products and results of these Services. INFRAMARK shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of PVAMU. PVAMU shall not be required to reimburse INFRAMARK for any Services performed or expenses incurred after the date of termination notice.

- (C) Performance by PVAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature ("Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then the PVAMU will issue written notice to INFRAMARK and PVAMU may terminate this Agreement without further duty or obligation hereunder. INFRAMARK acknowledges that appropriation of funds is beyond the control of the PVAMU.
- (D) In the event of the termination of this Agreement by PVAMU under Section 3(A), 3(B), 3(C) above, PVAMU shall pay INFRAMARK for the Services provided and invoiced by INFRAMARK up to the effective date of termination, plus the unamortized balance of Capital Improvements financed or paid for by INFRAMARK as reflected on INFRAMARK's financial statements, and the effectiveness of such termination by PVAMU will be conditioned upon receipt by INFRAMARK of such payment. If PVAMU incurs costs for damages due to a default of INFRAMARK that results in termination of this Agreement, PVAMU may deduct such costs or damages from the final payment due to INFRAMARK under this Section 3(D). Such deduction will not exceed the final payment owed to INFRAMARK and will constitute a full and final settlement between PVAMU and INFRAMARK for any and all claims against INFRAMARK by PVAMU and a release by PVAMU of any and all further claims against INFRAMARK.

## ARTICLE II SCOPE OF SERVICES

1. INFRAMARK shall be PVAMU's exclusive provider for all of the water/wastewater operations and maintenance services, which shall include operations, management and maintenance service including labor, equipment, sampling regulatory reporting, chemicals and materials, as further described in "Exhibit I – Scope of Work" ("Services"), attached hereto and incorporated for all purposes, at the PVAMU facilities listed in "Exhibit II – List of Prairie View A&M University Buildings/Sites" ("Facilities"), attached hereto and incorporated for all purposes. Notwithstanding the foregoing, the Parties acknowledge that additional PVAMU facilities may be added to this Agreement on a case by case basis, with scope and compensation to be mutually agreed to by the Parties and as determined by the Parties, through the execution of written amendments to this Agreement.
2. INFRAMARK shall make recommendations for Capital Improvements, equipment, operations, or maintenance (collectively referred to as "Recommendations") to PVAMU when necessary to perform the Services in compliance with the terms of this Agreement and Applicable Law. To the extent permitted by law, in the event PVAMU refuses to approve a Recommendation recommended by INFRAMARK, INFRAMARK will not be liable for any fine, penalty, loss, damage or liability, including loss, damage, or liability for failure of the Facilities, or failure to comply with Applicable Law, or failure to meet the requirements of this Agreement or for claims for indemnification, to the extent such fine, penalty, loss, damage, or liability results from PVAMU's rejection of the Recommendation. "Capital Improvements" means any major repairs, modifications, additions or upgrades to the Facilities made by or on behalf of PVAMU or with its prior approval and funded from PVAMU's capital proceeds whose cost (as to any single event or function) exceeds \$7,000.00. "Applicable Law" means laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the above, in each case that relate to the (a) parties' respective responsibilities under this Agreement; (b) operation or maintenance of the Facilities; (c) health and welfare of individuals working at or visiting

the Facilities; and (d) the collection, delivery and treatment of the PVAMU's raw and finished water.

3. **Staffing.**

(A) INFRAMARK will provide individuals with proper certifications and training to perform the duties outlined in this Agreement, at minimum Class B certification for wastewater and Class C certification for water. INFRAMARK shall provide a qualified and certified staff of three (3), consisting of a manager and two (2) operators for the operation and maintenance of the Facilities in accordance with PVAMU's environmental permits, hereinafter referred to as "Staff". INFRAMARK Staff shall be on site eight (8) hours per day five (5) days per week and shall respond to all after hours and weekend problems as related to the water and wastewater treatment plants. All actions/responses are included in the Scope of Work attached hereto.

(B) If PVAMU is dissatisfied with the performance of the Services by a particular member of INFRAMARK's personnel, PVAMU will provide written notice of such dissatisfaction. If PVAMU thereafter remains dissatisfied with the Services of such member of INFRAMARK's personnel, PVAMU may give written notice to INFRAMARK requiring removal and exclusion of the relevant INFRAMARK's personnel from PVAMU's property. Upon receipt of such a notice, INFRAMARK must immediately remove the member of INFRAMARK's personnel from PVAMU's property unless such removal would violate Applicable Law.

4. **Quality.** INFRAMARK shall perform the Services in accordance with the provisions of this Agreement, Applicable Law, and all permits, licenses, and specifications applicable to the operation and maintenance of the Facilities; exercising the degree of skill and care ordinarily exercised by members of INFRAMARK's profession in the geographic region of the Facilities. PVAMU, through its Director of Campus Planning and Space Management, shall perform quality reviews and oversight of compliance with all terms of the Agreement.

5. **Recommendations.** All Recommendations recommended by INFRAMARK during the term of the Agreement shall be presented in writing by INFRAMARK Staff to PVAMU Contract Administrator, and such Recommendations must be approved in writing prior to and a purchase order issued prior to the commencement of the work. The cost of such Recommendations shall be the responsibility of PVAMU. In the event PVAMU refuses to approve a Recommendation recommended by INFRAMARK, INFRAMARK will not be liable for any fine, penalty, loss, damage or liability, including loss, damage, or liability for failure of the Facilities, or failure to comply with Applicable Law, or failure to meet the requirements of this Agreement or for claims for indemnification, to the extent such fine, penalty, loss, damage, or liability results from PVAMU's rejection of the Recommendation. All Recommendations with a unit cost of \$7,000.00 or less shall be included in INFRAMARK's Compensation (defined below).

6. **Emergency Services.** INFRAMARK shall provide 24-hour maintenance during an Emergency. An "Emergency" under this Agreement is defined as an event that if left unattended will shut down the water/waste water plant operations, affect operational capacity, cause damage to the facilities, present a potential health hazard, and/or cause environmental permit violations. Costs incurred by INFRAMARK in addressing an Emergency shall be charged to the Annual Repair and Maintenance Budget, as defined below, subject to PVAMU's subsequent review and approval. All cost unnecessarily incurred shall be borne by INFRAMARK, but only to the extent it is subsequently determined that INFRAMARK's actions in incurring such cost were not consistent with good and prudent industry practice given the information available to INFRAMARK at the time the decision to incur such cost was made.

7. **Preventive Maintenance Schedule.** INFRAMARK shall provide the Services as described in Exhibit I in compliance with the Preventative Maintenance Schedule attached hereto as "Exhibit III – Preventive Maintenance Schedule" and made a part hereof for all purposes.

8. **Annual Repair and Maintenance Budget.** INFRAMARK shall be responsible for all Annual Maintenance Expenditures not to exceed the Annual Repair and Maintenance Budget of \$50,000.00 (which Annual Repair and Maintenance Budget shall be included in the Compensation). INFRAMARK will track Annual Maintenance Expenditures incurred against the Annual Repair and Maintenance Budget. If, at any point during an Agreement Year, the actual Annual Maintenance Expenditures incurred to that point exceed the Annual Repair and Maintenance Budget, INFRAMARK will invoice PVAMU for the excess cost in accordance with Article III Section 6 and will continue to invoice any additional Annual Maintenance Expenditures on a monthly basis thereafter. INFRAMARK shall reimburse PVAMU an amount, if any, equal to all unexpended amounts remaining in the Annual Repair and Maintenance Budget within a period of sixty (60) days following each anniversary of the Commencement Date. "Annual Maintenance Expenditures" is defined as the total of all expenses incurred annually by INFRAMARK in connection with the discharge of its Services; provided however that the Annual Maintenance Expenditures shall exclude INFRAMARK's direct labor expenses and related benefits for those individuals exclusively assigned by INFRAMARK to the operations and maintenance of the Facilities and whose cost is included in the Compensation hereunder. The Annual Maintenance Expenditures shall specifically include, but shall not be limited to, all materials, supplies, parts, tools, outside subcontractors, specialized services, rental equipment, Emergency Services as set forth in this Article II, and all of INFRAMARK's costs (excluding overtime costs) and related benefits, as well as the cost of INFRAMARK's personnel not exclusively assigned to the operation and maintenance of the Facilities at an agreed hourly billing rate. As stated hereunder, any individual expenditure for the repair and/or replacement of Facilities' equipment or structure, other than a Capital Improvement, whose unit cost (as to any single event or function) exceeds \$7,000.00 shall be subject to PVAMU's prior approval. The cost of such approved expenditures shall be included in the Annual Maintenance Expenditures.
9. **Additional Services.** INFRAMARK may perform additional services or Corrective Maintenance beyond the Services specified in Exhibit I with the mutual consent of both parties. The parties shall separately negotiate the costs of any such additional services.

### ARTICLE III

#### COMPENSATION AND METHOD OF PAYMENT:

1. PVAMU shall pay annual compensation to INFRAMARK for the Services in the amount of \$942,482.34 ("Compensation"). PVAMU shall pay the Compensation in equal monthly installments of \$78,540.20. The Compensation shall be due, in advance, on the first of the month during which the Services will be rendered. All other payments shall be due within thirty (30) days of the date of invoice and shall be paid consistent with the Texas Prompt Payment Act, Texas Government Code 2251 et seq.
2. All invoices must be accompanied by a HUB Assessment Report covering that payment period to the following address for processing: Prairie View A&M University, Attn: Accounts Payables, P.O. Box 519, MS 1311, Prairie View, TX 77446-0519 or may be submitted by email to payables@pvamu.edu. Failure to provide this report will constitute an incomplete invoice and payment will be delayed until such report is received.
3. Any and all late payments due to either party from the other party shall accrue interest in accordance with the Texas Prompt Payment Act, Texas Government Code 2251 et seq., unless waived by agreement.
4. PVAMU shall notify INFRAMARK of any dispute with an invoice within ten (10) business days from receipt of said invoice. In the event that PVAMU has a dispute with any charges, all undisputed charges on said invoice(s) will be due in accordance with the above times and the Parties shall negotiate in good faith to resolve any such dispute in a timely manner.
5. INFRAMARK's Compensation shall be adjusted on each anniversary date of the commencement of this Agreement. The Compensation shall be increased by the percentage of increase by the Consumer Price Index for all Urban Consumers – Water and Sewerage Maintenance (CPI-U) for the U.S. City Average, 1982-84=100, as

reported for the previous twelve (12) months. Adjusted Compensation, which becomes effective at the time of an extension of the Agreement, shall remain in effect through the end of that extension period. Price adjustments for all remaining extensions, if applicable, shall be calculated using the same formula. In no event will the Compensation be reduced.

6. PVAMU shall reimburse or compensate INFRAMARK for the costs that exceed the Annual Repair and Maintenance Budget plus overhead and profit as may be mutually agreed by the Parties and approved by PVAMU, but in no event less than 15% of the cost thereof. PVAMU shall reimburse or compensate INFRAMARK for the costs that exceed the Annual Repair and Maintenance Budget within 30 days of receipt of an invoice from INFRAMARK. Any portion of the Annual Repair and Maintenance Budget that has not been spent at the end of each Agreement Year will be refunded to PVAMU in accordance with the terms stated in Article II Paragraph 8. In the event the Agreement has been terminated, any portion of the Annual Repair and Maintenance Budget that has not been spent at the end of the Agreement will be reimbursed to PVAMU within thirty (30) days of the termination date.
7. In the event of a change in the Services or Applicable Law or other factor which causes a substantial increase in INFRAMARK's cost of providing the Services, INFRAMARK may provide notice to PVAMU and the parties shall negotiate in good faith to adjust the Base Fee to account for such change in INFRAMARK's costs. If the parties are unable to reach a negotiated agreement within thirty (30) days of the date of notice, then the contract may be terminated by INFRAMARK with at least 120 days' notice to PVAMU.

#### **ARTICLE IV** **GENERAL MANAGEMENT SERVICES**

1. **Relationship Management.** Each party agrees to designate a Relationship Manager to be responsible for overall performance, communicating tactical and strategic direction, budgeting, implementing PVAMU's priorities and monitoring and waiving disputes. A Relationship Manager may be replaced at any time by a person of at least equal capabilities and expertise, however, each party agrees to provide the other reasonable prior written notice of such change where possible. The Relationship Manager and the Service Manager may be the same person.
2. **Service Managers.** Each party will designate one (1) Service Manager that will lead each of the service areas and who will conduct performance and quality reviews, and receive or provide required records, plans and reports, implement agreed to changes in the Services and scope or direction, resolve conflicts, and generally oversee the provision of the particular service area. A Service Manager(s) may be replaced at any time by a person of at least equal capabilities and expertise, however, each party agrees to provide the other reasonable prior written notice of such change where possible.
3. **Non-Solicitation.** PVAMU acknowledges that employees assigned by INFRAMARK to provide the Services represent a valuable resource for INFRAMARK. PVAMU agrees that during the Term, and for twelve (12) months after employee is terminated by INFRAMARK, it shall not offer to employ or accept for employment any such employees of INFRAMARK without the prior written consent of INFRAMARK. In the event this Agreement is terminated for any reason at any time, other than for default by INFRAMARK pursuant to this Agreement, PVAMU agrees that it shall not offer to employ or accept for employment, or assist any other PVAMU or individual to employ or accept for employment any such employees of INFRAMARK (including Transferred Employees) for a period of twelve (12) months following termination of this Agreement. In the event that PVAMU hires any employees of INFRAMARK, or assists a third party in hiring such employees, in contravention of the provisions of this Section, PVAMU agrees to pay INFRAMARK a sum equal to one (1) year's salary of the employee calculated at the rate paid by INFRAMARK to the respective employee on the date of his/her termination of employment with INFRAMARK.
4. **Hazardous Materials and Environmental Issues.** Under this Agreement, "Hazardous Materials" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or

contaminant under any local, state or federal. law, regulation or ordinance, relating to or addressing public and employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product or polychlorinated biphenyls. "Hazardous Materials" specifically includes mold and lead based paints and specifically excludes ACM. For other Hazardous Materials that may be otherwise present at the Facilities, PVAMU shall supply INFRAMARK with any information in its possession relating to the presence of such materials if their presence may affect INFRAMARK's performance of the Services. If either PVAMU or INFRAMARK becomes aware of or suspects the presence of Hazardous Materials that may interfere with INFRAMARK's Services, it shall immediately stop the Services in the affected area and notify the other's contacts. As between PVAMU and INFRAMARK, PVAMU shall be responsible at its sole expense for removing and disposing of Hazardous Materials from the Facilities and the remediation of any areas impacted by the release of the Hazardous Materials, unless INFRAMARK had actual knowledge that Hazardous Materials were present and acted in willful disregard of that knowledge, in which case INFRAMARK shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Hazardous Materials, and (ii) PVAMU shall remain responsible at its sole expense for the removal of Hazardous Materials that have not been released and for releases not resulting from INFRAMARK's performance of the Services.

5. **Health and Safety of PVAMU Facilities.** The Parties agree to notify each other as promptly as is reasonably possible upon becoming aware of an inspection under, or any alleged violation of the Occupational Safety and Health Act relating in any way to the undertakings of either party under this Agreement.

#### ARTICLE V COVENANT OF GOOD FAITH AND FAIR DEALING

**Covenant of Good Faith and Fair Dealing.** This Agreement imposes an obligation of good faith and fair dealing on PVAMU and INFRAMARK in their performance and enforcement. PVAMU and INFRAMARK, with a shared commitment to honesty and integrity in the performance and administration of this Agreement, agree to the following mutual duties:

- (A) each will be held to a standard of good faith and fair dealing in the performance of its duties and obligations under this Agreement,
- (B) each will function within the laws and statutes applicable to their duties and responsibilities,
- (C) each will cooperate in the other's performance,
- (D) each will avoid hindering the other's performance,
- (E) each will proceed to fulfill its obligations under this Agreement diligently and honestly,
- (F) each will cooperate in the common endeavor of completing the Services and administration of this Agreement in a timely and efficient manner.

PVAMU shall provide to INFRAMARK all the reasonably necessary information, cooperation and support in order for INFRAMARK to provide the Services in a timely and professional manner. INFRAMARK is not responsible for any inaccuracies or errors contained in the information relied on by INFRAMARK and supplied by the PVAMU.

#### ARTICLE VI RECORDS AND DATA

All Facilities' records and data, including but not limited to operation reports, laboratory reports and monitoring documentation, but excluding INFRAMARK's budgetary, financial, and other proprietary information, are the property of the PVAMU and cannot be destroyed by INFRAMARK without written consent of the PVAMU. All site-specific operating procedure guidelines, preventive maintenance and safety programs and plant evaluation reports will become and remain the property of the PVAMU.

**ARTICLE VII**  
**REPRESENTATIONS AND WARRANTIES**

1. **Mutual Representations.** Each party represents to the other that:

- (A) It has all the requisite corporate power and authority to execute and deliver this Agreement and perform its obligations hereunder,
- (B) Its execution, delivery and performance of this Agreement have been duly authorized by, or are in accordance with, its certificate of incorporation and by-laws or Policies and Regulations; this Agreement has been duly executed and delivered for it by authorized signatories; and, this Agreement constitutes its legal, valid and binding obligation,
- (C) Its execution, delivery and performance of this Agreement does not and will not result in a breach or violation of, or constitute a default under any law, or any agreement; lease or instrument to which it is a party or by which it or its properties may be bound or affected
- (D) It has not received any notice, nor to its knowledge is there pending or threatened any notice of any violation of any Applicable Law, awards, or orders against it or any of its affiliates which would materially adversely affect its ability to perform hereunder.
- (E) It will abide by Applicable Law, including the US Foreign Corrupt Practices Act and any other anti-corruption laws,

2. **PVAMU Representations.** PVAMU hereby represents to INFRAMARK:

- (A) PVAMU presently intends to continue to use the Facilities during the Term in a manner similar to its present use, except as may have been disclosed by PVAMU in writing to INFRAMARK.
- (B) PVAMU has provided INFRAMARK with all records previously requested by INFRAMARK, and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be, true and accurate in all material respects.
- (C) PVAMU will comply with all requirements and obligations set forth on in this Agreement.
- (D) PVAMU shall consult with INFRAMARK on all material, industrial, insurance, safety, regulatory, or public relations matters and matters where litigation arises or is threatened or there are grounds for litigation arising which are known to PVAMU arising out of or in connection with this Agreement as soon as PVAMU is aware of the same where such matters affect the performance of the Services by INFRAMARK.
- (E) PVAMU shall cooperate with INFRAMARK generally, and in particular, provide INFRAMARK in a timely and complete manner with any information, policies and procedures relevant to the performance by INFRAMARK of its obligations under this Agreement.
- (F) PVAMU shall at no charge provide INFRAMARK, its employees, agents and subcontractors with reasonable access to each facility throughout the Term for the purposes of fulfilling all of its obligations under this Agreement, including but not limited to; (a) performing site due diligence; (b) performing the Services and other obligations; (c) permitting INFRAMARK to prepare itself and each facility for the provision of the Services; and (d) completing the termination assistance services, as applicable.
- (G) PVAMU furnish INFRAMARK with general offices, work areas, support areas, telephone and data communication equipment, storage facilities, light, identification, parking facilities, use of cafeterias, rest rooms, heat, air conditioning, and other items to enable INFRAMARK to provide the Services as further outlined in this Agreement. In addition, PVAMU shall, at its option, provide INFRAMARK with access to either personal

computers or high-speed Internet connections at each facility, All such equipment shall be provided to INFRAMARK free of charge, and shall be used by INFRAMARK solely in connection with the performance of the Services. The items provided by PVAMU hereunder shall remain the property of PVAMU.

3. **INFRAMARK Representations and Warranties.** INFRAMARK hereby warrants and represents to PVAMU:
  - (A) INFRAMARK will perform its obligations under this Agreement in compliance with all laws and in compliance with PVAMU's policies, regulations and rules, provided that such PVAMU policies, regulations and rules have been made known to INFRAMARK prior to commencing the Services under this Agreement
  - (B) INFRAMARK will supply sufficient and appropriately qualified and skilled employees and subcontractors to provide the Services.
  - (C) Except as otherwise provided in this Agreement, all Services will be performed in a manner which meets or exceeds industry standards.

#### **ARTICLE VIII** **GENERAL TERMS**

1. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be construed as such.
2. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
4. **Venue.** This Agreement is to be performed in Waller County, Texas. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against PVAMU shall be in the county in which the primary office of the chief executive officer of PVAMU is located, being Waller County, Texas.
5. **Entire Agreement.** This Agreement and its Exhibits (Exhibit I – Scope of Work, Exhibit II – List of PVAMU Buildings/Sites, Exhibit III – Preventive Maintenance Schedule-Water Plants, and Exhibit IV – Insurance Requirements for INFRAMARK Contract) constitute the sole and entire agreement between PVAMU and INFRAMARK and is binding only when signed by both parties. This Agreement supersedes all oral or written previous and contemporary understandings or agreements relating to matters contained herein. This Agreement may not be amended or otherwise altered except by mutual agreement in writing.
6. **Severability.** If any section, subsection, sentence or clause of Agreement shall be deemed illegal, invalid, unenforceable, or in conflict with any law, the validity of the remaining portions shall not be affected hereby.
7. **Insurance.**
  - (A) INFRAMARK acknowledges that, because PVAMU is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of PVAMU or for injuries caused by conditions of tangible state property is provided for solely by the provisions of the Texas Tort Claims Act (*Texas Civil Practice and Remedies Code*, Chapters 101 and 104), and that Workers' Compensation Insurance coverage for employees of PVAMU is provided by PVAMU as mandated by the provisions of Chapter 502, *Texas Labor Code*. PVAMU shall have the right, at its option, to (i) obtain liability insurance protecting PVAMU and its employees and property insurance protecting PVAMU buildings and the contents, to the extent authorized by Section 51.966, *Texas Education Code*, or other law, or (ii) self-insure against any risk that may be incurred by PVAMU as a result of its operations under this Agreement.

- (B) INFRAMARK shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth in the Insurance Requirements for INFRAMARK Contract in Exhibit IV of this agreement.
8. **Changes in Law.** If any changes occur during the term of this Agreement with respect to any laws, rules, regulations or ordinances that affect the rights or obligations of INFRAMARK or PVAMU under this Agreement or the applicability of any taxes or fees, INFRAMARK and PVAMU shall negotiate in good faith to bring this Agreement into conformance with such changes. In the event such agreement cannot be reached, either party shall have the right to terminate the Agreement immediately upon written notice to the other party.
9. **Assignment.** Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.
10. **Independent Contractor.** The relationship of INFRAMARK to PVAMU is that of independent contractor for all purposes under this Agreement. This Agreement is not intended to create, and shall not be construed as creating, between INFRAMARK and PVAMU, the relationship of principal and agent, joint ventures, co-partners or any other similar relationship, the existence of which is hereby expressly denied.
11. **Right of Access and Audits.** INFRAMARK shall complete and maintain accurate records in connection with the Services delivered pursuant to this Agreement. Such records shall include monthly reports, disbursements, etc. INFRAMARK understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. INFRAMARK agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all applicable records requested. INFRAMARK will include this provision in all contracts with permitted subcontractors. PVAMU shall also have the right, at its own expense, to inspect all records of INFRAMARK which relate to the provision of Services under this Agreement during regular business hours. Any action(s) taken by PVAMU under this provision shall not release INFRAMARK from its duties and obligations under this Agreement.
12. **Indemnification.** INFRAMARK shall defend, indemnify and hold harmless PVAMU, all of its officers, agents, employees, and assigns from and against all liability for damages, costs, losses, and expenses, including reasonable attorney's fees, resulting from any claim asserted by a third party against PVAMU for wrongful death, bodily injury, and/or property damage, but only to the extent caused by the willful or negligent acts or omissions of INFRAMARK. Judgment of any kind and the cost and expenses incident thereto (including cost of defense, settlement and reasonable attorneys' fees) which INFRAMARK may hereafter incur, become responsible for or pay out as a result of, arising from or occasioned by and to the extent caused by: (A) INFRAMARK's reach of any term or provision of the Agreement in the performance of the Services, or (B) the negligence or willful misconduct of INFRAMARK, its employees or agents in the performance of the Agreement, or (C) any failure to fully comply with Applicable Law by INFRAMARK, its agents, employees or subcontractors shall be borne by INFRAMARK.
13. **Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by Force Majeure. "Force Majeure" means an event which is beyond the reasonable control of a party, including without limitation: (a) acts of God; (b) flood, fire, earthquake, hurricane or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances, other than those involving the affected parties employees;] (i) shortage of adequate power or transportation facilities.
14. **Dispute Resolution Process.**

- (A) The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by PVAMU and INFRAMARK to attempt to resolve any claim for breach of contract made by INFRAMARK that cannot be resolved in the ordinary course of business. INFRAMARK shall submit written notice of a claim of breach of contract under this Chapter to the Executive Director for Procurement and Disbursement Services of PVAMU, who shall examine INFRAMARK'S claim and any counterclaim and negotiate with INFRAMARK in an effort to resolve the claim.
- (B) The submission, processing and resolution of INFRAMARK'S claim is governed by the published rules adopted by the Office of the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found in the *Texas Administrative Code*.
- (C) Neither the non-occurrence nor occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by INFRAMARK, in whole or in part.
15. **Non-Waiver Provisions.** The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.
16. **State Contracting Requirements.**
- (A) **Child Support.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an Agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, INFRAMARK or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- (B) **Debts or Delinquencies.** Pursuant to Section 2252.903, *Texas Government Code*, INFRAMARK agrees that any payments owing to INFRAMARK under this Agreement may be applied directly toward certain debts or delinquencies that INFRAMARK owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
- (C) **Franchise Tax Certification.** If INFRAMARK is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then INFRAMARK certifies that it is not currently delinquent in the payment of any franchise taxes or that INFRAMARK is exempt from the payment of franchise taxes.
- (D) **Public Information Act.**
- (i) INFRAMARK acknowledges that PVAMU is obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- (ii) Upon PVAMU's written request, INFRAMARK will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, *Texas Government Code*, to PVAMU in a non-proprietary format acceptable to PVAMU. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which PVAMU has a right of access.

(iii) INFRAMARK acknowledges that PVAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

- (E) **Previous Employment.** INFRAMARK acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits PVAMU from using state appropriated funds to enter into any consulting or professional services contract with an individual who has been previously employed, as an employee, by any agency within the Texas A&M University System within the past twelve (12) months. If INFRAMARK is an individual, by signing this Agreement, INFRAMARK certifies that Section 2252.901 of the *Texas Government Code* does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- (F) **Historically Underutilized Business.** INFRAMARK represents and warrants that it shall comply with the Historically Underutilized Business requirements pursuant to Government Code, Chapter 2161.
- (G) AS A FEDERAL CONTRACTOR, PVAMU HEREBY SERVES NOTICE TO THE RECIPIENT OF THIS AWARD THAT THIS CONTRACT, TO THE EXTENT APPLICABLE, MUST COMPLY WITH EXECUTIVE ORDER 11246, THE VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1974 AND SECTION 503 OF THE REHABILITATION ACT OF 1973. ADDITIONALLY, EXECUTIVE ORDER 13496 REQUIRES THAT ALL FEDERAL CONTRACTORS AND SUBCONTRACTORS WHO ARE SIGNATORIES TO A NON-EXEMPT FEDERAL CONTRACT OR SUBCONTRACT ENTERED INTO ON OR AFTER JUNE 21, 2010, POST AN EMPLOYEE NOTICE NOTIFYING EMPLOYEES OF THEIR RIGHTS UNDER FEDERAL LABOR LAWS

17. **Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. PVAMU and INFRAMARK can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

**PVAMU:** Prairie View A&M University  
P.O Box 519, MS 1311  
Prairie View, TX 77446-0519  
Attention: Exec. Director for Procurement & Disbursement Svcs.  
Phone: (936) 261-1933  
Fax: (936) 261-2158  
E-mail: [contracts@pvamu.edu](mailto:contracts@pvamu.edu)

**INFRAMARK:** INFRAMARK, LLC  
2002 West Grand Parkway North, Suite 100  
Katy, Texas 77449  
Attention: Todd Burrer  
Phone: 713-805-9232

With copy to:

INFRAMARK, LLC  
220 Gibraltar Road, Suite 200  
Horsham, PA 19044  
Attention: Legal Department

18. **Liability.**

- (A) Notwithstanding any provision to the contrary contained in this Agreement, in no event shall either party be liable to the other party, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit even if such party has been advised of the possibility of such damages.
- (B) In the event that claims(s) raised against INFRAMARK on account of this Agreement, or on account of the Services performed hereunder, is/are covered under INFRAMARK's insurance policies required of the INFRAMARK hereunder, the INFRAMARK shall not be responsible for any loss, damage or liability beyond amounts paid pursuant to the policy amounts contractually required hereunder and the limits and conditions of such insurance policies. With respect to any other causes of action and/or claims raised against the INFRAMARK that are not covered by the insurance policies required of the INFRAMARK hereunder arising under this Agreement, INFRAMARK's liability shall not exceed an aggregate amount equal to Four Million Dollars (\$4,000,000).
- (C) In the event that water or wastewater treatment violations occur following the Commencement Date, INFRAMARK shall, in respect of violations that may be imposed by environmental regulatory bodies under Applicable Law and to the extent directly attributable to INFRAMARK's breach of its contractual obligations hereunder, be responsible for: environmental regulatory fines or penalties. Prior to settlement or payment of any such fines or penalties, INFRAMARK reserves the right to contest any actions, suits or proceedings for violations through administrative procedures or otherwise. INFRAMARK is not liable for any liabilities resulting from the collection system for the Facilities unless such liabilities are the result of INFRAMARK's negligence.
- (D) This Section 18 is agreed to by PVAMU only to the extent permitted by the Constitution and laws of the state of Texas.

19. **Limitations.** The Parties are aware that there are constitutional and statutory limitations on the authority of PVAMU (a state agency) to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on PVAMU's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on PVAMU except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by PVAMU nor any other conduct, action, or inaction of any representative of PVAMU relating to this Agreement constitutes or is intended to constitute a waiver of PVAMU's or the state's sovereign immunity to suit.

20. **Non-Waiver.** INFRAMARK expressly acknowledges that PVAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by PVAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.

21. **Prohibition on Contracts with Companies Boycotting Israel.** By executing this Agreement, the INFRAMARK certifies it does not and will not, during the performance of this contract, boycott Israel.

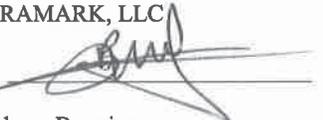
22. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, INFRAMARK certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization.

23. **Conflict of Interest.** By executing and/or accepting this Agreement, INFRAMARK certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, no member of PVAMU, nor any employee, or person, whose salary

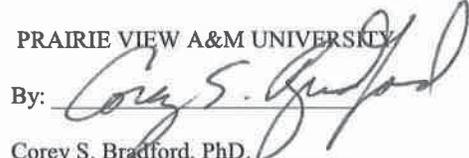
is payable in whole or in part by PVAMU, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

24. **Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

In WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

INFRAMARK, LLC  
By:   
Stephane Bouvier  
Printed Name:

CEO  
Title  
10/2/18  
Date

PRAIRIE VIEW A&M UNIVERSITY  
By:   
Corey S. Bradford, PhD.  
Printed Name

Senior Vice – President for Business Affairs  
Title  
10/15/18  
Date