

FINAL VERSION

POTABLE WATER AND WASTEWATER AGREEMENT

This Potable Water and Wastewater Agreement (this "Agreement") is entered as of August 22, 2023 (the "Effective Date") into between City of Twin Falls ("City") and Chobani, LLC, a Delaware limited liability company ("Chobani").

RECITALS

- A. Chobani operates a dairy manufacturing plant located in Twin Falls, Idaho (the "Facility").
- B. City has, pursuant to its industrial pretreatment ordinance (the "Pretreatment Ordinance") issued to Chobani an Industrial Wastewater Permit S0007R, which authorizes Chobani to discharge certain quantities of wastewater and related constituents from the pretreatment facility (the "Pretreatment Facility") associated with the Facility.
- C. Chobani has consistently increased its investment in, and expanded capacity at, the Facility.
- D. Chobani and City have had a number of discussions, and have entered into a number of understandings and agreements, related to water and wastewater matters at the Facility, including operation of the Pretreatment Facility, potable water intake at the Facility, and wastewater discharges from the Facility.
- E. Chobani and City desire to enter this Agreement to memorialize their mutual understanding and agreements with respect to water and wastewater matters at the Facility.
- F. Chobani and City also desire to confirm that their mutual understandings and agreements exist in the context of their long-standing relationship of cooperation and dealing with each other fairly and in good faith, and addressing issues that arise from time-to-time in a practical and cooperative manner.
- G. Chobani and City note that each section of the below agreement (i.e., Wastewater, Potable Water Intake, New Water Meter) was negotiated independently from one another.

AGREEMENT

1. WASTEWATER

- a. Purchase of Additional Wastewater Capacity. Chobani agrees to purchase, and City agrees to provide, a permanent increase to the wastewater discharge from the pretreatment facility of 500,000 (0.5 million) gallons per day, for a total of 2.0 million gallons per day of discharge from the Facility, with the corresponding allowances of total suspended solids ("TSS") and Biochemical Oxygen Demand ("BOD") as set forth in the wastewater capacity chart in Attachment 1 (the "Wastewater Capacity Chart"). The purchase price for the additional wastewater discharge, including for discharge of TSS and BOD, is \$2,400,000 ("Purchase Price"). City will invoice Chobani for the Purchase Price promptly after the Effective Date, which Purchase Price is payable within 60 days after receipt of City's invoice. With written approval of the City, which will not be unreasonably withheld, Chobani may sell back any portion of the wastewater capacity to the City or any 3rd party. Any sale to the City would be at the same rate at which the wastewater capacity was originally purchased.
- b. Pretreatment Permit Revisions. Within 60 days after receipt of the Purchase Price, City will provide Chobani with a revised industrial pretreatment permit that incorporates (1)

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the effluent limits set forth in the Wastewater Capacity Chart; and (2) any other changes necessary to reflect the increased purchased capacity identified in Section 1.a above.

- c. Pretreatment Fine Settlement. Chobani agrees to pay \$609,478.50 (the "Fine Settlement") to City as full and final settlement of all surcharges and notices of violation associated with Chobani's wastewater discharge from January 1, 2022 through July 31, 2023. Chobani will make payment of the Fine Settlement to City within 60 days after the Effective Date.
- d. Future Pretreatment Fines. Chobani recognizes that City has the authority to impose fines for future violations of Chobani's industrial pretreatment permit. City may impose fines against Chobani in accordance with the Twin Falls City Enforcement Response Plan (ERP) associated with the Industrial Pretreatment Program, as amended from time to time, and Chobani will either pay or appeal the assessed fines in accordance with the ERP. This agreement does not constitute a waiver by either party of any arguments related to appeal of any future fines.
- e. Wastewater Surcharges. City will hold in abeyance all existing surcharges as identified on Attachment 2, and future surcharges through December 20, 2023 associated with Chobani's pretreatment permit ("Held Surcharges"). City will credit the Held Surcharges against the costs of corrective action ("Corrective Action Costs"), as identified in Attachment 3.

2. POTABLE WATER INTAKE

- a. Capacity Increase. City agrees to provide Chobani a permit for a permanent increase of 1.0 million gallons per day of potable water, for a total of 2.0 million gallons per day of potable water delivered to the Facility, as depicted on the water capacity chart portion of Attachment 1 (the "Water Capacity Chart"). With written approval of the City, which will not be unreasonably withheld, Chobani may sell back any portion of the potable water capacity to the City or any other 3rd party. Any sale to the City would be at the same rate at which the potable water capacity was originally purchased.
- b. New Booster Station. In consideration of City's covenants in Section 2.a, Chobani will pay the City ("Chobani Payment") for all construction and engineering costs (the "Construction Costs") for a new Hankins Booster Station (the "Booster Station"), as the Booster Station is described in the Engineer's Opinion of Probable Cost attached hereto as Attachment 4 (the "Cost Opinion"). Chobani acknowledges that the Cost Opinion of \$9,579,000, is an estimate only, and the actual Construction Costs of the Booster Station may be greater. City acknowledges that Chobani's obligation is limited to the Booster Station as described in the Cost Opinion, provided, however, that the Cost Opinion includes cost for certain Pumps & Motors that will be borne by the City, not Chobani ("City Costs"). The City Costs are for one of the two 50 Horsepower (HP) Pumps & Motors and the two 125 HP Pumps & Motors that are listed in the Cost Opinion, and their mechanical installation, electrical installation, and electrical infrastructure. To quantify the City Costs, during the bidding phase for construction of the Booster Station, the City will obtain alternate bids that detail the City Costs. City will provide Chobani with the opportunity to review the Booster Station design at appropriate intervals including 50% and 90% design submittals. If Chobani notifies City that Chobani believes the proposed design or engineering of the Booster Station is inconsistent with this Agreement, City will meet with Chobani to resolve the matter in good faith. City will not proceed to procurement of the Booster Station without Chobani's approval of the design thereof, which approval will not be unreasonably withheld. To the extent permitted by applicable law, City will provide

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Chobani with the opportunity to be involved in the procurement of the Booster Station. Chobani and City agree to work together in good faith for the orderly, efficient, and timely completion of the Booster Station.

- c. **Chobani Payment.** Chobani's payment of the Construction Costs represents the costs for a municipal improvement project as part of a capital project and is directly identified with the receipt of the permit from the City described in Section 2.a. Chobani will pay the City \$2,000,000 down payment due upon receipt of invoice once this agreement is fully executed. Chobani will make monthly payments of \$500,000 due net 60 days from receipt of invoice through the design period until bids are received not to exceed \$7,000,000 inclusive of the down payment. Once bids are received, and the final cost of construction is fully developed, Chobani will be invoiced for the balance of the cost needed to cover the full amount of construction costs, payable within 30 days of receipt of invoice. City will not execute the construction contract for the booster station until Chobani payments are received to cover the full amount of construction. Upon completion of the Booster Station construction, a final accounting of all construction costs will be developed, and any unspent balance of the Chobani payments will be returned to Chobani.
3. **NEW WATER METER.** Chobani and City acknowledge that potable water is currently delivered to the Facility through a 6-inch meter installed in City's water system. Chobani will replace the existing meter with a new 8-inch meter (the "New Meter"), at Chobani's sole expense. The New Meter will be subject to City's approval, which approval will not be unreasonably withheld. Chobani will maintain, repair and replace the New Meter as required for it to adequately measure water delivered to the Facility. If New Meters fails or ceases to adequately measure water delivered to the Facility, then City will provide Chobani notice thereof and, within 30 days thereafter, Chobani will replace, at its sole expense, the New Meter with a new 6-inch meter of the same or comparable quality as that which is currently serving the Facility. City agrees that, in such event, City will take ownership of the 6-inch meter and maintain the meter at City's sole expense.
4. **GOOD FAITH AND FAIR DEALING.** Chobani and City agree that this Agreement is entered into in the context of their long-standing relationship of cooperation and dealing with each other fairly and in good faith, and addressing issues that arise from time-to-time in a practical and cooperative manner. Both parties agree to continue to act in accordance with their established relationship to allow both parties to take advantage of the terms of this Agreement.
5. **GENERAL**
 - a. **Amendments; Waivers.** No amendment, modification or waiver of any term of this Agreement, or any default under this Agreement, will be valid unless in writing and executed by each of the parties.
 - b. **Incorporation of Recitals and Exhibits.** The recitals to this Agreement and all attachments referred to in this Agreement are incorporated herein by such reference and made a part of this Agreement.
 - c. **Severability.** If any term of this Agreement is held to be or rendered invalid or unenforceable, such term will not affect the validity or enforceability of any other terms of this Agreement, or the validity or enforceability of such affected term at any other time.

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Twin Falls, ID 83301

C (208)-270-6239

With a copy to Legal@chobani.com

- j. **Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.
- k. **Further Acts.** The parties hereto agree to take such further acts and execute such further documents and instruments as may be reasonably required to consummate the transactions set forth herein.
- l. **Attorneys' Fees.** Should either party file any action to enforce this Agreement, the non-prevailing party will pay to the prevailing party its reasonable attorneys' fees and litigation costs expended or incurred in connection therewith.

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SIGNATURE PAGE

Dated effective as of the Effective Date.

"City"

CITY OF TWIN FALLS

By: *J Baird*
Name: Joshua R. Baird
Title: Public Works Director

"Chobani"

CHOBANI, LLC, a Delaware limited liability company

By: *Tarkan*
Name: Tarkan Gurkan
Title: Chief Financial Officer

ATTACHMENT 1

WASTEWATER CAPACITY CHART
(total of wastewater discharged to City)

	Existing			Upon Execution of this Agreement			Units
	Currently Owned by Chobani	Leased from Kimberly until 12/20/2023	Total	Additional capacity to be purchased from City	New Capacity until 12/20/2023	Capacity from 12/21/2023 forward	
Flow	1.50	0.35	1.85	0.50	2.35	2.00	MGD
BOD	3,753	2,249	6,002	1,252	7,253	5,004	PPD
TSS	3,753	2,249	6,002	1,252	7,253	5,004	PPD

WATER CAPACITY CHART
(total of all connections to City water)

	Existing			Upon Execution of this Agreement		
	Currently Owned by Chobani	Leased from City until 9/30/2023	Total	Additional capacity to be purchased from City	Capacity from 10/1/2023 forward	Units
Flow	1.00	1.00	2.00	1.00	2.00	MGD

MGD – Million Gallons per Day

BOD – Biochemical Oxygen Demand

PPD – Pounds per Day

TSS – Total Suspended Solids

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ATTACHMENT 2

HELD SURCHARGES

Month	Violation & Fines	Surcharge & Fees
Jan-22	\$0.00	\$0.00
Feb-22	\$27,896.92	\$13,264.12
Mar-22	\$34,036.89	\$25,245.05
Apr-22	\$46,386.57	\$45,501.53
May-22	\$8,795.30	\$16,452.27
Jun-22	\$7,729.20	\$17,950.52
Jul-22	\$10,394.36	\$15,609.69
Aug-22	\$43,160.18	\$29,964.07
Sep-22	\$57,464.16	\$36,843.31
Oct-22	\$4,291.90	\$17,894.60
Nov-22	\$0.00	\$1,691.81
Dec-22	\$128,423.67	\$41,529.09
Jan-23	\$32,628.04	\$19,578.97
Feb-23	\$167,515.86	\$59,924.35
Mar-23	\$34,144.26	\$19,633.56
Apr-23	\$6,611.19	\$25,414.89
May-23	\$0.00	\$3,836.20
Jun-23	\$0.00	\$0.00
Jul-23	\$0.00	\$0.00
Total	\$609,478.50	\$390,334.03

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**ATTACHMENT 3
CORRECTIVE ACTIONS**

- Chobani negotiated and executed a lease agreement under which Chobani obtained sewer capacity from the City of Kimberly for a term of forty-eight (48) months ending December 20, 2023.
- Chobani hired Brown & Caldwell to study and design physical and operational improvements at the pretreatment facility. Brown & Caldwell has produced a series of documents reflecting its studies, recommendations, and proposed solutions, including a February 24, 2020 technical memorandum identifying and describing interim measures to improve performance at the pretreatment facility.
- In the Fourth Quarter 2019, Chobani engaged in a detailed design for water recovery and supply management of potable supply, recovered flow and uses from the pretreatment facility, and discharge flow to D1 and D2.
- Chobani will take the following actions to improve the pretreatment facility on approximately the timeline below. The exact steps taken may change according to conditions. This list is intended as illustrative, not exhaustive.
 - First and Second Quarters, 2020: Request for proposals to identify equipment and systems for purchase. Begin implementation of interim measures, including conversion of existing storage tanks to an aerobic aeration basin, installation of filtration membrane skids to facilitate wastewater reuse, and installation of additional filtration systems.
 - Third Quarter 2020: Begin the 30% detailed design for the overall pretreatment plan upgrades based on the Alternative Evaluation process completed in Q1-2020.
 - Third Quarter 2021: Begin construction of pretreatment plant upgrades. Upgrades are anticipated to include expanding the aerobic treatment capacity of the system.
 - Third Quarter 2022: Startup and commission upgrades to pretreatment facility.
 - Fourth Quarter 2022-Third Quarter 2023: Operation stabilization and tracking of results of upgrades to pretreatment facility.
 - Fourth Quarter 2023: System performance review and determination of long-term operational stability.
- Chobani will take the following actions to address odor concerns:
 - Develop detailed plans to rebuild and restart the BioRem system – Completed August 2019.
 - Complete bio-chemical analysis of the site water systems to address root causes and define appropriate long-term corrective actions. – Completed, August 2019

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ATTACHMENT 4
ENGINEER'S OPINION OF PROBABLE COST
(Hankins Booster Station)



December 19, 2022

Mr. Nathan Erickson, Environmental Manager
City of Twin Falls Engineering
P.O. Box 1907
Twin Falls, ID 83303-1907

RE: Chobani –Anticipated Costs

Dear Mr. Erickson,

The City of Twin Falls Water and Sewer Models have been used to identify available water and effluent sewer capacity for additional permanent flow for Chobani. Previously, improvements were identified to accommodate an increase in capacity. One of these improvements was a base cost needed for a new Hankins Booster Station. This cost has been updated and estimated at \$9.6 million to accommodate the additional 1 MGD of flow. Additionally, capacity cost not updated for the sewer collection system and wastewater treatment plant had been previously estimated at \$2.4M based on 0.5 MGD of additional sewer capacity along with corresponding TSS and BOD.

We are happy to discuss this further as needed. Please contact me or Mark Holtzen if you have any questions.

Sincerely,

J-U-B ENGINEERS, Inc.

Gary M. Haderlie, P.E.




Enclosure: Hankins Cost Breakdown Details

CC: Troy Vitek, P.E., City Engineer, City of Twin Falls
Josh Baird, P.E., Public Works Director, City of Twin Falls
Rob Bohling, Water Superintendent, City of Twin Falls
Mark Holtzen, P.E., J-U-B ENGINEERS, Inc.

2114 Village Park Avenue, Suite 100, Twin Falls, ID 83301 • www.jub.com • 208.733.2414

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 <small>JUB ENGINEERS, INC.</small> 2114 Village Park Avenue Suite 100, Twin Falls, ID 83301 208.733.2414					
ENGINEERS OPINION OF PROBABLE COST					
PROJECT: New Hankins Pump Station				Revision Date: 19-Dec-22	
IMPROVEMENT: Phase 1				ESTIMATED IMPROVEMENT COST: \$ 9,579,000	
ITEM No.	Description	Est. Quant.	Unit	Unit Price	Total Price
6.00	Surface Restoration				
6.01	Stormwater Management	1	LS	\$ 9,300.00	\$ 9,300.00
6.12	Gravel Surface Repair	1800	SY	\$ 22.00	\$ 39,600.00
9.00	Site Work				
9.01	Site Work & Grading	1	LS	\$ 75,000.00	\$ 75,000.00
9.02	Site Power	1	LS	\$ 160,000.00	\$ 160,000.00
9.03	Yard Piping	1	LS	\$ 1,075,000.00	\$ 1,075,000.00
10.00	Booster Pump Station				
10.03	Pump & Motor - 50 HP	2	EA	\$ 130,000.00	\$ 260,000.00
10.04	Pump & Motor - 125 HP	2	EA	\$ 145,000.00	\$ 290,000.00
10.13	Standby Generator & Transfer Switch	1	EA	\$ 455,000.00	\$ 455,000.00
10.19	Pumphouse Building-Structural	1	LS	\$ 1,010,000.00	\$ 1,010,000.00
10.20	Pumphouse Building-Excavation and Rock Removal	1	LS	\$ 230,000.00	\$ 230,000.00
10.22	Pumphouse Building-Electrical/SCADA	1	LS	\$ 980,000.00	\$ 980,000.00
10.23	Pumphouse Building-HVAC	1	LS	\$ 280,000.00	\$ 280,000.00
10.24	Pumphouse Building-Piping	1	LS	\$ 650,000.00	\$ 650,000.00
10.27	Flow Meters and Misc	1	LS	\$ 30,000.00	\$ 30,000.00
21.00	Contractor Mobilization/Demobilization			5%	\$ 277,195.00
22.00	Contingency			30%	\$ 1,663,170.00
ESTIMATED CONSTRUCTION COSTS					\$ 7,484,000
23.00	Other Project Costs				
23.02	Inflation			10%	\$ 748,000
23.03	Engineering/Construction Admin			18%	\$ 1,347,000
TOTAL PROJECT COST					\$ 9,579,000

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Wastewater Discharge Permit Increase Cost						
	Treatment Flow:					
	Peak Day	500,000	gpd	\$ 3.411	per 1,000 gal per day	\$ 622,507.50
		0.500	mgd			
	Treatment BOD:		300	mg/L		
	Peak Day	1,252	ppd	\$ 1.356	per pound per day	\$ 619,541.15
	Treatment TSS:		300	mg/L		
	Peak Day	1,252	ppd	\$ 1.376	per pound per day	\$ 628,678.92
	Northeast Trunkline Capacity Flow Buy-in:					
		500,000	gpd	\$ 1,040	per 1,000 gal per day	\$ 520,000.00
						\$2,390,727.57

Note: The \$2.4 million represents the separate and distinct cost of the wastewater discharge permit increase of 500,000 GPD to a total of 2.0 MGD per Wastewater Capacity Chart in Attachment 1.