



## 2G ENERGY

### LONG TERM SERVICE AGREEMENT

THIS LONG TERM SERVICE AGREEMENT (this "Agreement") is made and entered into effective as of this 1st day of July, 2023 (the "Effective Date"), by and between the CITY OF MISSOULA, having its principal place of business at 1100 Clark Fork Ln, Missoula MT 59808, (the "Customer" or "City") and 2G Energy Inc., having its principal place of business at 205 Commercial Drive., St. Augustine, Florida (the "Contractor").

### RECITALS

**WHEREAS**, Contractor is, among other things, engaged in the business of providing certain maintenance services with respect to power plant equipment; and

**WHEREAS**, Customer owns, operates, has purchased or will purchase certain power plant equipment located at the Facility (as defined below); and

**WHEREAS**, Customer has requested that Contractor provide services for the Covered Unit(s) (as defined below) in accordance with the terms of this Agreement and Contractor is willing to provide services for the Covered Unit(s) in accordance with the terms of this Agreement; and

**WHEREAS**, Contractor has made a Proposal (as defined below) dated the 1st day of July, 2023, which proposal has been accepted by the Customer.

**NOW, THEREFORE**, in consideration of the foregoing, of the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Customer and the Contractor hereby agree as follows:

1. **Definitions.** The following terms shall have the meaning set forth below when used in this Agreement:
  - (a) "2G Manufacturer" means the Contractor or any affiliate thereof that manufactures some or all of the Parts for the Covered Unit(s).
  - (b) "CHP System" means a Combined Heat and Power system.
  - (c) "Contractor Taxes" means any and all corporate and individual taxes that are measured by net income or profit imposed by any government authority of any country on Contractor, its employees or subcontractors, due to the performance of or payment for work under this Agreement.
  - (d) "Contract Price" means the price for the Work as set out in the Proposal, including any Price Escalation (as set forth below).
  - (e) "Covered Unit(s)" means the engines/modules/CHP System, installed at the Facility identified in the Proposal attached hereto as Schedule A.
  - (f) "Customer Taxes" means any and all taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover, use or



value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), other than Contractor Taxes, imposed by any governmental authority of any country.

- (g) “Extra Work” means any goods or services that the Contractor provides or performs that are outside the scope of Work which shall be previously approved in writing by the Customer, which Extra Work shall incur costs in addition to the Contract Price to be paid by the Customer to the Contractor. “Extra Work” includes any work performed by the Contractor which is necessitated by misuse, improper or insufficient maintenance, the use of unacceptable fuel quality (as set forth on Schedule C), excessive heat, electrical supply fluctuations, storm, fire, flood, riot, vandalism, sabotage, espionage or any other cause beyond Contractor’s control with respect to the Covered Unit(s), or any parts thereof. Similarly, any tests, additions or modifications made to the Covered Unit(s) by the Contractor as may be required by governmental authorities or independent third Parties shall qualify as Extra Work. Customer shall pay Contractor for Extra Work at the applicable billing rates for material and labor as set forth on Schedule H
- (h) “Facility” means the power generation plant, station or power generation section of the premises in which the Covered Unit(s) is located, as identified in the Proposal and Schedule B.
- (i) “Hazardous Materials” means toxic substances, hazardous substances or hazardous wastes, as such terms are defined in any law, statute, ordinance or regulations promulgated by any national, federal, state, provincial, or local government authority or the country of the Site.
- (j) “Insolvent” has the same definition as “insolvent person” in the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3.
- (k) “OEM” means the original equipment manufacturer, which includes 2G Manufacturer and any Third Party Manufacturer.
- (l) “Monitoring & Performance System” means a system or systems which may be used from time to time by Contractor for the monitoring of Facility equipment and/or the provision of performance information and support, generally consisting of hardware, software, and a connection to a source of technical oversight or review.
- (m) “Parts” means new, repaired or refurbished parts, materials, components and other goods furnished by Contractor, or its subcontractors or suppliers, under this Agreement for the Covered Unit(s) as expressly provided in the Proposal.
- (n) “Proposal” means the Contractor’s proposal dated July 1<sup>st</sup>, 2022 which is attached hereto as Schedule A and incorporated herein by reference. In the event of a conflict between the terms of the Proposal and this Agreement, the terms of the Proposal shall govern.
- (o) “Site” means the real property upon which the Facility is located.
- (p) “Third Party Manufacturer” means any party other than the 2G Manufacturer who manufactures Parts used for the Covered Unit(s).
- (q) “Time and Material Rates” means those rates as set forth in Schedule H comprising:



- (i) Contractor's published or standard hourly rates for services, that are not warranty related, carried out at the Facility in effect at the time services are performed applied to the number of hours of such services including travel time, plus
- (ii) Reasonable travel and living expenses (including standard per diems, if applicable).
- (r) "Work" means the scope of services, equipment and material to be provided by Contractor as set forth in the Proposal. Work shall not include any equipment or materials added and/or modified after date of the Proposal, unless such changes are expressly accepted by Contractor.
- (s) "Regular Business Hours" means regular working & business hours on Monday through Friday, excluding public holidays and Saturday and Sunday, between 7:00 am and 6:00 pm at the physical location of the Covered Unit(s).
- (t) "Maintenance Schedule" means the schedule of services described in the Proposal, as well as any documentation from the OEM, as the same may be amended from time to time by the manufacturer.

## **2. Obligations of the Contractor.**

- (a) The Contractor shall perform the Work as set forth in the Proposal in a professional and workmanlike manner in accordance with industry standards. The Contractor shall document the Work performed, including its completion, in the Contractor's service report, a copy of which shall be delivered to the Customer upon the completion of the Work. The Work does not include any activities, services, parts or components that are not explicitly included in the Proposal. By way of example, but not limitation, unless otherwise provided in the Proposal, the Contractor shall not be obligated to:
  - (i) Supply, deliver, transport, store or dispose of commodities and goods, including without limitation lubrication oils, sampling oil kits, fuel gas, flushing compounds, battery acid, anti-freezing compound, cleaning materials or glycol.
  - (ii) Incur storage or preservation expenses or any other additional costs due to the shut down of any engine/module for an uninterrupted period of more than three (3) months.
  - (iii) Provide any third party services or equipment including without limitation cranes, man lifts, hydraulic modifications or other construction activities that may be required after the replacement of the Covered Unit(s) or any related equipment or materials.
  - (iv) Remove or replace any systems, structures or parts of the Facility (other than the Covered Unit(s) themselves to the extent necessary to perform covered maintenance and warranty obligations). If the Proposal explicitly contemplates that Contractor will remove or replace any systems, structures or parts of the Facility in order to access the Covered Unit(s) then such removals or replacements will be performed only to the extent so provided in the Proposal.



3. Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted by law. Contractor shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.
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- (b) With respect to its provision of services under this Agreement, Contractor agrees and shall comply with the following Non-Discrimination and Affirmative Action policies:
    - (i) Non-Discrimination. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation, or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.
    - (ii) Affirmative Action Policy. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City's Affirmative Action Policy, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings. For purposes hereof, the City's Affirmative Action Policy is set forth below:

"The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity."



“Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

“It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an “affected” class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

“The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

“Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.”

- (c) Contractor shall provide City with proof of Contractor’s liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:
  - (i) Workers’ Compensation – statutory
  - (ii) Employers’ Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate
  - (iii) Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate
  - (iv) Automobile Liability - \$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate
  - (v) Professional Liability - \$1,000,000 per claim; \$2,000,000 annual aggregate

The City shall be included or named as an additional or named insured on the Commercial General and Automobile Liability policies. The insurance must be in a form suitable to City in its reasonable discretion.

**3. Obligations of the Customer.** In consideration of the Contractor performing the Work, the Customer agrees as follows:

- (a) The Customer shall not make changes to the Covered Unit(s) without the prior written consent of the Contractor and without compensating the Contractor for any associated Extra Work.
- (b) The Customer shall acquire and maintain a Hazardous Waste Identification Number (“HWIN”) or its equivalent (i.e. an International Waste Identification Code (“IWIC”) or other hazardous waste manifest identification system).



- (c) The Customer shall provide the Contractor promptly upon request with historical fuel quality analyses (for fuels other than natural gas), which shall be carried out by the Customer every three (3) months. The fuel quality must meet the specifications designated by the OEM which are as set forth in the Proposal.
- (d) The Customer shall provide at no additional cost a secured room suitable for storage at the Site for the Contractor's use to store supplies in connection with the Work.
- (e) The Customer shall ensure that the Facility's structure and environment is suitable and safe for the Covered Unit(s) and the Work, including making such modifications to the Facility as are reasonably necessary or advisable to minimize the possibility and the impact of an emergency that could cause physical harm to people or damage the Facility. Any other modifications to the Facility by the Customer shall require written approval by the Contractor's Service Manager. Any approval by Contractor of, or consent by Contractor to, any plans, specifications or other items with respect to the Facility to be submitted to and/or reviewed by Contractor will be strictly limited to an acknowledgment of approval or consent by Contractor thereto, and such approval or consent will not constitute the assumption by Contractor of any responsibility for the accuracy, sufficiency or feasibility of any plans, specifications or other such items and will not imply any acknowledgment, representation or warranty by Contractor that the design is safe, feasible, structurally sound or will comply with any legal or governmental requirements, and Customer will be solely responsible for all of the same.
- (f) The Customer shall ensure that the determined number of operating hours per engine/module is maintained as set forth in the Proposal.
- (g) The Customer shall permit the Contractor to carry out the Work during regular business hours as set forth in the Proposal without interference. Any work included in the Contract Price but provided outside normal working hours, including remote support, shall be considered Extra Work. The Customer shall compensate the Contractor for such Extra Work by paying standard overtime fees in addition to the normal working hour fees as such fees are set forth on Schedule H, as well as other costs associated with working outside normal working hours.
- (h) The Customer shall install and maintain, at the Customer's cost, a high-speed internet connection at the Site to permit the Contractor to have immediate and uninterrupted remote support in accordance with the Contractor's instructions.
- (i) The Customer shall use, and allow the Contractor to access online monitoring that allows remote off-site readings of the status of the operating hours and certain performance relevant measurements with respect to the Covered Unit(s).
- (j) The Customer shall allow the Contractor to enter the Site to take on-site readings for accounting purposes and review written records of the performed operating records and hours.
- (k) Throughout the Term and for a period of twelve (12) months after the termination or expiration of this Agreement, the Customer shall not, without expressed written consent of the Contractor, directly or indirectly, solicit or induce any of the Contractor's employees or subcontractors to terminate or breach an employment, contractual or other relationship with the Contractor.



- (l) The Customer shall promptly make payments of the Contract Price as required by this Agreement and the Proposal.
- (m) The Customer shall perform troubleshooting on the Covered Unit(s) to ensure the safe operation of the Covered Unit(s), which troubleshooting must cover items including but not limited to the pressure, temperature transmitter, thermometer, gauges, ignition coils, spark plugs, ignition wires, and any leaks with respect to the Covered Unit(s). The Customer shall remedy any defects or issues discovered by such troubleshooting, or inform the Contractor of such to defects or issues in accordance with the warranty provisions set forth in this Agreement. This paragraph does not supersede the technical support by the Contractor, or the warranty obligations of the unit /parts.
- (n) The Customer shall support the Contractor by providing, at the Customer's cost, basic facilities and operator personnel, parking spaces, storage areas, changing and washing facilities, ladders, lifts (scissor or boom), rigging services, crane services, electricity, and water and compressed air (including the necessary connections) for use by the Contractor to perform the Work.
- (o) The Customer and its operators shall carry out the operation of the Covered Unit(s) and the remediation of minor malfunctions or repairs of the Covered Unit(s) which do not affect the safe operation of the Covered Unit(s), as well as perform the work required of the Customer as set forth on Schedule E and Schedule F. The Customer shall ensure that its personnel entrusted with carrying out such work do so in accordance with the manufacturer's guidelines & regulations for the Covered Units (The Customer shall provide the Contractor with access to the Site, the Facilities and the Covered Unit(s) to perform the Work.
- (p) The Customer shall ensure that its personnel meet the minimum qualifications, receive the necessary training, and are capable, qualified, and properly prepared to perform operator duties with respect to the Covered Unit(s).
- (q) The Customer shall adhere to the operating instructions and other instructions given by the manufacturer of the Covered Unit(s) with respect to the operation and maintenance of the Covered Unit(s).
- (r) The Customer shall provide the Contractor with any information relating to the Covered Unit(s) that is reasonably necessary for the Contractor to perform the Work, including any supporting documents such as an operator's log.
- (s) The Customer shall be solely responsible for compliance with any applicable (i) workplace health and safety regulations relating to the Work or the Site and (ii) any applicable legislation related to toxic and hazardous substances associated with the Work or the Site.

#### **4. Pricing and Payment.**

- (a) The Contract Price and applicable currency to be paid by the Customer to the Contractor is set forth in the Proposal at a cost not to exceed Eighty- Five Thousand and 31 dollars and sixty five cents. (\$85,031.65) and is net of any Contractor Taxes.
- (b) The Customer shall pay the portion of the Contract Price billed monthly by the Contractor net Forty-Five (45) days after receipt of an invoice from the Contractor. Any



amounts not paid when due shall be subject to interest at the rate of two percent (2%) per month or the highest rate allowed by law, whichever is less.

- (c) If, during the term of this Agreement, any new legislation, taxes or regulations are established that cause an increase in fees or charges in connection with oil and/or other waste removal requirements, the Customer shall be responsible for paying Contractor such increased fees or charges, as applicable.
  - (d) Customer agrees that the Work qualifies as services or materials on which a claim for lien (including without limitation a construction lien, mechanic's lien or builder's lien) may arise pursuant to the applicable legislation should the Contractor opt to pursue such lien for unpaid amounts owed to the Contractor. The Customer hereby waives any defense associated with the non-applicability of such lien legislation to the Work. The Customer shall execute and deliver any documents required for the Contractor to perfect its security interest in accordance with this Section 4(d).
  - (e) If the Customer fails to make any of the payments when due, Customer shall pay, in addition to any defaulted amount and interest thereon, all of the Contractor's legal fees, collection costs and court costs in connection herewith. The Contractor reserves the right to share any relevant credit information when requested of it.
  - (f) If the Customer fails to meet an agreed upon appointment for the Contractor to carry out the Work, if access to the Site or Covered Unit(s) is denied by the Customer, or if the Customer otherwise delays the Work, the Customer shall be charged separately for any additional costs incurred by the Contractor as the result of such delay ("Delay Costs"), unless the Customer has provided at least five (5) days' prior written notice to the Contractor cancelling the appointment. The Contractor reserves the right to invoice the Customer separately for any Delay Costs incurred.
  - (g) The parties acknowledge that the Contract Price is based on a certain minimum expected annual operating hours as identified in the Proposal (the "Minimum Hours"). If the actual annual operating hours of the Covered Unit(s) (the "Actual Hours") fall short for any given year by more than twenty percent (20%) of the Minimum Hours for any reason outside the Contractor's control, the Contractor shall be compensated by multiplying the percentage difference, but in no event more than eighty percent (80%), between the Actual Hours and the Minimum Hours, by the cost per operating hour as set forth in the Proposal. If applicable, this adjustment will be calculated in January following the previous year's contract term.
5. **Term.** This Agreement shall become effective upon the Effective Date and, unless earlier terminated pursuant to Section 6, shall end on the earlier of (i) when the respective engine/module has reached 40,000 operating hours or (ii) June 30, 2024, in either case without the need for a notice of termination (the "Term").
6. **Termination.**
- (a) Termination for Default and/or Insolvency.
    - (i) Either party may terminate this Agreement if the other party (i) becomes insolvent or (ii) commits a monetary or material breach of this Agreement and fails to cure such breach within thirty (30) days' of written notice of such breach,



or if such breach is non-monetary and if it is not possible to cure such non-monetary breach within thirty (30) days' of such notice, fails to commence to cure the breach within the same thirty (30) day period or fails to thereafter continue diligent efforts to complete the cure as soon as reasonably possible.

- (ii) In the case of termination pursuant to Section 6(a)(i), the party in default shall pay the other party the Termination Amount (as defined below). In addition, any amounts due under this Agreement but unpaid as of the effective date of termination shall be payable in accordance with the terms of this Agreement. The relief specified in this Section shall be the sole and exclusive relief for a termination for default and the breach giving rise to such termination.

(b) Termination Amount.

- (i) The "Termination Amount" as used in this Agreement shall be calculated as thirty percent (30%) of the remaining Contract Price to be billed pursuant to this Agreement (as of the date of termination). The parties agree that damages incurred in the event of termination would be difficult to measure, that the Termination Amount is reasonable and represents a genuine estimate of those damages, and that the Termination Amount shall be paid as liquidated damages in lieu of all such actual damages and not as a penalty.

## 7. Warranties.

(a) Warranty for the Parts.

- (i) For Parts manufactured by the 2G Manufacturer, the Contractor warrants that such Parts, shall be free from defects in material and workmanship. The claims procedure for the warranties in this Section 7(a)(i) are set forth on the Contractor's Warranty Guidelines, as the same may be amended from time to time, the present terms of which are set forth on Schedule I and incorporated herein by reference. The Contractor shall bear the cost of repairing or replacing any defective or nonconforming Parts, including costs associated with shipping, dismantling, installation, and labor. All other costs associated with such repair or replacement shall be borne by the Customer.
- (ii) The warranty set forth in Section 7(a)(i) shall not apply to:
  - (A) Parts which are considered maintenance or wear parts, which includes without limitation spark plugs, gaskets, spark plug connectors, coolant, filters and oils.
  - (B) Parts which become defective or non-conforming where such defect or nonconformity arises as a result of any of the following actions or scenarios:
    - (1) Faulty assembly or operation of the Covered Unit(s) by the Customer;



- (2) Improper operation and treatment of the Covered Unit(s) or failure to adhere to the applicable instruction manual by the Customer;
  - (3) Faulty repairs of breakdowns or damages to the Covered Unit(s) by the Customer;
  - (4) Installation or use by the Customer of parts on the Covered Unit(s) other than the Parts provided by the Contractor;
  - (5) Natural wear and tear with respect to the Covered Unit(s) or the Parts;
  - (6) Improper preparation of operating materials or failure to adhere to specifications for operating materials as set forth in the applicable instruction manual by the Customer;
  - (7) Use of improper chemicals by the Customer; or
  - (8) Electrical influences, including influences caused by the electrical grid.
- (iii) For Parts manufactured by any Third Party Manufacturer, such Third Party Manufacturer's warranty, if any, shall apply.
- (b) Warranty for the Work.
  - (i) The Contractor warrants that the Work provided shall be executed in a professional and workmanlike manner in accordance with industry standards. The Contractor shall use commercially reasonable efforts to re-perform or otherwise correct any defects or nonconformities in the Work. The Contractor shall bear the cost of repairing any or nonconforming Work or otherwise re-performing the Work, including costs associated with shipping, dismantling, installation, and labor. All other costs associated with such repair or performance shall be borne by the Customer.
- (c) Duration of Warranties. The warranties set forth in this Section 7 shall expire as follows:
  - (i) for Parts installed by the Contractor, one (1) year after installation of the Parts; and
  - (ii) for Work performed by the Contractor, one (1) year after the Work has been completed. The Customer must assert any warranty claims in writing and accordance with the procedures set forth on Schedule I prior to the expiration of such warranty period.

Notwithstanding the foregoing, all warranties set forth in this Section 7 and Schedule I shall expire one (1) year after the expiration of this Agreement, or immediately upon termination of this Agreement by the Contractor pursuant to Section 6(a).
- (d) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 7, THE CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER REGARDING THE WORK OR THE PARTS AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR



IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.

8. **Acceptance of Work and Parts.** Unless the Customer provides written rejection of the Work performed by the Contractor or the Parts installed by the Contractor within five (5) days after such completion of the Work or installation of the Parts, the Work and the Parts shall be deemed irrevocably accepted by the Customer, subject to the ongoing warranties set forth in Section 7.
9. **Assignment.** The Customer may not transfer or assign, in whole or in part, any of its rights or obligations under this Agreement without the express written consent of the Contractor, which consent shall not be unreasonably withheld. Any attempted transfer or assignment in contravention of this Agreement, whether by operation of law or otherwise, shall be null and void. The Contractor may transfer or assign, in whole or in part, any of its rights or obligations under this Agreement upon thirty (30) days' written notice to the Customer. This Agreement shall be binding upon each party's permitted successors and assigns. Nothing in this Section 9 shall restrict Contractor from subcontracting portions of the Work, provided that Contractor shall remain responsible to Customer for performance of subcontracted scope.
10. **Changes.** Each party may, from time to time, propose changes in the scope of Work to be performed by the Contractor under this Agreement, which changes must be accepted by both parties before becoming effective. The Contractor will advise the Customer if any proposed change would result in Extra Work or have other cost or performance impact. The Contractor shall not be obligated to proceed with any change until the Parties have agreed upon its effect and signed a written amendment to this Agreement or similar change order document.
11. **Contractor's Suspension Right.** In addition to other rights the Contractor may have, if the Customer fails to make payments as required by this Agreement, becomes generally unable to pay its debts when they become due, or sustains a material deterioration of its financial condition, Contractor may suspend performance of the Work and/or thereafter require full or partial payment of the Contract Price in advance. The Customer shall pay the Contractor for any costs incurred by the Contractor relating to such suspension of Work (including storage costs).
12. **Force Majeure.** Any delay or failure of the Contractor to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond the Contractor's control, without the Contractor's fault or negligence and that by its nature could not have been foreseen by the Contractor or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars or acts of terrorism) (each, a "Force Majeure Event"). The Contractor shall give the Customer prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event and the anticipated duration of such Force Majeure Event. The Contractor shall use commercially reasonable efforts to ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.
13. **Laws, Codes and Standards.** Unless otherwise set forth on the Proposal, this Agreement shall be governed, interpreted and unless otherwise specified, in all respects be construed and be given legal effect in conformity with the laws of the State of Florida, without regard to its choice of law provisions.



**14. Indemnification.**

- (a) For other than professional services rendered, to the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any negligent act or willful misconduct on the part of Contractor or Contractor's agents or employees. For the professional services rendered, to the fullest extent permitted by law, Contractor agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Contractor or Contractor's agents or employees.
- (b) Notwithstanding anything to the contrary set forth in Section 14(a), (i) Contractor shall have no obligation of indemnification except if, and only to the extent, the claims arise out of, pertain to, or relate to the negligence or willful misconduct of Contractor, (ii) Contractor's indemnification obligation shall not apply to the extent the claims or resulting damages and expenses are caused by the negligence, willful misconduct, or breach of contract attributable to the City, or by latent defects in the premises, (iii) in no event shall the indemnity obligation (including the cost to defend charged to Contractor) exceed the Contractor's proportionate percentage of fault, (iv) provided Contractor obtains and maintains the applicable insurance required of it under this Agreement, then Contractor's liability to satisfy any indemnification claims shall not exceed the amount of any insurance coverage payable by Contractor's insurance carrier with respect thereto, and (v) Contractor's obligation of indemnification shall remain subject to the limitations and terms of Section 15 below.
- (c) To the fullest extent permitted by law, City agrees to defend, indemnify, and hold the Contractor harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the Contractor by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, if and only to the extent occasioned by, growing out of, or in any way arising or resulting from any negligent act or willful misconduct on the part of City or City's agents or employees.
- (d) Promptly after receipt by an indemnified party of a notice of any third party claim or the commencement of any action, such indemnified party shall: (a) notify the indemnifying party in writing of any such claim; (b) provide the indemnifying party with reasonable assistance to settle or defend such claim, at the indemnified party's own expense; and (c) grant to the indemnifying party the right to control the defense and/or settlement of such claim, at the indemnifying party's own expense; provided, however, that: (i) the failure to so notify, provide assistance and grant authority and control shall relieve the indemnifying party of its obligation to the indemnified party only to the extent that the indemnifying party is prejudiced thereby; (ii) the indemnifying party shall not, without the indemnified party's consent (such consent not to be unreasonably withheld or delayed), agree to any settlement that (x) makes any admission on behalf of the indemnified party; or (y) consents to any injunction against the indemnified party; and (iii) the indemnified party shall have the right, at its expense, to participate in any legal proceeding to contest and defend a claim and to be represented by legal counsel of its choosing, but shall have no right to settle a claim without the indemnifying party's written consent.



**15. Limitation of Liability.**

- (a) IN NO EVENT SHALL THE CONTRACTOR BE LIABLE TO THE CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- (b) IN NO EVENT SHALL THE CONTRACTOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE INSURANCE COVERAGE AMOUNTS REQUIRED BY SECTION 2(c) ABOVE.
- (c) The limitation of liability set forth in this Section 15 shall not apply to death or bodily injury resulting from the Contractor's negligent acts or omissions.

**16. Dispute Resolution.** All disputes arising in connection with this Agreement shall be settled, if possible, by negotiation between the parties. If the matter is not resolved by such negotiations, all disputes arising out of or relating to this Agreement, or any transactions contemplated hereby, whether in contract, tort or otherwise, shall be settled by arbitration administered in New York,



New York by the American Arbitration Association in accordance with its arbitration rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the right to award costs, including attorneys' fees, to either party in its sole discretion.

**17. General Terms and Conditions.**

- (a) The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. In clarification of the foregoing, the parties agree that Contractor, is an independent contractor for purposes of this Agreement, and that Contractor is and shall be an independent contractor when performing services pursuant to this Agreement. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.
- (b) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- (c) No modification, amendment, rescission, waiver or other change to this Agreement shall be binding on a party unless agreed in writing by that party. This Agreement represents the entire agreement between the parties with respect to the subject matter contained herein. No oral or written representation, warranty, course of dealing or trade usage not contained or referenced in this Agreement will be binding on either party. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in this Agreement.
- (d) If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- (e) The language of this Agreement, and all documents, materials and training, if any, to be supplied by the Contractor under this Agreement shall be English.
- (f) Customer represents that it is the sole owner of the Covered Unit(s), the Facility and the Site. In the event there is an additional or different owner of all or any portion of the Covered Unit(s), the Facility or the Site, in addition to any other rights of Contractor, Customer shall indemnify and hold harmless Contractor from any and all claims, suits, losses and expenses (including legal fees) brought against or incurred by the Contractor by, or on account of, any such additional or different owner.
- (g) This Agreement may be signed in multiple counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute one and the same instrument.



- 18. Schedules.** The following schedules to this Agreement form an integral part of this Agreement and are incorporated herein by reference. In the event of any conflict between the terms of this Agreement and the Schedules, the terms of this Agreement shall prevail. The provisions of the remaining Schedules listed below shall prevail in the order listed above.

|            |                                              |
|------------|----------------------------------------------|
| SCHEDULE A | PROPOSAL                                     |
| SCHEDULE B | FACILITY BOUNDARY LOCATIONS                  |
| SCHEDULE C | GAS QUALITY                                  |
| SCHEDULE E | OPERATION CHECK LIST AND RECORDS BY CUSTOMER |
| SCHEDULE F | MAINTENANCE LOGS                             |
| SCHEDULE G | OIL AND GLYCOL QUALITY AND LIMIT LEVELS      |
| SCHEDULE H | RATES                                        |

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONTRACTOR:

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Maurice Lambrecht

ATTEST:

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Marty Rehbein, City Clerk

MAYOR:

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Jordan Hess, City of Missoula, Montana

APPROVED AS TO FORM AND CONTENT:

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Ryan Sudbury, City Attorney