

DEVELOPMENT SERVICES AGREEMENT

Hybrid Energy Group, LLC

This agreement (“Agreement”) is made between the City of Missoula, Montana ("City"), and HEG Montana, LLC, a Montana limited liability company. HEG Montana, LLC operates under the Alternate Business Name of Hybrid Energy Group, LLC ("HEG") and maintains an office at 101 East Broadway, Suite 415, Missoula, Montana, 59802. The parties agree as follows:

- 1. Background.** This Agreement is to provide professional services associated with the Clouse Property Agreement between the City and HEG, dated April 1, 2013. This Agreement shall supersede the Clouse Property Agreement between the City and HEG, dated February 16, 2011, as amended on August 30, 2012.
- 2. Retention of Services.** The City shall retain the services of HEG, and HEG shall serve the City under the following terms and conditions.
- 3. Independent Contractor Status.** In furnishing services hereunder, HEG shall be acting as an independent contractor in relation to the City. Accordingly, HEG shall have no authority to act on behalf of or to bind the City without its express written consent and shall not be considered as having employee status for the purpose of any employee benefit plan applicable to City employees generally.
- 4. Scope of Service.** HEG shall serve the City in an external project assessment, due diligence, design, and management capacity. More specifically, HEG shall serve the City in the design, construction, operation and management of a wastewater land application project to be located on the Clouse property adjacent to the City’s wastewater treatment facility in Missoula. Such project development and management shall include but not necessarily be limited to:
 - a. Ongoing: Site management, to include:
 - i. Lease servicing, as per the accompanying Clouse Property Agreement described in Section 8 of this Agreement, including payment of all incidental lease costs in the Clouse Property Lease not otherwise covered in the Clouse Property Agreement.
 - ii. Landowner relations and documentation of landowner communications.
 - b. Phase I: Design and construction of hybrid poplar plantation infrastructure, to include:
 - i. Preparation of field for planting.
 - ii. Installation of fencing, wastewater pipeline, and irrigation equipment.
 - iii. Tree stock selection, field marking, and tree planting.
 - c. Phase II: Annual plantation management, to include:
 - i. Tree pruning and care.
 - ii. Irrigation system, fence and pipeline maintenance.

- iii. Biomass harvesting.
 - iv. Soil and water quality monitoring.
 - v. Site control.
- d. Phase III: Project wind-up, to include:
- i. Saw log harvest and marketing.
 - ii. Biomass removal.
 - iii. Site restoration.
- e. Other miscellaneous tasks as agreed upon in consultation with the City.

5. Compensation.

- a. The City will approve a project budget and establish project implementation standards and benchmarks. HEG will supervise project implementation, long-term management, saw log harvest, and site restoration. The City agrees to reimburse budgeted, documented expenditures by HEG and its subcontractors for the purchase of materials and equipment required for the project, and to compensate for authorized lease servicing, labor, and site management expenses.

See Budget Exhibit A – Authorized Expenditures.

- i. Phase I – two (2) years: HEG will provide project management to construct project infrastructure and establish the hybrid poplar plantation, which expenditures for materials, labor and administration will not exceed \$475,000 in total during the two-year construction and planting phase, unless specifically authorized in writing by the City.
 - ii. Phase II – twelve (12) years: HEG will provide project management to service the site lease and provide annual plantation maintenance, which expenditures for materials, labor and administration will not exceed an average of \$60,000 annually and \$720,000 in total during the 12 year operations phase, unless specifically authorized in writing by the City.
 - iii. Phase III – one (1) year: HEG will provide project management to oversee the harvest and marketing of the saw logs, and restoration of the plantation site, which expenditures for equipment, labor and administration will not exceed \$180,000 in total during the one-year harvest and site restoration phase, unless specifically authorized in writing by the City. Tree harvest, timber marketing, and site restoration expenses shall be reimbursed from the gross proceeds of saw log sales unless specifically authorized in writing by the City. Profits from saw log sales shall revert to the City except as authorized herein.
- b. HEG will bill the City for ongoing development services on an hourly basis. The hourly rate for services will be an average blended rate of \$40 per hour regardless

of who internal to HEG does the work. All hourly compensation must be pre-approved by the City and the total compensation billed by HEG shall be on a not-to-exceed basis according to Budget Exhibit A – Authorized Expenditures, unless specifically authorized in writing by the City:

- c. Project construction materials and equipment expenditures, including field preparation contract work, irrigation system materials and equipment, wastewater pipeline materials, fence materials, tree planting stock, lease costs, insurance, utilities, restoration bonding, saw log harvest and marketing expenses, site restoration costs, and miscellaneous expenses in support of project implementation, operations, and wind-up, must be pre-authorized by the City in order to be eligible for reimbursement. Authorized materials, equipment, and service pass-thru expenses will be itemized and submitted for reimbursement by HEG in an invoice accompanied by an expense report and receipts. Authorized pass-thru expenses submitted for reimbursement by HEG will include an administration fee of ten percent (10%), calculated as a multiple of the itemized, authorized expenditures.
 - d. HEG will be paid for services listed in Section 4 upon completion and delivery of the work products identified in Section 4.
6. **Billing.** HEG shall bill the City monthly. The City shall pay HEG within 30 days of receipt of invoice, with a late penalty of 2% of the unpaid balance per month plus costs incurred in collecting payment.
 7. **Term of Agreement.** This Agreement shall begin April 1, 2013 and end December 31, 2027, unless otherwise modified as agreed to by both parties in writing.
 8. **Accompanying Clouse Property Agreement.** This Agreement accompanies an agreement between the City and HEG related to the Clouse property (the “Clouse Property Agreement”), which includes commitment of funds by the City for lease reimbursement payments during the full term of the lease and the terms of assignment of rights contained in the Clouse lease including a City option on right of first refusal to purchase the property from HEG to the City. This Agreement shall be void without the legal operation of the accompanying Clouse Property Agreement.
 9. **Confidential Information.** While this agreement is in effect and thereafter HEG shall not divulge information related to the agreement except as expressly authorized by the City.
 10. **Amendment.** No amendment, modification or termination of, or addition to, this Agreement shall be valid unless and until executed in writing by the parties to this Agreement.
 11. **Binding Agreement.** This Agreement shall be binding on and inure to the benefit of the City and HEG.

12. Non-Discrimination. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis 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 or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

13. Affirmative Action Policy. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

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, 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.

14. Waivers of Subrogation. The City and HEG waive all rights against each other and any subcontractor, Architect, Engineer, and any of their subcontractors, and agents and

employees, each of the other, for damages or causes of loss to the extent covered by property insurance obtained pursuant to Article 2.4.03, or 2.4.04 of these General Conditions, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. HEG, or the City as appropriate, shall require of subcontractors, separate contractors, Architect, Engineer or their subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise.

END OF TEXT

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The parties have executed this agreement on _____, 2013.

City of Missoula

By: _____
John Engen, Mayor, City of Missoula Date

By: _____
Marty Rehbein, CM, City Clerk Date

HEG Montana, LLC ABN Hybrid Energy Group, LLC

By: _____
Tom Platt, Manager, HEG Montana, LLC Date

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Budget Exhibit A – Authorized Expenditures

Phase I: Construction and Planting Phase	2 years (2013-2014)
Field preparation (2013)	\$ (25,000)
Irrigation system (2013)	\$ (195,000)
Fence (2013)	\$ (50,000)
Pipeline (2013)	\$ (50,000)
Planting (2014)	\$ (125,000)
Lease service (2013-2014)	\$ (30,000)
Total Construction and Planting Budget	\$ (475,000)
Phase II: Annual Operating Phase	12 years (2015-2026)
Average annual lease cost	\$ (20,000)
Average annual maintenance	\$ (40,000)
Average combined annual expenses	\$ (60,000)
Total Annual Operating Budget	\$ (720,000)
Phase III: Harvest/Site Restoration Phase	1 year (2027)
Harvest/site restoration (2027)	\$ (160,000)
Lease service (2027)	\$ (20,000)
Total Harvest/Site Restoration Budget	\$ (180,000)
Total Budget Commitment (2013-2027)	\$ (1,375,000)
Projected Harvest Revenue (2027)	\$ 550,000
Projected Net Budget Commitment	\$ (825,000)