

## **CONTRACTUAL SERVICE AGREEMENT**

**BETWEEN**

---

**City of Columbia, Missouri**

**and**

**INNIO Jenbacher North America LLC**

---

**TABLE OF CONTENTS**

1. DEFINITIONS .....	4
2. CONTRACTOR RESPONSIBILITIES .....	6
3. EXCLUSIONS.....	8
4. CUSTOMER RESPONSIBILITIES .....	8
5. AGREEMENT PRICE .....	9
6. TERM AND TERMINATION .....	12
7. INSURANCE.....	13
8. TAXES AND DUTIES .....	15
9. WARRANTY .....	15
10. DELIVERY, TITLE TRANSFER .....	16
11. ASSIGNMENT .....	18
12. HEALTH AND SAFETY .....	18
13. INDEMNIFICATION .....	18
14. SUSPENSION RIGHT .....	19
15. EXCUSABLE EVENTS .....	19
16. LIMITATION OF LIABILITY.....	19
17. GOVERNING LAW AND DISPUTE RESOLUTION .....	20
18. CONFIDENTIAL INFORMATION .....	20
19. LAWS, CODES AND STANDARDS .....	20
20. GENERAL CONDITIONS .....	21
21. VALIDITY .....	22
22. EXHIBITS .....	22
23. SIGNATURES.....	23
EXHIBIT A. SCOPE OF MAJOR OVERHAUL .....	24
EXHIBIT B. HEALTH AND SAFETY .....	25
EXHIBIT C. MYPLANT GENERAL TERMS AND CONDITIONS.....	26

This Contractual Service Agreement (the "**Agreement**") is made effective on the **Effective Date** by and between:

- **INNIO Jenbacher North America LLC**, a corporation organized under the laws of **Delaware**, and its registered office at **8860 Fallbrook Drive, Houston, TX 77064** ("**Contractor**") and
- **City of Columbia**, a corporation organized under the laws of **Missouri**, and its registered office at **701 East Broadway, Columbia, Missouri 65201** ("**Customer**").

Contractor and Customer are referred to herein, individually, as a "Party" and, collectively, as the "Parties".

### RECITALS

**WHEREAS**, Contractor is engaged in the business of delivering spare parts and performing maintenance services with respect to Contractor's equipment; and

**WHEREAS**, Customer owns and operates, or will own and operate, the equipment identified in this Agreement as the Covered Unit, at the plant, station or facility located at **5700 Peabody Road, Columbia, MO 65202** (the "Site"); and

**WHEREAS**, Customer has requested that Contractor provides, and Contractor is willing to provide, services for the Covered Unit in accordance with the terms of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein, Contractor and Customer hereby agree to perform their obligations described in this Agreement.

**Contract No.: 1569679**  
**Project: City of Columbia Unit 3**

## 1. DEFINITIONS

The following terms shall have the meaning set forth below when used in this Agreement:

- 1.1. **"Agreement Price"** means the total price to be paid by Customer to Contractor under this Agreement as described in Section 5, but excluding any amounts paid for Extra Work.
- 1.2. **"Assumptions"** means the operating parameters set out in this Section:
- Expected number of operating hours per year per Covered Unit of 6,000
  - Operation at a minimum starts/ophs ratio of 1 start per 9 operating hours per Covered Unit
  - Operation of the Covered Unit in accordance with the technical instructions
  - Gas quality as defined in TA 1000 - 0300 (with catalytic converter operation without warranty limitation) (i.e. Sulphur < 200 mg / 10 kWh)
- 1.3. **"Contractor Equipment"** means tools, sensors, instruments, or materials utilized by Contractor in connection with this Agreement or made available to Owner.
- 1.4. **"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.
- 1.5. **"Covered Unit(s)"** means the engine(s) or module(s) owned by City of Columbia and installed at the Facility identified as follows:

Site Name	Engine Type	Design Number	Serial Numbers		Start operating hour	End operating hour
City of Columbia Unit 3	JGS320	Q296	Unit serial no. (FA)	<u>1081415</u>	<u>0</u>	<u>60,000</u>
			Engine serial no.	<u>1261966</u>	<u>0</u>	<u>60,000</u>

For the avoidance of doubt: any reference in this Agreement to "hours" or "counters", refers to the hours/counter of the Unit (FA) in the table in this article 1.5.

- 1.6. **"Customer Taxes"** means any 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. Products exported from the United States are presumed to be exempt from Customer Taxes levied within the United States.
- 1.7. **"Effective Date"** is the date of the last signature by either party.
- 1.8. **"Excusable Event"** means any excusable event described in Section 15.
- 1.9. **"Extra Work"** means parts or services which Contractor provides or performs under Section 2.2.
- 1.10. **"Hazardous Materials"** means toxic substances, hazardous substances or hazardous wastes, as such terms are defined in any applicable European safety standard or regulation or in any law,

statute, ordinance or regulations promulgated by any national, federal, state, provincial, or local government authority of the country of the Site.

- 1.11. **“Major Overhaul”** means a Major Overhaul of a Covered Unit as further described in Section 2.1 and EXHIBIT A.
- 1.12. **“Minor Overhaul”** means a Minor Overhaul of a Covered Unit as further described in Section 2.1
- 1.13. **“Monitoring & Performance System”** means a system or systems which may be used from time to time by Contractor for monitoring of Facility equipment and/or provision of performance information and support, generally consisting of hardware, software, and a connection to a source of technical oversight or review (e.g. Hermes system).
- 1.14. **“myPlant Basic”** means a cloud based digital software solution which provides capabilities for visibility over selected engine operating status, basic engine operating trends, real time engine readings, and engine alarm over a limited time interval.
- 1.15. **“myPlant Portal”** means Contractor’s cloud-based internet portal, as the same is maintained, updated and modified, renamed or replaced.
- 1.16. **“myPlant Care”** means a cloud based digital software solution which provides capabilities to manage the reliability of your engine/engine fleet. Capabilities include visibility of engine data and alarms through the myPlant web portal, remote access to the equipment control system (as available), advanced diagnostics tools, engine protecting analytic features, fleet reporting and instantaneous SMS/email notifications.
- 1.17. **“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).
- 1.18. **“Peaking Operation”** means the engine will operate in a starts/ops ratio range between minimum 1 start per 2.5 operating hours and 1 start per 6 operating hours. In case of such Peaking Operation additional Planned Maintenance based on the number of starts may be required.
- 1.19. **“Performance End Date”** means, for each Covered Unit, the date the corresponding Covered Unit reaches the End operating Hours or End number of starts as specified in the table in Section 1.5, whatever comes first.
- 1.20. **“Performance Start Date”** means, the first operating hour after the start operating hours specified in the table in Section 1.5.
- 1.21. **“Planned Maintenance”** means the planned inspection, testing, overhaul and/or replacement of components of a Covered Unit based either on the condition of such components or based on operating hours of the Covered Units in accordance with Contractor’s maintenance specification, but always excluding Unplanned Maintenance, Extra Work and Operation and Routine Activities.
- 1.22. **“Operation and Routine Activities”** means activities of a regular, preventive or minor nature that is performed to maintain the Covered Unit and other equipment in good working order on a day-to-day basis, including: exchange of pressure and temperature transmitter, thermometer, gauges, ignition coils and the elimination of insignificant leaks not being detrimental for a safe operation, and other similar preventive, routine or minor work as identified in the operation and maintenance manual or other instructions of the manufacturer of the Covered Unit or components thereof.
- 1.23. **“Site”** means the real property where the Covered Units are located, as specified in the table in Section 1.5.
- 1.24. **“Software”** means a computer program or compilation of data that is fixed in any tangible medium of expression, or any storage medium from which the program may be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device, and shall include

without limitation any of Contractor's proprietary operating Software, provided for the ordinary operation of the Covered Unit(s), any optional Software to enhance the operation of the Covered Unit(s), as well as any upgrades or revisions of this material provided by Contractor.

- 1.25. **"Software Modules"** means collectively myPlant Basic and myPlant Care or either of them, as the context requires.
- 1.26. **"Technical Instructions"** means Contractor's following technical instructions:  
TA 1100-0110; TA 1100-0111; TA 1000-0099A; TA 1000-0099B; TA-1000-0099D; TA1000-0099K; TA 1000-0112; TA 1000-1109; TA 1000-0200; TA 1000-0300; TA 1000-0099L; TA 2300-0008;
- 1.27. **"Unplanned Maintenance"** means maintenance or repair of the Covered Unit as a result of an engine failure, that is neither Operation and Routine Activities, nor Planned Maintenance, nor Extra Work, and may include at Contractor's discretion repairs or Parts over and above the scope for a Planned Maintenance event.

## 2. CONTRACTOR RESPONSIBILITIES

### 2.1. **Planned Maintenance**

For each Covered Unit, from the Performance Start Date to the Performance End Date of such Covered Unit, Contractor shall carry out the Planned Maintenance as necessary on the Covered Units and provide necessary Parts. The Planned Maintenance work of Contractor will be performed to the extent Contractor determines to be necessary in accordance with Contractor's then current maintenance guidelines and prudent industry practices.

Contractor may vary intervals and scopes stated in the maintenance specifications or apply modified parts in order to improve parts usage. Both parties will agree on the exact date for carrying out Planned Maintenance mutually.

#### **Spark Plugs / Cylinder Heads / Oil filters**

Spark plugs (not exceeding 30 sets of 120 pieces per Covered Unit), oil filters and cylinder heads are considered to be Parts to be delivered in accordance with Section 2.1. Customer is responsible for spark plugs management in accordance with Contractor's Technical Instructions in order to ensure the maximum life time of the spark plugs. Additional costs due to deviations from Contractor's Technical Instructions with respect to spark plugs maintenance shall be invoiced separately as Extra Work by Contractor in accordance with Section 2.2.

#### **Minor Overhaul**

The Contractor shall be responsible to carry out the Minor Overhaul and to provide the necessary Parts in accordance with the maintenance specifications.

Both parties will agree on the date of the Minor Overhaul and the specific conditions for its performance timely before starting the work.

#### **Major Overhaul**

The Contractor shall be responsible to carry out one Major Overhaul and to provide the necessary Parts in accordance with the scope set forth in EXHIBIT A and Contractor's maintenance specifications. Such Major Overhaul may become due either based on operating hours or in case of Peaking Operation based on a Covered Unit reaching 24,000 starts

Both parties will agree on the date of the Major Overhaul and the specific conditions for its performance timely before starting the work.

### 2.2. **Extra Work**

Contractor shall furnish parts and services needed to perform work beyond Contractor's scope under this Agreement, such as commercially available conversions, modifications or upgrades, correction of damages and other impacts to a Covered Unit, services due to Covered Unit not meeting the Assumptions. Acceptance of purchase order by Contractor for such Extra Work shall be subject to Contractor's product and service offerings and capabilities at the time Extra Work is required.

Extra Work shall be provided at time and material rates in effect at the time the work is performed, less a discount of 10% on material rates. For tools, consumables, software, licences this discount will not be applicable. The Contractor reserves the right to add further articles throughout the term of this Agreement, to which such discount will not be applicable.

### **2.3. Hotline, Remote Support**

#### **a) Hotline**

Contractor shall make available a technical service hotline 24 hours every day / 7 days a week in order to provide Customer with technical expertise and support in case of a malfunction of the Covered Unit(s). After obtaining the necessary information (for example J-number, contact data etc.) the call will be forwarded to a Contractor's technician, who will begin assessing and diagnosing Customer's situation.

24-Hour Service Hotline is limited to calls considered to be of a remote troubleshooting nature, such as malfunction of the Covered Unit(s). It is not intended for remote training or commercial related topics.

Outside Standard Business Hours (i. e. Monday to Friday from 7:00 a.m. until 5:00 p.m CST) Hotline shall be available only for emergency calls (i. e. engine stand still etc.).

<b>Country/Region</b>	<b>24-Hour Service Hotline No.</b>
Austria (Central Europe)	+43 5244 600 3000
North America	+1 832 295 5600

Telephone fees for its calls shall be borne by Customer. In case of changes of the above mentioned numbers Contractor will inform Customer.

Contractor shall make sure that 24-Hour Service Hotline support is being provided in English. In case Customer or its employees lack in English Contractor can provide support in German, Dutch, Italian, Spanish language by using a translator.

#### **b) Remote Support**

In case a malfunction occurs on the Covered Unit(s), Contractor – after Customer's call at the 24-Hour Service Hotline – shall log Customer's case and begin to assess and diagnose the situation as described below:

- Analyse operational data and control system messages (i. e. alarms, warnings, operating messages)
- Log problem summary of the identified malfunction or the symptoms thereof

If Contractor on basis of remote data is able to diagnose the malfunction or failure of the Covered Unit(s) Contractor shall give its best effort to support Customer in solving the issue remotely or via 24-Hour Service Hotline support. Contractor does not warrant any performance results of its remote services.

If the malfunction cannot be resolved remotely Contractor shall propose further action plan to the Customer.

**2.4. MyPlant Digital Solution****a) Subscription.**

During the Term, Customer may access myPlant Portal and use myPlant Care in accordance with the myPlant General Terms and Conditions specified in Exhibit C, using the username and password provided by Contractor. Contractor may revise the features and functions of the Software Modules at any time.

**b) License.**

Contractor hereby grants Customer, for the duration of the Term, a non-exclusive license to reproduce and use unlimited copies of the App (as defined below in this paragraph) on Customer mobile devices, solely as a component of the Software Modules and solely for the purpose of the use (including maintenance) of the Covered Unit(s), provided always that Customer complies with the restrictions set forth in Article 2 (Restrictions) of the myPlant General Terms and Conditions (Exhibit C). The "App" means the app named myPlant downloadable at iStore or Play Store. The App is a component of the Software Modules and is included in references thereto, except in this Article 2.4 and anywhere else addressed separately.

**2.5. Use of Refurbished Parts and Parts for field validation**

In performance of its scope of work under this Agreement, Contractor may use Parts which have been previously installed at a power generation facility other than the Facility and subsequently refurbished by the Contractor, including to the extent applicable parts for field validation. Such Parts are warranted in accordance with Section 9.

**3. EXCLUSIONS**

The following shall be excluded from Contractor's responsibilities under this Agreement:

- 3.1. Any Unplanned Maintenance and Parts necessary for such Unplanned Maintenance
- 3.2. Conversion and modification of the Covered Units.
- 3.3. Delivery, transport, storage and disposal of commodities necessary for the operation of the Covered Unit as given in the Technical Instructions of the Contractor, such as: lubrication oils, fuel gas, generator sleeve-bearing lube oil, urea, flushing compounds, cooling water, battery acid, anti-freezing compound, or cleaning materials.
- 3.4. Additional expenditures due to shut-down of Covered Units for an uninterrupted period of time of more than 3 months, such as costs for conservation of the Covered Unit or expenditures arising from the Customer not meeting the Assumptions.
- 3.5. Any additional expenditure resulting from Peaking Operation. Such additional expenditure shall be charged based on Contractor's price list for Peaking Operation, considering an additional fee per operating hour and milestone payments based on number of starts. At Customer's request the Contractor will make such pricelist available.
- 3.6. Any activities required in the course of a replacement of a Covered Unit, such as construction or rebuilding activities, hydraulic modifications or costs for cranes.

**4. CUSTOMER RESPONSIBILITIES**

- 4.1. Customer shall connect and maintain connections of all Covered Units to Contractor's remote monitoring centre in Jenbach, Austria, via an uninterrupted broadband data connection. Customer



shall be responsible to meet necessary technical requirements regarding infrastructure (hardware requirements, internet connection, etc.) and internet browser as defined by Contractor.

**4.2.** Customer shall perform Operation and Routine Activities and keep the operation log daily.

**4.3.** Customer shall:

- perform lube oil analyses in accordance with Contractor's relevant technical instructions and provide the evaluation thereof to Contractor
- perform generator lubrication
- perform fuel gas analysis every 3 months. Standard gas analysis of the Customer is sufficient as long as gas quality does not change remarkably. If the gas quality changes remarkably, the Contractor reserves the right to request increased fuel gas analysis frequency and/or demand a gas analysis by an authorized laboratory.
- perform cooling water analysis and provide evaluation thereof to Contractor in accordance with Contractor's technical instructions and make sure that cooling water replacement is made in due course.
- provide necessary scaffolding and lifting equipment
- ensure access to the Site for Contractor's or Contractor's subcontractor's personnel
- make any modifications or manipulation to the plant operations to minimize the impact of an emergency with possible physical harm to people or damage to the plant. Any other manipulations and modifications require written approval by the Contractor.
- permit the Contractor to carry out the maintenance and repair works during the normal working time from 7.30 a.m. to 5.00 p.m. CST from Monday to Friday without assertion of any compensation. Work performed beyond these working hours will be charged as Extra Work according to section 2.2.
- strictly meet the requirements for engine lubrication oil or the oil changes, parameters for Jenbacher Gas engines, cooling water quality and anti-freezing compound anti-corrosion compound and fuel gas quality, all according to the Technical Instructions.

**4.4.** If Customer intends to perform maintenance or repair work through a third party, Customer shall request Contractor's prior written consent. In case Customer fails to observe this obligation, Contractor shall be entitled to suspend cost coverage for repairs connected to such work. In addition, Customer expressly waives all warranty claims for defects arising from such work or parts installed during such work.

**4.5.** If Customer intends to sell any or all of the Covered Unit(s), Customer shall notify Contractor within a reasonable period prior to the intended sale. Contractor shall be granted a right of first refusal to purchase the Covered Unit at a reasonable market price. The right of first refusal shall be valid during a period of ninety (90) days from the date of Contractor's notification about the intended sale by Customer.

**4.6.** Customer shall provide a valid email address to the Contractor for the receipt of electronic invoices.

## **5. AGREEMENT PRICE**

The Agreement Price to be paid by Customer to Contractor is set forth in this Section 5, and shall be valid until December 31, 2024. The Agreement Price for 2025 and each year thereafter will be adjusted according to the price variation clause given in Section 5.5. Customer shall make all payments without set-off or deduction. The Contractor shall be entitled to distribute its invoices in an electronic manner.

### **5.1. Package Pricing**

- Billings take place when parts packages are made available for shipment.

- Any Additional Fee to be invoiced in such month as per Article 5.2;

Maintenance activity	Scheduled at (in oph)	Price per package (\$)
2,000 oph maintenance activity	2,000, 4,000, 8,000, 14,000, 16,000, 22,000, 26,000, 28,000, 32,000, 34,000, 38,000, 44,000, 46,000, 52,000, 56,000, 58,000	\$4,226.15
6,000 oph maintenance activity	6,000, 12,000, 18,000, 24,000, 36,000, 42,000, 48,000, 54,000	\$4,298.55
10,000 oph maintenance activity	10,000, 50,000	\$35,860.29
20,000 oph maintenance activity	20,000	\$158,405.40
30,000 oph maintenance activity	30,000	\$60,822.73
40,000 oph maintenance activity	40,000	\$164,153.79
Set of spark plugs	Every 9,000 oph (6 intervals)	\$15,172.50

## 5.2. Additional Fee

Additional payments from Customer to Contractor shall become due one month before the first Covered Unit reaches the operating hours stated in the table below.

Maintenance Event (operating hours)	Additional Fee
Major Overhaul at 60,000 oph	\$310,900.00

Customer shall make all payments with regard to the Major Overhaul without deduction or set-off according to the following schedule:

Event #	Payment Event due date	% of Total Contract Price
1	Within 15 calendar days after notification of date of performance of Major Overhaul	30 %
2	At date of readiness to ship ("RTS")	60 %
3	Within fifteen (15) days after re-commissioning of the Covered Unit, but no later than 60 days upon notice of Ready to Ship	10 %
<b>Total</b>		<b>100%</b>

## 5.3. Payment Term

Except as set forth otherwise in this Agreement, Customer shall make all payments due under this Agreement within fifteen (15) days after Contractor's invoice.

## 5.4. Minimum Operating Hours

Both parties agree that the prices quoted are based on certain minimum expected operating hours of each Covered Unit during the Term. The defined yearly minimum operating hours of each Covered Unit for this Agreement are 2,500. If the yearly operating hours of any Covered Unit fall

below the minimum operating hours, for reasons not attributable to the Contractor, Contractor shall have the right to bill up to the amount which equals the minimum operating hours for the respective Covered Unit.

### 5.5. Price Escalation

The Agreement Price stated in Section 5 of this Agreement shall be escalated in accordance with this Section 5.5.

The said payments shall be adjusted upward on an annual basis on January 1<sup>st</sup> of each year, beginning on January 1<sup>st</sup>, 2025 by an amount determined in accordance with the definitions and formulas described in this Section 5.5.

$$P_n = P_{n-1} \left( 0,45 \frac{L_{n-1}}{L_{n-2}} + 0,55 \frac{M_{n-1} \cdot E1}{M_{n-2} \cdot E0} \right)$$

P	=	Values or prices as stated in Section 5 of this Agreement.
L	=	<u>Labor Index:</u> All Urban Consumer Price Index (CPI-U), South Region Series Id: CUUR0300SA0 As published on the site: <a href="https://data.bls.gov/">https://data.bls.gov/</a>
M	=	<u>Material Index:</u> German Statistical Federal Authority Producer Price Index of Industrial Products, technical volume 17, row 2 Index number: GP09-2811, Product category: combustion engines and turbines Current number: 452 Basis 2015 = 100
E	=	Foreign Exchange Rate Euro to US Dollar E0 = Exchange rate ("Base Exchange Rate") at contract signing, that being January 2024.  Euro € 1 = 1.09 U.S. Dollar at contract signing; Exchange rate as determined pursuant to website listed below. Current rate at contract signing: 1.09 U.S. Dollar  E1 = Average of last calendar year's daily spot rates ("Actual Exchange Rate") For determining Base and Actual Exchange Rate the daily interbank Euro/USD exchange rates shall be sourced from the website: <a href="http://www.oanda.com/convert/fxhistory">http://www.oanda.com/convert/fxhistory</a> . In case such website ceases to exist, a similar, mutually agreed website will be identified.
n	=	Calendar year of value / price escalation. n-1 refers to the previous year.

**Initial index values**

Index	Value	Months of reference
L	298.9	November 2023
M	121.6	October 2023

The values and prices  $P_n$  result from the ratio of the index values of the previous year (n-1) and the year before the previous year (n-2). For the calculation of each price escalation the index values of the months of reference as per the above table shall be used.

The values and prices  $P_n$  shall equal the greater of the values and prices  $P_{n-1}$  or the result from the calculation in accordance with the above formula.  $P_n$  shall be calculated to the second decimal point. If the next succeeding decimal place is five (5) or higher, the preceding figure shall be raised to the next figure.

In the event that the specified indices are discontinued, or the basis of their calculation is modified, equivalent indices shall be substituted by Contractor. The Contractor shall be entitled to retroactively charge price differences due to index values published later than January 1<sup>st</sup>.

If, during the term of this Agreement, any new legislation, taxes or regulations are established that related to oil and/or other waste removal requirements or fees, then Contractor shall be entitled to pass on such charges to Customer if such services form a part of this Agreement. If oil services are included and the price of oil will change for more than twenty per-cent (20%), then, an equitable adjustment will be negotiated between the parties. If, during the term of this Agreement, cost for raw materials used for the production of spark plugs change by more than twenty per-cent (20%), Contractor shall be entitled to pass on such changes in cost to Customer by adjusting the prices for spark plugs accordingly.

**5.6. Late Payment**

In addition to the foregoing, Customer shall pay interest to Contractor, at the rate of one percent (1%) per month (or any fraction thereof), not to exceed the lesser of twelve percent (12%) per annum or the maximum amount permitted by applicable law, on all amounts not timely paid in accordance with this Agreement.

**6. TERM AND TERMINATION****6.1. Term and Expiration**

This Agreement shall become effective on the Effective Date. Contractor's performance shall for each Covered Unit commence on the Performance Start Date and shall expire, unless sooner terminated in accordance with the provisions of this Agreement, upon the first to occur of the following (the "Term"):

- a) The date upon which all of the Covered Units have reached their respective Performance End Dates, or
- b) Fifteen (15) years from the Effective Date.

Unless otherwise agreed between the Parties, the reset of the engine operating hours counter (due to f. e. exchange of the core engine) does not extend the Term.

**6.2. Termination****6.2.1. Termination for Default and/or Insolvency and/or Excusable Events**

- A. Either Party (the "Non-Defaulting Party") may terminate this Agreement if the other Party (the "Defaulting Party")
- a) becomes Insolvent, or
  - b) the Defaulting Party commits a material breach of this Agreement and fails to cure the breach
    - i. within thirty (30) days of notice from the Non-Defaulting Party, or
    - ii. if it is not possible to cure such breach within thirty (30) days of such notice, fails to commence to cure the breach within thirty (30) days or fails to thereafter continue diligent efforts to complete the cure as soon as reasonably possible.

For any default other than a default in payment under Article 5, this provision for Termination for Default may only be exercised by notice in writing within ninety (90) days of the event(s) giving rise to the default and effective thirty (30) days from such written notice.

- B. In the case of Termination for Default and/or Insolvency pursuant to Section 6.2.1 the Defaulting Party shall pay the Non-Defaulting Party the Termination Amount as specified in Section 6.2.2. In addition, all payments required under this Agreement for Contractor's performance prior to the Effective Date of such termination and all payments due prior to such termination date shall also be paid in accordance with this Agreement. The foregoing specified in this Section 6.2.1 shall be the sole exclusive rights and liabilities of the Non-Defaulting Party and Defaulting Party, respectively, on account of Termination for Default and/or Insolvency and the breach giving rise to such termination.

#### 6.2.2. Termination Amount

The "Termination Amount" shall amount to 15% of the remaining Agreement Price, such value to be calculated on the price basis of the respective year when the termination becomes effective. The Parties agree that the damages likely to be incurred by a Non-Defaulting Party or Non-Terminating Party in the event of termination will be difficult to measure, that the Termination Amount is reasonable, and that the Termination Amount shall be paid as liquidated damages in lieu of all such actual damages and not as a penalty.

If this Agreement is terminated on account of an Excusable Event, Customer shall pay to Contractor all payments required under this Agreement for Contractor's performance prior to the Effective Date of such termination and all payments due prior to such termination date. In the event this Agreement is terminated on account of an Excusable Event, payment of the Termination Amount specified in Section 6.2.3 is not required.

#### 6.2.3. Obligations Prior to Termination

Termination or expiration of this Agreement shall not relieve either Party of any obligation arising out of work performed prior to termination.

## 7. **INSURANCE**

- 7.1. Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as Customer's review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Agreement.

#### 7.1.1. Commercial General Liability

Contractor agrees to maintain Commercial General Liability at a limit of liability not less than \$2,000,000 per occurrence and \$3,000,000 aggregate covering both bodily injury and property damage, including accidental death. Coverage shall not contain any endorsement(s) excluding nor limiting Contractual Liability or Cross Liability. If the contract involves any underground/digging operations, the general liability certificate shall include X, C and U (Explosion, Collapse and Underground) coverage.

7.1.2. Business Automobile Liability

Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$2,000,000 per occurrence and \$3,000,000 aggregate, covering both bodily injury, including accidental death, and property damage, to protect themselves from any and all claims arising from the use of the Contractor's own automobiles, and trucks; hired automobiles, and trucks; and automobiles both on and off the site of work. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Contractor does not own automobiles, Contractor agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

7.1.3. Workers' Compensation Insurance

Contractor shall maintain Workers' Compensation insurance coverage in accordance with Missouri Revised Statutes or provide evidence of monopolistic state coverage with minimum limits of \$500,000 for each employee, \$500,000 for each accident, and \$500,000 policy limit. In case any class of employees engaged in hazardous work under this contract is not protected under the Missouri Workers' Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide Employers' Liability Insurance for the protection of their employees not otherwise protected.

7.1.4. Excess/Umbrella Liability

The above liability limits may be satisfied by any combination of primary and excess/umbrella liability policies.

7.1.5. Additional Insured

Contractor agrees to endorse Customer as an Additional Insured with a CG2026 Additional Insured – Designated Person or Organization endorsement, or similar endorsement, to the Commercial General Liability. The Additional Insured shall read "City of Columbia, Missouri".

7.1.6. Waiver of Subrogation

Contractor agrees by entering into this contract to a Waiver of Subrogation for each required policy herein except professional liability. When required by the insurer, or should a policy condition not permit Contractor to enter into a pre-loss agreement to waive subrogation without an endorsement, then Contractor agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement, or voids coverage should Contractor enter into such an agreement on a pre-loss basis.

7.1.7. Certificate(s) of Insurance

Contractor agrees to provide Customer with Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. Said Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate(s) of Insurance shall name the Customer

as additional insured in an amount as required in this contract and contain a description of the project or work to be performed.

**7.1.8. Right to Revise or Reject**

Customer reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work / specifications affecting the applicability of coverage. Additionally, Customer reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein or any insurer providing coverage due to its poor financial condition or failure to operate legally

- 7.2.** Failure of either of the Parties to maintain any insurance required under this Section 7 shall constitute an event of material breach for the purposes of Article 6 and, in addition to termination rights, the non-defaulting Party shall have the right to immediately suspend performance and delivery until such breach is cured. The Parties acknowledge that the City of Columbia may meet its insurance obligations through self-insurance or other insurance coverage.

**8. TAXES AND DUTIES**

- 8.1.** Contractor shall be responsible for, and shall pay directly all Contractor Taxes. If Customer deducts or withholds Contractor Taxes, Customer shall furnish within one (1) month to Contractor accurate official receipts from the appropriate governmental authority for each deducted or withheld amount of Contractor Taxes.
- 8.2.** If Customer intends to claim any exemption from taxes or duties related to this Agreement or its performance, Customer agrees to furnish without charge evidence of tax or duty exemption acceptable to the taxing or customs authorities. Furthermore, if Customer arranges for export shipment, Customer agrees to provide Contractor, without charge, an export bill of lading.

**9. WARRANTY**

**9.1. Contractor Warranty**

Contractor warrants to Customer that the Parts delivered during the Term shall be free from defects in material, workmanship and title and that Services performed during the Term shall be performed in a competent, diligent manner.

The foregoing warranties shall expire, (A) in the case of Parts, one (1) year after the date of delivery and (B) in the case of Services one (1) year after the performance of the Service, provided that all warranties of Parts and Services shall expire no later than one (1) year after the expiration or termination of this Agreement. Any defect which is the basis for a warranty claim shall not be cause for any extension of the warranty period.

Notwithstanding the foregoing, in the case of any Engineering Study, Contractor does not warrant the accuracy or the performance results of any conclusions or recommendations provided, or that any desired objective will result from the Engineering Study.

If any failure of Parts or Services to meet the above warranties is discovered during the warranty period, Customer shall promptly notify Contractor in writing and promptly make the affected Parts or components of the Covered Unit(s) available for correction. Contractor shall thereupon correct any defect by re-performing the Services and, at its option, repairing or replacing the defective

Parts. If a defect in a Part cannot be corrected despite Contractor's reasonable efforts, the Parties will negotiate an equitable price adjustment in one or more of the payments based upon the price of the defective Part.

In fulfilling its warranty responsibilities as described in this Section, Contractor shall be responsible for the cost of opening and closing of the Covered Unit(s) in order to access Parts for warranty repair or replacement, but Contractor shall not be responsible for removal or replacement of systems, structures or parts of the Facility other than the Covered Unit(s).

Contractor does not warrant the Services or Parts against normal wear and tear including that due to operation at peak capability; frequent starting; type and/or quality of fuel; detrimental air inlet conditions (including contaminants such as salt air, chemicals and harmful gases); or erosion, corrosion or material deposits from fluids. The warranties and remedies set forth herein are also conditioned upon the: (i) proper storage, installation, operation, and maintenance of the Parts and conformance with the operation and maintenance manual or other operation instruction manuals provided by Contractor or its subcontractors; and (ii) repair or modification pursuant to Contractor's instructions or approval. Contractor does not warrant any equipment or services of third parties designated for use by Customer.

The preceding paragraphs of this Section set forth the exclusive remedies for all claims based on failure of or defect in the parts and services provided under the Agreement or Contractor's performance, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. The foregoing warranties and guarantees are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. No implied or statutory warranty of merchantability or fitness for a particular purpose shall apply.

## **9.2. Customer Warranty**

Customer warrants that all parts, materials and services provided or made available to Contractor by Customer in connection with this Agreement shall be free from defects in materials and workmanship and performed in a competent, diligent manner.

## **10. DELIVERY, TITLE TRANSFER**

### **10.1. Delivery**

#### **10.1.1. General Delivery Terms**

Contractor shall be responsible for scheduling delivery of Parts for Contractor's Covered Maintenance under this Agreement, pursuant to any work schedule discussed and agreed with Customer. Partial shipments will be permitted.

#### **10.1.2. Delivery of Parts**

Contractor will deliver Parts as per its obligations in Section 2  
DAP Customer Site (INCOTERMS 2020).  
For the avoidance of doubt:

Contractor shall not be obliged to clear the goods for import, pay any import duty, taxes related thereto or carry out any import customs formalities. Contractor shall not be liable for delays of delivery related to such import customs formalities.

#### **10.1.3. Shipment to Storage**

If any of the Parts cannot be delivered to Customer when ready due to any cause not attributable to Contractor, Contractor may ship such Parts to storage. If such Parts are placed in storage,



including storage at the facility where manufactured, the following conditions shall apply: (a) title and risk of loss shall thereupon pass to Customer, if it had not already passed; (b) any amounts otherwise payable to Contractor upon delivery or shipment shall be payable upon presentation of Contractor's invoices and certification of cause for storage; (c) all expenses incurred by Contractor, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any taxes shall be payable by Customer upon submission of Contractor's invoices; and (d) when conditions permit and upon payment of all amounts due hereunder, Contractor shall resume delivery of the Parts to the originally agreed point of delivery.

**10.1.4. Return Delivery of Warranty Parts**

The Customer shall return the defective Part to the Contractor FCA (INCOTERMS 2020) Site or any other place of delivery notified by Contractor to Customer as the case may be within a reasonable timeframe but not later than 60 days after notification about the warranty claim.

**10.2. Passage of Title**

**10.2.1. Passage of Title to Customer**

Title to Parts shall pass to Customer when made available for shipment to the Customer or if applicable immediately after they have been cleared for export. Notwithstanding the foregoing, Contractor shall have the option to declare, from time to time, alternate title passage points for some or all of the Parts, provided that (i) title shall pass to Customer no later than the time of installation in a Covered Unit and (ii) the Contractor's delivery and risk of loss responsibilities shall remain as specified in Section 10.1.2.

**10.2.2. Inventory Utilization**

Customer shall provide a secured room suitable for storage of spare Parts at Site free of charge. Customer shall retain title to and properly keep and store the spare Parts at the Site during the term of this Agreement. If any Part is found to be unsuitable for use due to improper storage or maintenance, Contractor shall provide a replacement part as Extra Work at Time and Material Rates.

Customer shall during the term of this Agreement permit Contractor to utilize such spare Parts for Contractor's performance of its contractual obligations.

For the avoidance of doubt:

Contractor shall not be obliged to store spare Parts at Customer's site.

**10.2.3. Passage of Title to Contractor**

Contractor shall have the right, at its option, to take title to and possession of, and remove from the Site, any parts or components of the Covered Unit(s) which have been replaced and/or not used during performance of services with Parts supplied by Contractor under this Agreement. Title to such parts and components shall pass from Customer to Contractor at the Site upon completion of the Outage during which the replacement Part is installed - or - in case of export, at the port of export after the parts and components have been cleared for export.

Customer warrants to Contractor good title to such parts and components, free and clear of all liens, encumbrances, and claims. Contractor shall be responsible for packing such parts and components at the Site. Notwithstanding the foregoing, Contractor shall have the option of declaring, from time to time, alternate title passage points for some or all of such parts and components.

**11. ASSIGNMENT****11.1. Customer's Right to Assign**

Customer may not assign, except to Affiliates, its rights and delegate its obligations under this Agreement without Contractor's prior written consent.

**11.2. Contractor's Right to Assign**

Contractor may assign its rights and delegate its obligations under this Agreement to any Affiliate. Contractor may also assign its rights and obligations to other parties with the consent of Customer. In any case, Customer consents to Contractor assigning its accounts receivables under this Agreement to any party. All assignments by either Party shall be subject to all limitations and exclusions of liability contained in this Agreement.

**11.3. Change in Control of Customer**

Customer shall notify Contractor prior to any sale or transfer of all or a controlling interest in Customer no less than thirty (30) Days prior to such event. If Contractor believes that such change in control may materially prejudice Contractor, then Contractor may terminate this Agreement pursuant to Section 6. Payment of a Termination Amount as specified in Section 6.2.2 shall not be required.

**12. HEALTH AND SAFETY**

The Parties shall comply with the provisions set forth in EXHIBIT B (HEALTH AND SAFETY).

**13. INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless Customer from and against any loss or expense by reason of tangible, physical damage to the property of third parties or bodily injury, including death, of persons to the extent such damage or injury results directly from the negligence of Contractor or its subcontractors while engaged in the performance of this Agreement. Customer shall likewise indemnify and hold harmless Contractor from and against any loss or expense by reason of physical damage to the property of third parties or bodily injury, including death, of persons to the extent such damage or injury results directly from the negligence of Customer or its other contractors. In the event such damage or injury is caused by the joint or concurrent negligence of Customer (or its other contractors) and Contractor (or its subcontractors), the loss or expense shall be borne by each Party in proportion to its degree of negligence or the degree of negligence of its contractors/subcontractors. For purposes of Contractor's indemnity responsibility under this Section 12, no portion of the Covered Unit(s), Facility or the Site is considered third party property. In no case, however, shall Customer or Contractor have any obligation under the foregoing unless Customer or Contractor is liable to such third parties (including without limitation such employees) under the law otherwise normally applicable. The indemnities provided for in this Section 12 shall only apply if the Party demanding to be indemnified gives the other Party prompt notice of any such claim and all necessary information and assistance so that the other Party, at its option, may defend or settle such claim and the Party demanding to be indemnified does not take any adverse position in connection with such claim.

**14. SUSPENSION RIGHT**

In addition to its other rights, if Customer fails to fulfil any of the payment conditions in 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 and delivery and/or thereafter require full or partial payment in advance.

Contractor shall not be liable for damages arising during the suspension period or which arise after Contractor having eventually resumed performance of its obligations under this Agreement and are attributable to the suspension period. During the suspension period the Customer shall be obliged to adhere to Contractor's technical instructions. Contractor shall have the right to charge to the Customer any additional costs in relation to Contractor's suspension.

Contractor shall have the right to charge to the Customer any additional costs in relation to Contractor's suspension.

**15. EXCUSABLE EVENTS**

Neither Party shall have any liability or be in breach or default of its obligations under this Agreement to the extent that its performance is delayed or prevented, by any cause beyond its reasonable control. If Contractor is delayed by Customer, its other contractors or Suppliers, Contractor shall also be entitled to an equitable price adjustment. The affected Party shall notify the other Party of any Excusable Delay. In no event will an Excusable Delay relieve either Party of its obligation to make any payment hereunder when due. If any Excusable Delay extends for more than one hundred eighty (180) Days and the Parties have not agreed upon a revised basis for continuing the Work at the end of the Excusable Delay, including adjustment of the Agreement Price, then either Party (except where Excusable Delay is caused by Customer, in which event only Contractor) may, upon thirty (30) Days' written notice, terminate this Agreement in accordance with Section 6.2.2 of this Agreement with respect to undelivered Parts to which title has not yet passed and any uncompleted Services.

**16. LIMITATION OF LIABILITY**

- 16.1.** Exclusion or limitation of Contractor's liability shall exclusively be applicable within the limits of what is permitted by governing law. Such exclusion or limitation shall therefore not apply in the event of intentional misconduct, gross negligence or culpable death, bodily injury or damage to health.
- 16.2.** The total liability of contractor, on all claims of any kind accruing during any calendar year, whether in contract, extra work, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability, or otherwise, arising out of the performance or breach of this Agreement, or the use of any parts or the provision of any services, shall not exceed the average billing amount per year. In no event shall the cumulative total liability of contractor on all such claims of any kind arising from or relating to this Agreement, until the time all such liability ends, exceed the Agreement Price. Notwithstanding anything to the contrary, all contractor liability shall end upon expiration of the applicable warranty period, and, in no event, later than one (1) year following termination or expiration of this agreement, whichever is earlier.
- 16.3.** In no event, whether as a result of breach of contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability, or otherwise, shall contractor or its subcontractors or suppliers be liable for loss of profit or revenues, loss of use of the facility or the Covered Unit(s)

or any associated equipment, cost of capital, cost of substitute equipment, facilities, services or replacement power, downtime costs, claims of customer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages.

- 16.4.** If contractor furnishes customer with advice or assistance concerning any products, systems or work which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject contractor to any liability, whether in contract, warranty, indemnity, tort (including negligence), strict liability or otherwise.
- 16.5.** For the purpose of this section 16, the term "contractor" shall mean contractor, its parent, affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, whether individually or collectively. The provisions of this section 16 shall prevail over any conflicting or inconsistent provision contained in any of the documents comprising this agreement, except to the extent that such provisions further restrict contractor's liability.

## **17. GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement, shall be governed, construed and interpreted in accordance with the laws of the State of New York, without regard to its choice of laws rules (the "Governing Law"). In the event of any dispute arising out of or in connection with this Agreement, such dispute shall be finally settled in the United States District Court for the Southern District of New York or, if such court lacks jurisdiction, in the Supreme Court of the State of New York in New York County. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such action or proceeding brought in these courts and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding is brought in an inconvenient forum.

## **18. CONFIDENTIAL INFORMATION**

Contractor and Customer (both as to information disclosed, a "Disclosing Party") may each provide the other (both as to information received, a "Receiving Party") with Confidential Information. The Receiving Party agrees: (i) to use the Confidential Information only in connection with this Agreement and permitted use(s) and maintenance of the Equipment, (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees, officers, agents or financing parties ("Representatives") (or those of its Affiliates) who have a need to know for the Receiving Party to perform its obligations under this Agreement or to use and maintain the Equipment, and (iii) not to disclose the Confidential Information to any other party and in no case to a competitor of the Disclosing Party. The Receiving Party shall obtain a written commitment from any third party recipient of Confidential Information to comply with the terms of this Article. The restrictions of this Section shall expire ten (10) years after the date of disclosure of the Confidential Information.

City is subject to the Missouri Sunshine Law under Chapter 610, RSMo. The Parties agree that the Agreement, regarding City's obligations, shall be interpreted in accordance with the provisions of the Missouri Sunshine Law, as amended. City shall maintain the confidentiality of Confidential Information and records which are not subject to public disclosure under the Sunshine Law.

## **19. LAWS, CODES AND STANDARDS**

- 19.1.** The prices set forth in this Agreement are based on Contractor's manufacture and delivery of Parts and performance of Services pursuant to (i) its manufacturing processes and quality assurance program, (ii) industry specifications, codes and standards, in effect as of the date of Contractor's proposal applicable to the Parts and Services, (iii) applicable laws, rules and regulations, (iv) the Assumptions, (v) the ownership of Customer, and (vi) the expected ability of Customer to perform his obligations under this Agreement.
- 19.2.** In the event of (a) any change in industry specifications, codes, standards, laws, rules or regulations described in Section 19.1 (ii) or (iii) after the date of Contractor's proposal which affect the Contractor's performance, or (b) any failure to meet or change in, after the Effective Date, any of the conditions described in Section 19.1 (v) or (vi), the price will be equitably increased to reflect additional costs to be incurred by Contractor and reasonable adjustments may be made to other provisions herein as appropriate.

## **20. GENERAL CONDITIONS**

- 20.1.** Customer and Contractor are each independent of the other and nothing in this Agreement is intended, or shall be deemed, to create a partnership or joint venture of the Parties.
- 20.2.** The Parties shall respect the working time regulations applicable for their employees.
- 20.3.** Notwithstanding anything to the contrary, Contractor shall have the right, in its discretion, to gather and use data and information concerning Parts, Covered Unit and Facility performance, so long as Contractor does not disclose to any party not a Contractor Affiliate company an identification of the Customer in connection with a particular item of data or information. Contractor's rights under this Section 20.2 include, without limitation, the right to interface directly to the Facility distributed control system and to utilize a dedicated network or internet connection or telephone line.
- 20.4.** No modification, amendment, rescission, waiver or other change shall be binding on a Party unless agreed in writing by that Party. This Agreement represents the entire agreement between the Parties. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not 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.
- 20.5.** The invalidity in whole or in part of any portion of this Agreement shall not affect the validity of the remainder of this Agreement. The rights and remedies set forth in this Agreement are the exclusive rights and remedies of each Party with respect to this Agreement, its performance or breach.
- 20.6.** The language of this Agreement, and all documents, materials and training, if any, to be supplied by Contractor under this Agreement shall be English.
- 20.7.** In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by applicable United States federal and state constitutions or laws.
- 20.8.** The City of Columbia is an equal opportunity, affirmative action employer pursuant to federal, state and local law. Contractor shall comply with federal, state and local laws related to Equal Opportunity. Contractor shall not discriminate based on race, color, religion, sex, national origin, ancestry, marital status, disability, sexual orientation, gender identity or expression, or any other protected category designated by local, state or federal law.

- 20.9.** Contractor shall comply with all applicable provisions of the Americans with Disabilities Act and the regulations implementing the Act, including those regulations governing employment practices.
- 20.10.** Contractor shall comply with Missouri Revised Statute Section 285.530 in that Contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.
- 20.11.** To the extent required by Missouri Revised Statute Section 34.600, Contractor certifies it is not currently engaged in and shall not, for the duration of this Contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. If any provision of this paragraph, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Contract, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. This paragraph shall not apply to contracts with a total potential value of less than one hundred thousand dollars (\$100,000) or to contractors with fewer than ten (10) employees.
- 20.12.** This Agreement may be signed in 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 contract.

## **21. VALIDITY**

This Agreement is valid only if the time between Contractor's and Customer's signatures does not exceed ninety (90) calendar days and Contractor received the Agreement countersigned by Customer within five (5) calendar days upon Customer's signature.

## **22. EXHIBITS**

The Exhibits form an integral part of this Agreement. In the event of any conflict between the terms herein and the Exhibits, the terms and conditions herein shall prevail. The provisions of the remaining Exhibits listed below shall prevail in the order listed.

- |                     |                                             |
|---------------------|---------------------------------------------|
| <b>1. EXHIBIT A</b> | <b>SCOPE OF MAJOR OVERHAUL</b>              |
| <b>2. EXHIBIT B</b> | <b>HEALTH AND SAFETY</b>                    |
| <b>3. EXHIBIT C</b> | <b>myPlant GENERAL TERMS AND CONDITIONS</b> |

**23. SIGNATURES**

Contractor:

INNIO Jenbacher North America LLC

Date: February 12, 2024



Thomas Jaud  
Managing Director



Luke Papini  
Sales Manager

Customer hereby acknowledges and accepts the terms and conditions contained in this Agreement and agrees to be bound by the terms and conditions contained herein and the ANNEXES.

Customer: THE CITY OF COLUMBIA, MISSOURI

Signature: By: \_\_\_\_\_

Print Name: De'Carlton Seewood

Title: City Manager Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor/ek

CERTIFICATION: I hereby certify that this Contract is within the purpose of the appropriation to which it is to be charged account 17540553-504820 and that there is an unencumbered balance to the credit of such account sufficient to pay therefore.

By: \_\_\_\_\_  
Mathew Lue, City Director of Finance

## **EXHIBIT A. SCOPE OF MAJOR OVERHAUL**

The Major Overhaul is performed by renewal or overhaul of the Gas Engine in accordance with the scope of supply described below:

Excluded from the Major Overhaul:

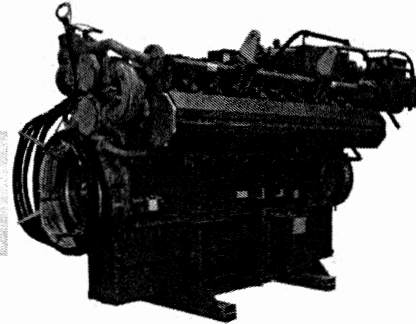
- Transport of the Covered Unit



## LONGBLOCK

J320 - D822

<b>Project Name</b>	<b>Columbia County Landfill</b>
<b>J- Number</b>	<b>J Q296</b>
<b>created by</b>	Joachim Mörl / O&R Team
<b>date</b>	05.12.2023



Symbol Picture

<b>Crankshaft</b>	Overhauled - Remachined (Undersize dimension at main and con rod pin possible)
<b>Crankcase</b>	Overhauled - Remachined (Oversize dimension at main bore & liner bore possible)
<b>Main Bearings</b>	NEW <i>size aligned to shaft &amp; block dimensions</i>
<b>Cylinder Liners</b>	NEW <i>size aligned to liner bore dimension</i>
<b>Scraper Rings</b>	NEW
<b>Pistons</b>	NEW <i>Type Alu Heart-mould Piston <math>\epsilon=12,5</math> inclusive Piston Pin &amp; Rings</i>
<b>Piston Cooling Nozzles</b>	Overhauled
<b>Connecting Rods</b>	Overhauled
<b>Connecting Rod Bearings</b>	NEW <i>size aligned to shaft dimensions</i>
<b>Camshaft</b>	NEW <i>Type D-Miller</i>
<b>Camshaft pick up</b>	NEW <i>inclusive cable</i>
<b>Cam Followers</b>	Overhauled
<b>Cylinderheads</b>	Overhauled (with Oversize seat rings and valve guides possible)
<b>Cylinderhead Gaskets</b>	NEW
<b>Rockers</b>	Overhauled
<b>Push Rods</b>	Overhauled
<b>Spark Plugs</b>	NEW
<b>Gear Drive</b>	Overhauled
<b>Gear Drive Bearings</b>	NEW
<b>Flywheel</b>	Overhauled
<b>Vibration Damper</b>	NEW
<b>Engine Water Pump</b>	Overhauled
<b>Oil Lubrication Pump</b>	Overhauled
<b>Oil Filter cartridge</b>	NEW
<b>Oil Cooler</b>	Overhauled <i>Type OCCO</i>
<b>Oil pressure regulation valve</b>	Overhauled
<b>Oil Sump</b>	Overhauled
<b>Mixture intake manifold</b>	Overhauled
<b>Throttle valve</b>	Overhauled
<b>Actuator</b>	NEW <i>inclusive cable</i>
<b>Knocking Sensors</b>	NEW <i>Type KLS 90 / inclusive cables</i>
<b>Starter</b>	NEW - Type ISKRA
<b>Gas Mixer</b>	Overhauled
<b>Exhaust Gas Manifold</b>	NEW
<b>Exhaust Manifold Insulation</b>	NEW

Overhaul Repair Team  
Scope Description

<b>Turbocharger connection parts</b>	NEW	Type Advanced exhaust compensator
<b>Turbocharger</b>	Overhauled - Type ABB "Utex"      TPS52 H (water-cooled)	
<b>Turbocharger Insulation</b>	NEW	
<b>Turbobypass Valve</b>	NEW	inclusive cable
<b>Crankcase ventilation system</b>	Overhauled	
<b>Blow By Filter</b>	NEW	delivery as spare part
<b>Intercooler</b>	NEW	
<b>Temperature Sensors</b>	NEW	inclusive cables
<b>Thermocouples</b>	NEW	
<b>Pressue transducer air mixture</b>	NEW	inclusive cable
<b>Ignition Rail with Coils</b>	NEW	inclusive cables
<b>Ignition Box</b>	NEW	Type MIC 950
<b>Gaskets &amp; O-Rings</b>	NEW	
<b>Additional Services</b>	Engine Test Run <i>in Test frame with protocol</i> Type plate with over-/undersize information Preservation Painting (cleaned & recoated) Lifting lugs installed and mounted on transport frame Updated spare parts list, wiring diagramm & software in digital form	
<b>Not included</b>	Spare parts & local services Gaskets & sealing elements for onsite connection TecJet 110	
<b>Core Return Policy</b>	The replaced engine needs to be returned to get deposit refunded	
<b>Core Criteria</b>	All Core returns need to be announced prior to shipment On Time return shipment Core must be returned fully assembled Incomplete, excessively damaged, cracked, welded, corroded, machined, or non genuine parts installed get charged according to price list	
<b>ABB UTEX explanation</b>	<p><b><i>ABB customized Service exchange program for Jenbacher gas engines</i></b> <i>Delivered turbocharger has exactly the same warranty period like a new turbocharger</i> <i>SIKO relevant parts (SIKO= "SicherheitsKONzept" / security concept) will be replaced by ABB genuine spare parts (incl. Compressor wheel and shaft).</i> <i>All other components will be checked closely according to ABB working instructions. Technical irreproachable parts will be reused and are included in the mentioned warranty period, equal to new turbocharger.</i>  <i>Due to the fact, that UTEX is a service product and therefore the amount of turbochargers in the field is still the same, UTEX turbochargers are delivered without changing the serial number.</i>  <i>UTEX turbochargers are special product for INNIO Jenbacher Repairshop in Jenbach and are subject to usual Terms and Conditions.</i></p>	

**EXHIBIT B. HEALTH AND SAFETY**

1. Customer will take necessary precautions for the safety of Contractor's personnel at the Site. This includes, but is not limited to, provision for review by Contractor of, and instruction by Customer on, Customer's safety practices, proper and safe handling and disposal of hazardous substances and protection of Contractor's personnel from exposure thereto, energization/ de-energization of all power systems (electrical, mechanical and hydraulic) using a safe and effective lock-out tag procedure, and conducting periodic safety meetings.
2. Contractor shall comply with reasonable health and safety requirements established from time to time by Customer at the Facility, provided, however, that if Customer imposes unusual or new requirements, or requirements that materially impact Contractor's costs or performance, the Parties will negotiate appropriate amendments to this Agreement to address such impact, including an equitable adjustment in price and/or payment terms.
3. If Contractor personnel require medical attention, local Customer facilities will be made available to Contractor personnel for the duration of such needs.
4. If, in Contractor's opinion, the safe execution of Services at the Site is, or is apt to be, imperilled by local conditions, Contractor may remove some or all of its personnel from the Site and/or supervise performances of all or any part of its Services and/or evacuate its personnel and Customer shall assist in said evacuation, any of which shall be considered to be an Excusable Event.
5. The operation of equipment at the Site is the responsibility of Customer. If Customer requires or permits Contractor's personnel to operate equipment at the Site, Customer shall indemnify and save Contractor, its employees and agents, harmless from expense and liability (including reasonable attorneys' fees) incurred by or imposed upon Contractor, its employees and agents, based upon injury to persons (including death) or damage to property resulting from operation of equipment at the Site by Contractor personnel.
6. During the Term of this Agreement, Customer shall at no cost to Contractor provide, and/or ensure the availability of, in a timely manner, the following: Ownership, storage, transportation, record keeping (including signing all Hazardous Substances shipping manifests), and reporting of all Hazardous Material and non-hazardous wastes resulting from Maintenance or Extra Work, in accordance with all applicable laws, rules, ordinances and regulation. Customer shall upon Contractor's request at any time provide documentation legally required for treatment, storage, transportation or disposal of hazardous materials.
7. If, at the Site, Contractor encounters any Hazardous Material which requires special handling and/or disposal, Customer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions so that the work under the Agreement may safely proceed. If any such Hazardous Materials cause an increase in Contractor's cost of or the time required for performance of any part of the work, an equitable adjustment shall be made in the price and schedule. Customer agrees to properly dispose of all Hazardous Materials produced or generated in the course of Contractor's work at the Site. Customer shall indemnify Contractor for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to (i) the presence of any Hazardous Materials which are present on the Site prior to the commencement of Contractor's work or (ii) improperly handled or disposed of by Customer or (iii) brought on to the Site or produced thereon by parties other than Contractor.
8. In case Contractor is responsible for waste disposal under this Agreement, the Customer will adhere to the disposal system provided by the Contractor. In case of Customer's non-observance Contractor shall have the right to charge any resulting extra costs to the Customer.

## **EXHIBIT C. myPlant GENERAL TERMS AND CONDITIONS**

### **1. Definitions**

Unless otherwise defined herein, all capitalized terms used in these General Terms and Conditions shall have the same meaning given to them in the Agreement.

### **2. Restrictions**

Copies of the App created or transferred pursuant to the Agreement are licensed, not sold, and Customer receives no title to or ownership in any copy or the App itself. Furthermore, Customer receives no rights to the App other than those specifically granted in the Agreement. Without limiting the generality of the foregoing, Customer will not modify, create derivative works from, distribute or sublicense the App (except to an End User as specified below), reverse engineer, decompile, disassemble, or otherwise attempt to derive any of either the Software Modules, MyPlant or the App's source code. Customer may sublicense the App to an End User, under terms at least as restrictive as those contained herein.

### **3. Permission to use Data**

3.1. Notwithstanding anything to the contrary in the Agreement, these Terms and Conditions or otherwise, Customer hereby grants to Contractor as necessary, a non-terminable, non-exclusive, royalty-free, worldwide right and license to access, collect, store, transmit, analyse and otherwise use all data and information concerning the Equipment, Unit(s) and Facility operation and performance (the "Data"). Contractor will not disclose to any party not a Contractor Affiliate the identification of Customer in connection with a particular item of Data. Contractor may use Data to identify statistical patterns and evaluations of equipment performance in connection with research and development, in an aggregate format, for the creation of commercial analytics tools and products in accordance with applicable law, or for other lawful purposes. Contractor will own all right, title or interest in or to any information, products, services or intellectual property it develops arising from its analysis of Data and its research and development activities. Contractor reserves the right to store and transfer any Data globally, as needed.

3.2. Customer will be responsible for providing notice and obtaining any consents reasonably required or necessary for the use, storage, transferring and obtaining of any Data provided to Contractor. In particular, where Customer sells the Equipment to an End User, Customer shall procure the rights set out in Article 3 for Contractor from the End User. Customer shall indemnify and hold harmless Contractor from and against all claims, damages, losses and expenses arising as a result of or relating to the failure by Customer to procure the necessary rights and consents for Contractor in accordance with the foregoing.

3.3. The provisions of this Article will survive, for the entire duration of protection of intellectual property rights in the relevant data, any termination of this Agreement, in whole or in part, for any reason whatsoever.

### **4. Ownership**

Contractor (or as applicable its Affiliates) retains all right, title, and interest in and to the Software Modules, including without limitation the App and all software used to provide the Software Modules and all graphics, user interfaces, logos, trademarks reproduced through the Software Modules, as well as all content other than Data. Nothing in the Agreement grants Customer any intellectual property license or rights in or to the Software Modules or any of its components, except to the limited extent that Article 2.4 (*MyPlant Digital Solution*) of the Agreement (together with Article 2 (*Restrictions*) hereof) specifically sets forth Customer's license rights to the App.

Customer recognizes that the Software Modules and their components are protected by copyright and other laws.

## **5. Termination**

5.1. Upon expiration or termination of the Agreement for any reason whatsoever, all licenses and rights granted and all obligations undertaken under the Agreement shall terminate immediately, unless the Agreement expressly provides for their survival.

5.2. Upon expiration or termination of this Agreement, Data may be purged, at Contractor's sole discretion.

## **6. Warranty**

6.1. Contractor warrants, for Customer's benefit alone, that during the Term applicable to myPlant Care (the "Software Modules Warranty Period") the Software Modules will function in substantial conformity with the specifications contained in the Agreement as may be updated or modified by Contractor from time to time. If the Software Modules fail to meet the above warranties, Customer shall notify Contractor in writing of such failure promptly, and in any event within 30 days of the date when Customer is aware such failure occurred. Customer's sole and exclusive remedy regarding any such failure will be Contractor's use of commercially reasonable efforts to correct the non-conformity (provided Contractor was notified in accordance with the foregoing). Contractor shall have no obligation or liability in respect of the failure if Customer fails to notify Contractor in accordance with the foregoing.

6.2. To the maximum extent permitted by applicable law, (1) the foregoing warranties are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory; and (2) no implied or statutory warranty, or warranty or condition of merchantability or fitness for a particular purpose will apply. Without limiting the foregoing, Contractor does not warrant that the Software Modules (or Customer's use thereof) will be free from all errors or that their use will be uninterrupted.

6.3. Contractor represents and warrants that it is the owner of the Software Modules and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in the Agreement without the further consent of any third party. In the event of a breach of the warranty in this Article 6.3 during the Term, Contractor, at its own expense, will promptly take the following actions: (a) secure for Customer the right to continue using the Software Modules; (b) replace or modify the Software Modules to make them noninfringing; or (c) discontinue the use of the infringing features of the Software Modules. The preceding sentence states Contractor's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Article 6.3 and for any potential or actual intellectual property infringement by the Software Modules.

## **7. Limitation of Liability**

Article 16 of the Agreement applies.

## **8. System Requirements**

8.1. Customer agrees to allow continuous uninterrupted access to the data stream and will not add tags, links to other devices or systems or otherwise change the set, functioning and configuration or connectivity during the Term.

8.2. Customer will take commercially reasonable measures to maintain its equipment, systems, software and network interfaces to ensure that no viruses, Trojan horses, tracking or other cookies, malware or any other harmful software are or become embedded in or attached to

Software Modules or Data or to any such equipment, systems, software or network interfaces accessed by or otherwise affecting Contractor's equipment, systems or software.

8.3. Upon reasonable request by Contractor (but no more than once per year), Customer will perform testing or audits of its security program to verify compliance with this Article. Customer will use industry-accepted software and cyber security measures for the purpose of protecting equipment, systems, software and network interfaces and such protection measures will be at least commensurate with those which it uses for the protection of its own equipment, systems, software and network interfaces (which will be no less than reasonable measures).

## **9. General**

Contractor may suspend or terminate Customer's right to access or use any portion or all of the Software Modules immediately upon notice to Customer if Contractor determines that Customer's use of the Software Modules (i) poses a risk to such Software Modules or any third party, (ii) may adversely impact the Software Modules, (iii) may subject Contractor, Contractor's Affiliates, or any third party to liability, or (iv) may be fraudulent or prohibited by law.

## **10. Disclaimer**

Contractor shall have no liability for any action, or inaction, which Customer elects to take or not to take as a result of viewing any data, reports or other information provided by the Software Modules, or for any analyses Customer conducts using information provided by the Software Modules.

## **11. Governing Law and Dispute Resolution**

Article 17 of the Agreement applies.