
The Board may vote to go into Closed Session on any agenda item as allowed by State Law.

ROUTINE BUSINESS

1. Announcement of Open Meetings Act
2. Roll Call
3. Public Works Report

CONSENT AGENDA

1. Minutes Approval for August 6th, 2026
2. Agenda Approval
3. Consent Agenda

Any item listed on the Consent Agenda may, by the request of any single BOPW Member, be considered as a separate item under the Regular Agenda Section of the Agenda.

OLD BUSINESS

REGULAR BUSINESS

1. Discussion & Action – Approval of lease agreement from NMC CAT for a CAT model 303.5 in the amount of \$7,250.00.
2. Discussion & Action – Review Market Participant Services RFQs
3. Discussion & Action – Recommend City Council Approve the Energy Management and Market Participation Support Agreement from Tenaska Power Services Co., upon Legal Review.
4. Discussion & Action – OPPD Prepayment Agreement
5. Discussion & Action – Request Water & Sewer Charges be waived for 1812 Wilson on the 06/24/2026 Bill | Mark Harkendorff

ADJOURNMENT

Trevor Campbell, Public Works Director

REGULAR MEETING OF THE FALLS CITY BOARD OF PUBLIC WORKS

August 6, 2026
2307 Barada Street
Falls City, Nebraska

A regular meeting of the Board of Public Works of the City of Falls City, Nebraska, was held at the City Hall, 2307 Barada Street in said City on the 6th day of August 2026 at 5:30 o'clock P.M. Present were: Board Members: Fischer, Joy, Rieger, and Koopman. Absent: Froeschl. Trevor Campbell recorded the minutes of the meeting. Notice of the meeting was given in advance thereof by posting in three public places, a designated method for giving notice as shown by the Certificate of Posting Notice attached to these minutes. Notice of this meeting was given to the Board Chairperson and all members of the Board and a copy of their acknowledgment of receipt of notice and the agenda is attached to the minutes. Availability of the agenda was communicated in the advance notice and in the notice to the Chairperson and Board of this meeting. All proceedings hereafter shown were taken while the convened meeting was open to the attendance of the public. The Chairperson publicly stated to all in attendance that a current copy of the Nebraska Open Meetings Act was available for review and indicated the location of such copy posted in the room where the meeting was being held.

PUBLIC WORKS DIRECTOR REPORT

Trevor Campbell gave the Public Works Report. No action was required.

CONSENT AGENDA

A motion was made by Koopman and seconded by Joy to approve the consent agenda as follows: *WHEREAS*, certain business of the Board of Public Works of the City of Falls City (City) transpires on a regular and routine basis or is not of controversial nature; and *WHEREAS*, roll call votes on each individual issue greatly extend the meeting time. *NOW, THEREFORE, BE IT HEREBY RESOLVED* BY the Board of Public Works that in the interest of economizing time, yet complying with the Public Meeting Laws of the State of Nebraska, which require roll call voting, the following issues are hereby consolidated in this Consent Resolution: 1. *BE IT FURTHER RESOLVED BY* the Board of Public Works that the minutes from the July 16th, 2026, meeting is hereby approved. 2. *BE IT FURTHER RESOLVED BY* the Board of Public Works that the agenda for August 6th, 2026, is hereby approved. 3. *BE IT FURTHER RESOLVED BY* the Board of Public Works that the Consent Agenda for August 6th, 2026, is hereby approved. Roll was called on this motion and the members voted as follows: "YEA" Joy, Rieger, Koopman. "NAY" None. "ABSTAINED" Fischer. "ABSENT": Froeschl. Motion carried.

ALLOWANCE & POLICY REGARDING GENERLINK TRANSFER SWITCHES

A motion was made by Joy and seconded by Fischer to approve the allowance of GenerLink transfer switches. Roll was called on this motion and the members voted as follows: "YEA" Fischer, Rieger, Koopman, Joy. "NAY" None. "ABSENT" Froeschl. Motion carried.

BORING MACHINE UTILITY INSTALLATION PRICE

A motion was made by Joy and seconded by Fischer to approve setting the boring machine price at \$12/foot for 2-inch bores and allow the Utility Superintendent to price larger bores as needed. Roll was called on this motion and the members voted as follows: "YEA" Fischer, Rieger, Koopman, Joy. "NAY" None. "ABSENT" Froeschl. Motion carried.

SEL PROJECT CHANGE ORDER NO. 01 FOR SCADA SYSTEM EQUIPMENT PROJECT

A motion was made by Rieger and seconded by Joy to approve the change order as presented. Roll was called on this motion and the members voted as follows: "YEA" Fischer, Rieger, Koopman, Joy. "NAY" None. "ABSENT" Froeschl. Motion carried.

JOHNSON SERVICE COMPANY ESTIMATE FOR MANHOLE REHAB & PIPING

A motion was made by Koopman and seconded by Joy to approve the estimate for the rehab of Manhole #12 and mobilization in the amount of \$7,000.00. Roll was called on this motion and the members voted as follows: "YEA" Fischer, Rieger, Koopman, Joy. "NAY" None. "ABSENT" Froeschl. Motion carried.

ALLIANCE FOR ENERGY INNOVATION, LLC NON-DISCLOSURE AGREEMENT

A motion was made by Koopman and seconded by Joy to approve the non-disclosure agreement contingent on the review of the City Attorney. Roll was called on this motion and the members voted as follows: "YEA" Fischer, Rieger, Koopman, Joy. "NAY" None. "ABSENT" Froeschl. Motion carried.

MEETING ADJOURNED AT 6:39 PM

I, the undersigned, City Clerk for the City of Falls City, Nebraska, hereby certify that the foregoing is a true and correct copy of proceedings had and done by the Chairperson and Board on August 6th, 2026, that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such agenda items were sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that at least one copy of all reproducible material discussed at the meeting was available at the meeting for examination and copying by members of the public; that the said minutes from which the foregoing proceedings have been extracted were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided advance notification of the time and place of said meeting and the subjects to be discussed at said meeting; and that a current copy of the Nebraska Open Meetings Act was available and accessible to members of the public, posted during such meeting in the room in which such meeting was held.

(SEAL)

CITY CLERK

SECRETARY

CHAIRPERSON

REPURCHASE AGREEMENT

This Repurchase Agreement applies to:

PURCHASER: City of Falls City
MAKE/MODEL: 303.5
SERIAL NUMBER: RE907302
DELIVERY DATE: 8/2026
WARRANTY: Standard
DELIVERY HOUR
METER READING: 4

Repurchase amount: \$62,206.57 based upon a maximum of 250 service meter hours

1. Subject to the terms and conditions herein, Nebraska Machinery Company ("NMC") agrees to repurchase the machine listed above at the end of the 12-month term.
2. To maintain the Repurchase Agreement, the Purchaser agrees to the following conditions and limitations:
 - a. The Equipment must be maintained in accordance with the manufacturer's recommended maintenance schedule as per the manufacturer's manual(s) provided with the Equipment. Purchaser agrees to maintain adequate maintenance records, and to allow access to those records to NMC upon request.
 - b. The Equipment must be in a normal physical and operating condition. At the time of repurchase, the Equipment must:
 - i. have all glass intact and without cracks;
 - ii. have no missing parts or sheet metal;
 - iii. have no significant sheet metal damage or any structural damage to frame;
 - iv. have no damage or modification done to the Rollover Protective Structure (ROPS) that voids certification;
 - v. have all machine functions in working order, including, but not limited to, power train systems, hydraulic systems, and electrical systems;
 - vi. have all hinges, doors, grills, steps, attachments, buckets, blades and grab irons in good, workable condition;
 - vii. if applicable, have 50% remaining tire wear, as determined by a generally accepted measuring device, with no cords showing from cuts to the sidewalls or tread of the tire; recaps not acceptable; all tires must be of the same size, make and configuration as originally supplied;
 - viii. if applicable, have 50% remaining undercarriage wear, as determined by a generally accepted measuring device; undercarriage must be of the same make as originally supplied;
 - ix. be returned with all attachments, accessories or upgrades originally sold with equipment;
 - x. be delivered to the nearest NMC location;
 - xi. be free and clear of all liens, claims, security interests and encumbrances, with good and marketable title delivered to NMC at repurchase.
 - c. Purchaser agrees not to alter or modify the Equipment in any manner without NMC's prior written consent.

EXHIBIT 2
Concluding Payment Schedule to
Government Agreement

Quote Number.....5100161

Dated _____, 20__
between
Caterpillar Financial Services Corporation
and
CITY OF FALLS CITY

Description of Unit: 303.5-07CR Hydraulic Excavator:RE907046

Number of Payments Made	Beginning Balance	Payment Amount	Balloon	Interest	Interest Rate	Concluding Payment (*)
1	66,500.00	7,250.00	0.00	0.00	4.99	59,250.00
total		7,250.00	62,206.57	0.00		
2	59,250.00	0.00	62,206.57	2,956.57	4.99	0.00
total		0.00	62,206.57	2,956.57		
total		7,250.00	62,206.57	2,956.57		

(*)Does not include any rent payment or other amount then due.

Initialed: _____
(Lessee)

LET'S GET STARTED.

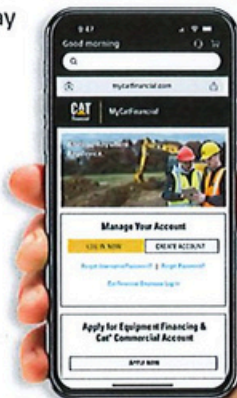
- ☐ Complete and sign all documents in this package.
- ☐ Submit completed and signed documents by clicking FINISH at the end of your documents.
- ☐ Open and review your executed document package after you receive your confirmation email confirming all parties have signed.
- ☐ Register for MyCatFinancial to manage your account anytime and anywhere via desktop or with the free mobile app.

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MyCatFinancial is our online, self-service tool that allows you to manage your Cat Financial accounts anytime, anywhere, on any device.

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- View your signed documents
- Send and receive confidential information securely
- Request a payoff quote
- Submit an online credit application
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PREVENTING FRAUD TOGETHER

Cat Financial is committed to helping you keep your personal and financial information secure. Find out how you can protect yourself against fraudulent activity by [visiting our website](http://cat.com/getrewards).

¹ Financing is subject to credit approval by Caterpillar Financial Commercial Account Corporation for US customers, and Caterpillar Financial Services Limited for Canadian customers. Not all customers will qualify.

² See cat.com/getrewards for eligibility, details, and terms and conditions.

Document Checklist – Governmental Lease



These documents were prepared especially for:

CITY OF FALLS CITY
2307 BARADA STREET
FALLS CITY, NE 68355

Dealer: NEBRASKA MACHINERY COMPANY, E330
Contract Number 001-70233914
Transaction Number: 5111701
Comments:

Date: 08/13/2026
Time: 10:37:09 AM

Customer Executed Documents	Comments
☐ Governmental Lease Document	_____
☐ Insurance-Liability and Physical Damage	_____
☐ Advance Payment (cross out if N/A)	_____
☐ Guaranty of Payment (cross out if N/A)	_____
☐ Tax Exemption Certif. (cross out if N/A)	_____
☐ Title applied for (cross out if N/A)	_____
☐ Customer Information Verification	_____
☐ Any necessary Riders/Amendments	_____
☐ CVA DOC ADDENDUM TO FINANCE LEASE (Multiple CVA offers at Doc Gen)	_____
☐ FINAL CVA AT ADDENDUM (Multiple CVA offers at Doc Gen)	_____
☐ FINAL CVA AT QUOTE (Customer Accepted CVA before Doc Gen)	_____
☐ Other _____	_____
☐ 8038G / CG Form	_____
☐ Request for Minutes	_____
☐ Opinion of Counsel	_____
☐ Governmental Resolution to Lease, Purchase and/or Finance	_____
☐ Governmental Buyback Agreement (cross out if N/A)	_____

Dealer Executed Documents	
☐ Purchase Agreement	_____
☐ Dealer Invoice	_____
☐ All Credit Conditions Met	_____

*If any of these documents are altered, or if the Lessee wishes to add or delete documents, please contact your CFSC Credit Analyst to obtain acceptance of any and all changes.

If you have any questions concerning these documents please call and ask for

Checklist completed and confirmed by: _____ Print Name: _____
Date: _____

These Documents do not constitute any offer or commitment to offer financing by Caterpillar Financial Services Corporation without Caterpillar Financial Services Corporation's expressed written approval.

1. PARTIES

LESSOR ("we", "us", or "our"):

CATERPILLAR FINANCIAL SERVICES CORPORATION
2120 West End Avenue
Nashville, TN 37203

LESSEE ("you" or "your"):

CITY OF FALLS CITY
2307 BARADA STREET
FALLS CITY, NE 68355

In reliance on your selection of the equipment described below (each a "Unit"), we have agreed to acquire and lease the Units to you, subject to the terms of this Agreement. **Until this Agreement has been signed by our duly authorized representative, it will constitute an offer by you to enter into this Agreement with us on the terms stated herein.**

2. DESCRIPTION OF THE UNITS

DESCRIPTION OF UNITS Whether the Unit is new or used, the model number, the manufacturer, and the model name	SERIAL/VIN Unique ID number for this Unit	ANNUAL LEASE PAYMENT This is due per period, as stated below in section 3.	FINAL LEASE PAYMENT	DELIVERY DATE Enter date machine was delivered to you.
1 New 2026 Caterpillar 303.5-07CR Hydraulic Excavator	RE907046	SEE ATTACHMENT	\$62,206.57	

TERMS AND CONDITIONS

3. Lease Payments; Current Expense You will pay us the lease payments, including the final lease payment set forth above (collectively, the "Lease Payments"). Lease Payments will be paid by you to us according to the attached payment schedule; provided that all amounts owing hereunder will be due by the final lease payment date. A portion of each Lease Payment constitutes interest and the balance of each Lease Payment is payment of principal. The Lease Payments will be due without demand. You will pay the Lease Payments to us at CATERPILLAR FINANCIAL SERVICES CORP., P.O. BOX 730681, DALLAS, TX 75373-0681 or such other location that we designate in writing. Your obligations, including your obligation to pay the Lease Payments due in any fiscal year, will constitute a current expense of yours for such fiscal year and will not constitute an indebtedness of yours within the meaning of the constitution and laws of the State in which you are located (the "State"). Nothing in this Agreement will constitute a pledge by you of any taxes or other moneys, other than moneys lawfully appropriated from time to time for the payment of the "Payments" (as defined in the last sentence of this Section) owing under this Agreement. You agree that, except as provided in Section 7, your duties and liabilities under this Agreement and any associated documents are absolute and unconditional. Your payment and performance obligations are not subject to cancellation, reduction, or setoff for any reason. You agree to settle all claims, defenses, setoffs, counterclaims and other disputes you may have with the Supplier, the manufacturer of the Unit, or any other third party directly with the Supplier, the manufacturer or the third party, as the case may be. You will not assert, allege or make any such claim, defense, setoff, counterclaim or other dispute against us or with respect to the payments due us under this Agreement. As used in this Agreement, "Payments" will mean the Lease Payments and any other amounts required to be paid by you.

The portion of the Lease Payments constituting principal will bear interest (computed on the basis of actual days elapsed in a 360 day year) at the rate of 4.990% per annum.

- 4. Late Charges** If we do not receive a Payment on the date it is due, you will pay to us, on demand, a late payment charge equal to the lesser of five percent (5%) of such Payment or the highest charge allowed by law.
- 5. Security Interest** To secure your obligations under this Agreement, you grant us a continuing first priority security interest in each Unit (including any Additional Collateral), including all attachments, accessories and optional features (whether or not installed on such Units) and all substitutions, replacements, additions, and accessions, and the proceeds of all the foregoing, including, but not limited to, proceeds in the form of chattel paper. You authorize the filing of such financing statements and will, at your expense, do any act and execute, acknowledge, deliver, file, register and record any document, which we deem desirable to protect our security interest in each Unit and our rights and benefits under this Agreement. You, at your expense, will protect and defend our security interest in the Units and will keep the Units free and clear of any and all claims, liens, encumbrances and legal processes however and whenever arising.
- 6. Disclaimer of Warranties** WE HAVE NOT MADE AND DO NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE UNITS. AS TO US, YOUR LEASE AND PURCHASE OF THE UNITS WILL BE ON AN "AS IS" AND "WHERE IS" BASIS AND "WITH ALL FAULTS". Nothing in this Agreement is intended to limit, waive, abridge or otherwise modify any rights, claims, or causes of action that you may have against any person or entity other than us.
- 7. Non-Appropriation** You have an immediate need for, and expect to make immediate use of, the Units. This need is not temporary or expected to diminish during the term of this Agreement. To that end, you agree, to the extent permitted by law, to include in your budget for the current and each successive fiscal year during the term of this Agreement, a sufficient amount to permit you to discharge your obligations under this Agreement. Notwithstanding any provision of this Agreement to the contrary, we and you agree

that, in the event that prior to the commencement of any of your fiscal years you do not have sufficient funds appropriated to make the Payments due under this Agreement for such fiscal year, you will have the option of terminating this Agreement as of the date of the commencement of such fiscal year by giving us sixty (60) days prior written notice of your intent to terminate. No later than the last day of the last fiscal year for which appropriations were made for the Payments (the "Return Date"), you will return to us all of the Units, at your sole expense, in accordance with Section 14, and this Agreement will terminate on the Return Date without penalty or expense to you and you will not be obligated to pay the Lease Payments beyond such fiscal year; provided, that you will pay all Payments for which moneys have been appropriated or are otherwise available; and provided further, that you will pay month-to-month rent at the rate set by us for each month or part of any month that you fail to return the Units.

8. Tax Warranty You will, at all times, do and perform all acts and things necessary and within your control to ensure that the interest component of the Lease Payments will, for the purposes of Federal income taxation, be excluded from our gross income. You will not permit or cause your obligations under this Agreement to be guaranteed by the Federal Government or any branch or instrumentality of the Federal Government. You will use the Units for the purpose of performing one or more of your governmental functions consistent with the scope of your authority and not in any trade or business carried on by a person other than you. You will report this Agreement to the Internal Revenue Service by filing Form 8038G, 8038GC or 8038, as applicable. Failure to do so will cause this Agreement to lose its tax exempt status. You agree that if the appropriate form is not filed, the interest rate payable under this Agreement will be raised to the equivalent taxable interest rate. If the use, possession or acquisition of the Units is determined to be subject to taxation, you will pay when due all taxes and governmental charges assessed or levied against or with respect to the Units.

9. Assignment You may not, without our prior written consent, by operation of law or otherwise, assign, transfer, pledge, hypothecate or otherwise dispose of your right, title and interest in and to this Agreement and/or the Units and/or grant or assign a security interest in this Agreement and/or the Units, in whole or in part. We may not transfer, sell, assign, pledge, hypothecate, or otherwise dispose of our right, title and interest in and to this Agreement and/or the Units and/or grant or assign a security interest in this Agreement and/or the Units, in whole or in part.

10. Indemnity To the extent permitted by law, you assume liability for, agree to and do indemnify, protect and hold harmless us and our employees, officers, directors and agents from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorney's fees), of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by you or us), operation, ownership, selection, delivery, storage, leasing or return of any item of Units, regardless of where, how and by whom operated, or any failure on your part to accept the Units or otherwise to perform or comply with any conditions of this Agreement.

11. Insurance; Loss and Damage You bear the entire risk of loss, theft, destruction or damage to the Units from any cause whatsoever. No loss, theft, destruction or damage of the Units will relieve you of the obligation to make Lease Payments or to perform any obligation owing under this Agreement. You agree to keep the Units insured to protect all of our interests, at your expense, for such risks, in such amounts, in such forms and with such

companies as we may require, including but not limited to fire and extended coverage insurance, explosion and collision coverage, and personal liability and property damage liability insurance. Any insurance policies relating to loss or damage to the Units will name us as loss payee as our interests may appear and the proceeds may be applied toward the replacement or repair of the Units or the satisfaction of the Payments due under this Agreement. You agree to use, operate and maintain the Units in accordance with all laws, regulations and ordinances and in accordance with the provision of any policies of insurance covering the Units, and will not rent the Units or permit the Units to be used by anyone other than you. You agree to keep the Units in good repair, working order and condition and house the Units in suitable shelter, and to permit us or our assigns to inspect the Units at any time and to otherwise protect our interests in the Units. If any Unit is customarily covered by a maintenance agreement, you will furnish us with a maintenance agreement by a party acceptable to us.

12. Default; Remedies An "Event of Default" will occur if (a) you fail to pay any Payment when due and such failure continues for ten (10) days after the due date for such Payment or (b) you fail to perform or observe any other covenant, condition, or agreement to be performed or observed by you under this Agreement and such failure is not cured within twenty (20) days after written notice of such failure from us. Upon an Event of Default, we will have all rights and remedies available under applicable law. In addition, we may declare all Lease Payments due or to become due during the fiscal year in which the Event of Default occurs to be immediately due and payable by you and/or we may repossess the Units by giving you written notice to deliver the Units to us in the manner provided in Section 14, or in the event you fail to do so within ten (10) days after receipt of such notice, and subject to all applicable laws, we may enter upon your premises and take possession of the Units. Further, if we financed your obligations under any extended warranty agreement such as an Equipment Protection Plan, Extended Service Contract, Extended Warranty, Customer Service Agreement, Total Maintenance and Repair Agreement or similar agreement, we may cancel such extended warranty agreement on your behalf and receive the refund of the extended warranty agreement fees that we financed but had not received from you as of the date of the Event of Default.

13. Miscellaneous This Agreement may not be modified, amended, altered or changed except by a written agreement signed by you and us. In the event any provision of this Agreement is found invalid or unenforceable, the remaining provisions will remain in full force and effect. This Agreement, together with exhibits, constitutes the entire agreement between you and us and supersedes all prior and contemporaneous writings, understandings, agreements, solicitations, documents and representations, expressed or implied. Any terms and conditions of any purchase order or other documents submitted by you in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on us and will not apply to this Agreement. You agree that we may correct patent errors in this Agreement and fill in blanks including, for example, correcting or filling in serial numbers, VIN numbers, and dates. Any notices required to be given under this Agreement will be given to the parties in writing and by certified mail at the address provided in this Agreement, or to such other addresses as each party may substitute by notice to the other, which notice will be effective upon its receipt.

14. Title; Return of Units Notwithstanding our designation as "Lessor," we do not own the Units. Legal title to the Units will be in you so long as an Event of Default has not occurred, and you have not exercised your right of non-appropriation. If an Event of Default occurs or if you non-appropriate, full and unencumbered title to the

Units will pass to us without the necessity of further action by the parties, and you will have no further interest in the Units. If we are entitled to obtain possession of any Units or if you are obligated at any time to return any Units, then (a) title to the Units will vest in us immediately, and (b) you will, at your expense, promptly deliver the Unit to us properly protected and in the condition required by Section 11. You will deliver the Unit, at our option, (i) to the nearest Caterpillar dealer selling equipment of the same type as the Unit; or (ii) on board a carrier named by us and shipping the Unit, freight collect, to a destination designated by us. If the Unit is not in the condition required by Section 11, you must pay us, on demand, all costs and expenses incurred by us to bring the Unit into the required condition. Until the Units are returned as required above, all terms of this Agreement will remain in full force and effect including, without limitation, your obligation to pay Lease Payments and to insure the Units.

15. Other Documents In connection with the execution of this Agreement, you will cause to be delivered to us (i) either (A) a certified copy of your authorizing resolution substantially in the form attached as Attachment B and a copy of the minutes of the relevant meeting or (B) an opinion of your counsel substantially in the form attached as Attachment C; (ii) a copy of the signed Form filed with the Internal Revenue Service required in Section 8 above as Attachment D; and (iii) any other documents or items required by us.

16. Applicable Law This Agreement will be governed by the laws, excluding the laws relating to the choice of law, of the State in which you are located.

SIGNATURES

LESSOR CATERPILLAR FINANCIAL SERVICES CORPORATION

LESSEE CITY OF FALLS CITY

Signature _____
Name (Print) _____
Title _____
Date _____

Signature _____
Name (Print) Trevor Campbell
Title Utility Superintendent
Date _____

GOVERNMENTAL ENTITY RESOLUTION TO LEASE, PURCHASE AND/OR FINANCE

WHEREAS, the laws of the State of Nebraska (the "State") authorize CITY OF FALLS CITY (the "Governmental Entity"), a duly organized political subdivision, municipal corporation or similar public entity of the State, to purchase, acquire and lease personal property for the benefit of the Governmental Entity and its inhabitants and to enter into any necessary contracts; and

the Governmental Entity wants to lease, purchase and/or finance equipment ("Equipment") from Caterpillar Financial Services Corporation and/or an authorized Caterpillar dealer ("Caterpillar") by entering into that certain Governmental Equipment Lease-Purchase Agreement (the "Agreement") with Caterpillar; and

the form of the Agreement has been presented to the governing body of the Governmental Entity at this meeting.

RESOLVED, that: (i) the Agreement, including all schedules and exhibits attached to the Agreement, is approved in substantially the form presented at the meeting, with any Approved Changes (as defined below), (ii) the Governmental Entity enter into the Agreement with Caterpillar and (iii) the Agreement is adopted as a binding obligation of the Governmental Entity; and

that changes may later be made to the Agreement if the changes are approved by the Governmental Entity's counsel or members of the governing body of the Governmental Entity signing the Agreement (the "Approved Changes") and that the signing of the Agreement and any related documents is conclusive evidence of the approval of the changes; and

that the persons listed below, who are the incumbent officers of the Governmental Entity (the "Authorized Persons");

[PLEASE INSERT NAME AND TITLE OF EACH AUTHORIZED PERSON BELOW]

Name (Print or Type)

Title (Print or Type)

Trevor Campbell

Utility Superintendent

be, and each is, authorized, directed and empowered, on behalf of the Governmental Entity, to (i) sign and deliver to Caterpillar, and its successors and assigns, the Agreement and any related documents, and (ii) take or cause to be taken all actions he/she deems necessary or advisable to acquire the Equipment, including the signing and delivery of the Agreement and related documents; and

that the signatory below is authorized to attest to these resolutions and affix the seal of the Governmental Entity to the Agreement, these resolutions, and any related documents; and

that nothing in these resolutions, the Agreement or any other document imposes a pecuniary liability or charge upon the general credit of the Governmental Entity or against its taxing power, except to the extent that the payments payable under the Agreement are special limited obligations of the Governmental Entity as provided in the Agreement; and

that a breach of these resolutions, the Agreement or any related document will not impose any pecuniary liability upon the Governmental Entity or any charge upon its general credit or against its taxing power, except to the extent that the payments payable under the Agreement are special limited obligations of the Governmental Entity as provided in the Agreement; and

that the authority granted by these resolutions will apply equally and with the same effect to the successors in office of the Authorized Persons.

I, Courtney Bybee - Utility Account Clerk of CITY OF FALLS CITY, certify that the resolutions above are a full, true and correct copy of resolutions of the governing body of the Governmental Entity. I also certify that the resolutions were duly and regularly passed and adopted at a meeting of the governing body of the Governmental Entity. I also certify that such meeting was duly and regularly called and held in all respects as required by law, at the Governmental Entity's office. I also certify that at such meeting, a majority of the governing body of the Governmental Entity was present and voted in favor of these resolutions.

I also certify that these resolutions are still in full force and effect and have not been amended or revoked.

IN WITNESS of these resolutions, the signatory named below executes this document on behalf of the Governmental Entity.

SIGNATURE [To be signed by authorized individual.]

Signature

Title

Utility Account Clerk

Date

Purchase Agreement
Contract Number 001-70233914



This Purchase Agreement is between **NEBRASKA MACHINERY COMPANY** ("Vendor") and Caterpillar Financial Services Corporation ("Cat Financial"). Vendor agrees to sell to Cat Financial and Cat Financial agrees to buy from Vendor the equipment described below (the "Unit(s)"), subject to the terms and conditions set forth below and on the reverse side hereof.

Description of Unit(s)	Serial#	VIN #	Freight	Total Price
(1) 303.5-07CR CATERPILLAR Hydraulic Excavator	RE907046		\$	\$66,250.00

Lessee:	Subtotal	\$66,250.00
CITY OF FALLS CITY	Federal Excise Tax	\$0.00
2307 BARADA STREET	Other Tax	\$0.00
FALLS CITY, NE 68355	Total Purchase Price	\$66,250.00
	Unit(s) Delivery Point:	
	2307 BARADA STREET	
	FALLS CITY, NE 68355	

See next page for additional terms and conditions.

SIGNATURES

CATERPILLAR FINANCIAL SERVICES CORPORATION

NEBRASKA MACHINERY COMPANY

Signature _____

Signature _____

Name (Print) _____

Name (Print) _____

Title _____

Title _____

Date _____

Date _____

1. The lessee named on the front hereof (the "Lessee") has selected the Unit(s), instructed Cat Financial to purchase the Unit(s) from Vendor, and agreed to lease the Unit(s) from Cat Financial.
2. Cat Financial (or its assignee) will have no obligation hereunder (and any sums previously paid by Cat Financial to Vendor with respect to the Unit(s) shall be promptly refunded to Cat Financial) unless (a) all of the conditions set forth in the lease with the Lessee covering the Unit(s) have been timely fulfilled and (b) the Lessee has not communicated to Cat Financial (or its assignee), prior to "Delivery" (as hereinafter defined) of the Unit(s), an intent not to lease the Unit(s) from Cat Financial. All conditions specified in this paragraph shall be deemed timely fulfilled unless prior to Delivery of the Unit(s), Cat Financial (or its assignee) shall notify Vendor to the contrary in writing, which shall include fax or email. "Delivery" shall mean the later of the time (a) Cat Financial executes this Purchase Agreement or (b) the Lessee or its agent takes control and/or physical possession of the Unit(s).
3. Upon timely satisfaction of the conditions specified in Paragraph 2 above, ownership, title and risk of loss to the Unit(s) shall transfer to Cat Financial (or its assignee) upon Delivery of the Unit(s).
4. Vendor warrants that (a) upon Delivery of the Unit(s), Cat Financial (or its assignee) will be the owner of and have absolute title to the Unit(s) free and clear of all claims, liens, security interests and encumbrances and the description of the Unit(s) set forth herein is correct and (b) the Unit Transaction Price set forth on the front hereof for each unit of Unit(s) leased under a lease is equal to such Unit(s)'s fair market value.
5. Vendor shall forever warrant and defend the sale of the Unit(s) to Cat Financial (or its assignee), its successors and assigns, against any person claiming an interest in the Unit(s).
6. Provided that no event of default exists under any agreement between Lessee and Cat Financial and upon timely satisfaction of the conditions specified in Paragraph 2 above, and unless otherwise agreed to in this Purchase Agreement, Cat Financial (or its assignee) shall pay Vendor the total Purchase Price set forth on the front hereof for the Unit(s) within three business days following (a) the receipt and approval by Cat Financial of all documentation deemed necessary by Cat Financial in connection with the lease transaction and (b) all credit conditions have been satisfied.
7. Vendor shall deliver the Unit(s) to the Lessee at the delivery point set forth on the front hereof.
8. This Purchase Agreement may be assigned by Cat Financial to a third party. Vendor hereby consents to any such assignment.
9. This Purchase Agreement shall become effective only upon execution by Cat Financial.

1. PARTIES

LESSOR

CATERPILLAR FINANCIAL SERVICES CORPORATION

LESSEE

CITY OF FALLS CITY

2. PAYMENT SCHEDULE

<u>PAYMENT NUMBER</u>	<u>PAYMENT DATE</u>	<u>PAYMENT AMOUNT</u>
1	_____	\$7,250.00
2	_____	\$62,206.57

SIGNATURES

CATERPILLAR FINANCIAL SERVICES CORPORATION

CITY OF FALLS CITY

Signature _____

Signature _____

Name (Print) _____

Name (Print) Trevor Campbell

Title _____

Title Utility Superintendent

Date _____

Date _____

COVERAGE THAT GETS YOU BACK TO BUSINESS



Your equipment is one of your operation's biggest financial investments. Our Physical Damage Insurance is built to protect it. If your new or used machine experiences a covered loss, we'll get it repaired or replaced—so you can get back to work fast.

WE'VE GOT YOU COVERED

PROTECT YOUR HEAVY EQUIPMENT WITH PHYSICAL DAMAGE INSURANCE

- For covered total losses, we pay up to policy limits the **GREATER** of –
 - > The payoff value of your loan*
 - > Actual cash value
 - > Fair market value
- **FULL REPLACEMENT COST** for Cat® genuine parts, where available, and repairs by an authorized Cat dealer or facility of choice
- Coverage for **RENTAL COSTS** up to \$500 per day, up to \$10,000 per occurrence and \$100,000 coverage for rented replacement equipment
- **PROTECT** any brand of equipment you own – as well as trailers and attachments that are purchased with the equipment and listed on the sales invoice

This is only a brief description of the program. The actual policy will govern.

This marketing tool does not represent a contract or obligation of any kind between Caterpillar Inc., its subsidiaries or affiliates, and the equipment owner. For details on any dealer agreement, including a complete description of the terms, conditions, and/or exclusions, contact your local Cat dealer. All graphics and lists in this marketing tool are provided solely for general information purposes and are not intended to be a solicitation or an offer to sell any product or service.



To learn more about the insurance coverage available for your machines, talk to your Cat dealer or contact us at 1.800.248.4228 or PhysicalDamage@cat.co

100
YEARS
CATERPILLAR®

*Less late payments and fees

© 2025 Caterpillar. All Rights Reserved. CAT, CATERPILLAR, LET'S DO THE WORK, their respective logos, "Caterpillar Corporate Yellow", the "Power Edge" and Cat "Modern Hex" trade dress as well as corporate and product identity used herein, are trademarks of Caterpillar and may not be used without permission.

CAT
Financial

**CATERPILLAR INSURANCE COMPANY (CIC) SELECTION FORM**

Data and Privacy. Caterpillar's Global Data Privacy Statement ("**Privacy Statement**") describes how Caterpillar collects, processes, and shares information that relates to an identified or identifiable individual ("**Personal Information**") and rights that individuals might have under applicable data privacy laws. Caterpillar also publishes its Data Governance Statement covering other matters relating to equipment or data collected by Caterpillar, including geolocation and operational data relating to equipment or owners or operators of the equipment from which telematic data is received. By transmitting, facilitating, or otherwise providing information in connection with any insurance-related inquiry, request, quote, or application, or by acceptance of an insurance policy, you acknowledge and agree: (1) that you have received and reviewed the Privacy Statement online at <https://www.caterpillar.com/dataprivacy> and the Data Governance Statement online at <https://www.caterpillar.com/en/legal-notice/data-governance-statement.html>; (2) to the collection, use, disclosure, and sharing of Personal Information as set forth in the Privacy Statement; and (3) to the extent that you provide any information to Caterpillar Insurance Company or its affiliates that relates to another individual, you will only do so in accordance with all applicable laws and that you will provide such individual access to or provide them with a copy of the Privacy Statement and Data Governance Statement. You may also authorize and/or consent to the collection, use, disclosure and sharing of information and/or Personal Information in other agreements or documents with us, our affiliates or Caterpillar dealers, and nothing contained herein shall interfere with or affect such agreements or documents in any way.



CATERPILLAR INSURANCE COMPANY (CIC) SELECTION FORM

Before financing your equipment, you must arrange physical damage insurance on the equipment identified below. The insurance may be provided through an insurance agent or insurance company of your choice. We recommend the insurance company has a financial strength rating of at least A- from either A.M. Best, Moody's, S&P, Fitch, or Kroll Bond Agency ("KBRA").

As an alternative to obtaining your own insurance, you may elect to have your equipment insured under coverage arranged by Caterpillar Insurance Services Corporation (CISC), that has been designed specifically for those that purchase Cat® equipment.

Please complete this form if you elect to insure your equipment with Caterpillar Insurance Company (CIC).

CIC Physical Damage Insurance Program (the Program) Summary

Please note: This is only a brief description of the CIC Physical Damage Insurance Program. Contractual provisions contained in the policy will govern.

Coverage

The Program protects your equipment against physical damage losses, including collision, fire, theft, vandalism, upset or overturn, flood, sinking, earthquake and other unfortunate acts of nature. The protection has been designed for owners of heavy equipment and provides benefits you most likely would not find in other plans.

The Program does include normal exclusions. Some important exclusions include, but are not limited to, wear and tear, rust, loss of income, acts of war, nuclear damage, mechanical breakdown, automobiles, watercraft, waterborne shipments, tires or tubes or mobile track belts damaged by blow-out, puncture, and road damage.

The Program does not cover losses to your equipment that you loan, lease, or rent to others.

Repairs

When a covered loss occurs, the Program will pay for Cat® replacement parts, where available, on all your new or used Caterpillar equipment. For all other equipment from other manufacturers, the Program will pay for comparable replacement parts.

Rental Reimbursement

The Program allows for rental expenses up to \$10,000 per occurrence but not more than \$500 per day that you incur to rent similar equipment following a covered loss. You are automatically protected with up to \$100,000 of coverage for damage to the similar equipment you rent.

Claims

In the event of a total loss, the Program will pay the greater of, not to exceed policy limits, the following:

- The payoff value of the loan, excluding past due payments and late charges, on the damaged parts or equipment as of the date of loss; or
- The actual cash value of the covered property; or
- The Fair Market Value of replacing that property with property of like kind and quality.

Debris Removal

The Program will pay 25% of the direct physical loss plus the deductible, up to a \$10,000 maximum above the limit of insurance of the covered property.

Fire Department Service Charge

The Program will pay fire department service fees up to \$10,000.

Deductible

Construction and Agricultural Equipment Deductible: \$500

Forestry Equipment Deductible: \$5,000

Customer Service

If you have any questions or need additional details, see your Authorized Cat Dealer or call CISC toll free at **1-800-248-4228 option 2**.

You may also e-mail CISC at physicaldamage@cat.com.

POLICYHOLDER DISCLOSURE

NOTICE OF TERRORISM RISK INSURANCE ACT OF 2002

(as extended by the Terrorism Risk Insurance Extension Act of 2005, as amended in 2007, as extended in 2015, and amended in 2019)

You are hereby notified that under the Terrorism Risk Insurance Act, as amended defines in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury - in concurrence with the Secretary of State, and the Attorney General of the United States - to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended in 2019. However, your policy may contain other exclusions, which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government reimburses 80% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced. The portion of your premium that is attributable to coverage for terrorist acts certified under the Act is: **\$ 0.00.**

APPLICATION FOR CIC PHYSICAL DAMAGE INSURANCE

Item	Year	Model #	Equipment Description	Serial/VIN	State	Policy Limit (Value Including Total Tax)	Pymt Method-3 Total Premium	Pymt Method-1 Finance Pymt
1	2026	303.5-07CR	Caterpillar Hydraulic Excavator	RE907046	NE	\$66,250.00	\$914.00	\$914.00

Arranged by Caterpillar Insurance Services Corporation

I understand that the total insurance premium for 12 months will be \$914.00, which is \$914.00 per year based upon the total equipment value of \$66,250.00.

- Method 1 ☐ I will finance the insurance premium, including finance charges, of \$914.00 per scheduled equipment payment. The finance charge is calculated at 4.990% per annum on the total insurance premium covering the full term of the finance agreement. By choosing Method 1 and signing this document I am agreeing to finance the insurance along with the equipment payments with Caterpillar Financial Services Corporation.
- Method 2 ☐ I desire coverage for an initial 12 month term. I will pay the \$914.00 premium and return the payment with the signed equipment documents.
- Method 3 ☐ I will pay the total premium and return the payment with the signed equipment documents.
- Method 4 ☐ I decline insurance through Caterpillar Insurance Company. I elect to obtain my own commercial insurance on the equipment shown from an agent or insurance company of my choice.

If selecting method 2 or 3 above, you are also eligible to pay with Cat Commercial Account.

- ☐ I will pay by Cat Commercial Account and provide my account information below.
- ☐ I will pay by check Please make check payable to Caterpillar Insurance Services Corp. and include Policy Number CIC - 70233914 on your check.
- ☐ Not applicable—Only Choose this option if Method 4 is selected above.

 Accountholder Name

 Cat Commercial Account Number

 Authorized User Signature

 Print Name

I understand that the quote I receive is not a binder of insurance. If I elect to obtain coverage from CIC, coverage will be effective in accordance with the terms and conditions of the issued Policy and that I may terminate the coverage at any time with advance written notice.

I acknowledge that I have been notified that, under the TERRORISM RISK INSURANCE ACT of 2002 (as extended by the Terrorism Risk Insurance Extension Act of 2019), any losses caused by certified acts of terrorism under my policy will result in coverage under my policy that will be partially reimbursed by the United States as outlined in the attached policyholder disclosure notification.

I also acknowledge I have been advised that, if I accept this insurance, an appointed licensed insurance producer may receive commission compensation.

Dealer Name: NEBRASKA MACHINERY COMPANY
 Customer Name: CITY OF FALLS CITY
 Billing Address: 2307 BARADA STREET
 FALLS CITY, NE 68355

Please note: If you would like a no obligation quote on your additional equipment, call 1-800-248-4228 option 2.

Accepted By: _____ Name (PRINT): Trevor Campbell

Title: Utility Superintendent

Date: _____

Fraud Warning:

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Applicable in AL: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution, fines or confinement in prison, or any combination thereof.

Applicable in MD: Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

Applicable in AK: A person who knowingly and with intent to injure, defraud, or deceive an insurance company files a claim containing false, incomplete, or misleading information may be prosecuted under state law.

Applicable in CA: For your protection, California law requires the following to appear on this form: Any person who knowingly presents false or fraudulent information to obtain or amend insurance coverage or to make a claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

Applicable in CO: It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

Applicable in DC: WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

Applicable in FL: Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

Applicable in HI: Intentionally or knowingly misrepresenting or concealing a material fact, opinion or intention to obtain coverage, benefits, recovery or compensation when presenting an application for the issuance or renewal of an insurance policy or when presenting a claim for the payment of a loss is a criminal offense punishable by fines or imprisonment, or both.

Applicable in ID: Any person who knowingly, and with intent to defraud or deceive any insurance company, files a statement of claim containing any false, incomplete, or misleading information is guilty of a felony.

Applicable in KS: Any person who commits a fraudulent insurance act is guilty of a crime and may be subject to restitution, fines, and confinement in prison. A fraudulent insurance act means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer or insurance agent or broker, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for insurance, or the rating of an insurance policy, or a claim for payment or other benefit under an insurance policy, which such person knows to contain materially false information concerning any material fact thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

Applicable in KY, NY, and PA: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties (not to exceed five thousand dollars and the stated value of the claim for each such violation)*. *Applies in NY Only.

Applicable in ME, TN, VA, and WA: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties (may)* include imprisonment, fines, and denial of insurance benefits. *Applies in ME Only.

Applicable in NJ: Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

Applicable in NM: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

Applicable in OH: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Applicable in OK: WARNING – Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

Applicable in OR: Any person who knowingly and with intent to defraud or solicit another to defraud the insurer by submitting an application containing a false statement as to any material fact may be violating state law.

Applicable in PR: Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation with a penalty of a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances [be] present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.

INSURANCE SELECTION FORM- INSURANCE REQUIREMENTS



Before funding your equipment, you must arrange physical damage insurance on the equipment identified below. The insurance may be provided through an insurance agent or insurance company of your choice, provided the insurance company has a financial strength rating of at least A- from either A.M. Best, Moody's, S&P, Fitch or Kroll Bond Rating Agency ("KBRA").

Physical Damage coverage must show that Caterpillar Financial Services Corporation has been named as loss payee for the equipment's replacement value. The deductible must be shown. Liability Coverage must be a minimum of \$1,000,000 or combined coverage for bodily injury and property damage per occurrence. Caterpillar Financial Services Corporation must be named as additional insured.

As an alternative to obtaining your own Physical Damage coverage, you may elect to have your equipment insured under coverage arranged by Caterpillar Insurance Services Corporation designed specifically for those that purchase Cat® equipment. If a quote is not included in your document package, please contact your Cat dealer, call **1-800-248-4228**, or e-mail PhysicalDamage@cat.com.

Please complete this form to provide contact information for your liability coverage, as well as your physical damage coverage if you did not elect to arrange your physical damage coverage through Caterpillar Insurance Services Corporation.

Transaction Number: 001-70233914
Dealer Name: NEBRASKA MACHINERY COMPANY
Customer's Name: CITY OF FALLS CITY
Address: 2307 BARADA STREET
FALLS CITY, NE 68355

I have entered into the above agreement under which I am responsible for providing insurance against **ALL RISKS** of direct physical loss or damage for the replacement value of the following equipment, subject to common exclusions such as damage caused by corrosion, rust, mechanical or electrical breakdown, etc.

Model #	Equipment Description	Serial #	VIN#	Policy Limit (Value Including Tax)
1. 303.5-07CR	2026 Caterpillar Hydraulic Excavator	RE907046		\$66,250.00

Insurance Agency Insurance Agent's Name
Street Address
City State Zip
Agent's Phone Number Fax Number E-mail Address

TO CUSTOMER'S INSURANCE AGENT

Caterpillar Financial Services Corporation must be added as a Loss Payee for physical damage and as an Additional Insured for general liability for the equipment listed above:

- ☐ To my existing policy number(s) _____, which now provide the coverage required, or
☐ To a policy or policies which you are authorized to issue in the name listed above which will provide the coverage required.

Signature _____
Name(Print) Trevor Campbell
Title Utility Superintendent
Date _____

PROCESSING OF THIS TRANSACTION MAY BE HELD PENDING RECEIPT OF THIS INFORMATION

PLEASE FORWARD A COPY OF THE CERTIFICATE OR BINDER EVIDENCING COVERAGE TO:

CATERPILLAR FINANCIAL SERVICES CORPORATION Attn: Document Services
2120 West End Avenue Nashville, TN 37203

PLEASE ATTACH A COPY OF THIS NOTICE TO PROOF OF INSURANCE

CUSTOMER INFORMATION VERIFICATION
Contract Number 001-70233914



CUSTOMER INFORMATION

CHANGES TO CUSTOMER INFORMATION

Customer Name: CITY OF FALLS CITY

Physical Address: 2307 BARADA STREET
FALLS CITY, NE, 68355

Mailing Address: 2307 BARADA STREET
FALLS CITY, NE, 68355

Equipment Location: 2307 BARADA STREET
FALLS CITY, NE, 68355

Business Phone: 4022452851

Mobile Phone: _____

E-mail Address: _____

The changes above apply to: ☐ Current Request for financing ☐ All active contracts

TAX INFORMATION

Tax Exempt** ☒ Non-Exempt

Asset outside the City limits Yes _____ No _____

****A Tax Exemption Certificate is required for all tax exempt customer. If you are tax exempt – please enclose a current tax exemption certificate to be returned with your documents.**

AUTO PAY INFORMATION (Checking Account Information)

☐ I decline Auto Pay authorization at this time

☐ I request and authorize Caterpillar Financial Services Corporation ("Cat Financial") to begin debiting my account for the amounts due under the contract(s) indicated below, with debits made to my account and withdrawn by Cat Financial, provided my account has sufficient collected funds to pay the debit when presented. If my financial institution dishonors any debit for any reason, Cat Financial may issue another debit in substitution for the dishonored debit and will have no liability on account of a dishonored debit. I agree that Cat Financial's rights relating to each debit will be the same as if I had personally signed a check. I agree that I will be liable to make payment promptly, including any applicable late fees, if any debit is not paid, unless Cat Financial or its agents or affiliates are directly responsible for the nonpayment. I acknowledge that I may cancel this authorization at any time by written notice to Cat Financial, which notice will be effective 10 days after receipt; however, my cancellation of this authorization does not terminate, cancel or reduce my obligations under the contract(s). I understand that Cat Financial will not notify me in advance of any withdrawal and I agree to waive all pre-notification requirements in respect of all debits drawn under this authorization. Please use the information below to set up Auto Pay on:

Bank Name

Routing Number

9 digits

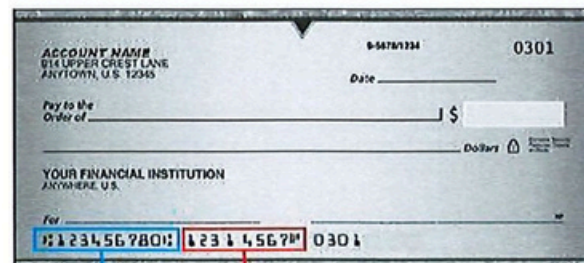
Account Number

3-17 digits

Re-Enter Account Number

3-17 digits

Account Name (exactly as it appears on Check)



Routing Number Account Number

CUSTOMER SIGNATURE

The information above has been reviewed and is accurate to the best of my knowledge. For a joint account, all account holders must sign if more than one signature is required on checks issued against the account.

Signature _____

Name Trevor Campbell

Title Utility Superintendent

For questions or assistance with Auto Pay, or for information about your account, please contact Customer Service, 1-800-651-0567.

Thank you for selecting Caterpillar products and for allowing Caterpillar Financial Services Corporation to serve your financing needs. Included in this document package are all of the forms that will be needed for standard tax exempt lease purchase transactions. The forms have been designed to be clear, concise and user friendly. We have also provided a brief explanation of the purpose of each form. If you wish to discuss any of the forms or have any questions about any aspect of this transaction, we encourage you to contact your Caterpillar Dealer or Caterpillar Financial Services Corporation at 1-866-263-3791 Option # 5.

A. Governmental Equipment Lease-Purchase Agreement. The Governmental Lease-Purchase Agreement contains the terms that govern each transaction between us. It is the standard Caterpillar Financial Services Corporation tax exempt lease-purchase agreement, and provides that we will lease to you the equipment described therein pursuant to a full payout amortization schedule. A new Governmental Equipment Lease-Purchase Agreement will have to be signed in connection with each transaction.

B. Lessee's Authorizing Resolution. The Authorizing Resolution is evidence you have taken the necessary governing body actions to approve the Governmental Equipment Lease-Purchase Agreement. Although the authorizing instrument is often a resolution, it may also take other forms such as an ordinance. We are agreeable to using your customary or standard form provided it contains specific approval for the lease-purchase agreement, designates persons who are authorized to sign on your behalf and either approves the document forms or delegates this authority to a named official **C.**

Verification of Insurance. The Certificate of Insurance is intended to supply information regarding the insurance coverage for the equipment being lease-purchased. You will need to supply the requested information to us so we can verify coverage.

D. Opinion of Counsel. An opinion of counsel is required in connection with each Governmental Equipment Lease-Purchase Agreement. The opinion is intended to confirm that you have complied with all open meeting laws, publication and notice requirements, procedural rules for governing body meetings, and any other relevant state or local government statutes, ordinances, rules or regulations. We would be unable to confirm compliance with these laws and regulations ourselves absent long delays and higher costs so we rely upon the opinion of your attorney since he/she may have been involved in the process to approve our transaction and is an expert in the laws and regulations to which you are subject. The opinion also confirms that you are an entity eligible to issue tax-exempt obligations and that the Governmental Equipment Lease-Purchase Agreement will be treated as tax-exempt as it is your obligation to ensure that you have complied with relevant tax law.

E. Form of 8038G or GC. Form 8038 is required by the Internal Revenue Service in order to monitor the amount of tax-exempt obligations issued. You have to execute a Form 8038 for each Governmental Equipment Lease-Purchase Agreement. Whether a Form 8038 G or GC is required depends on the original principal amount of the Governmental Equipment Lease-Purchase Agreement. If the original principal amount is less than \$100,000 Form 8038GC is filed with the IRS. If the original principal amount is \$100,000 or more Form 8038G is filed with the IRS. Choose the appropriate 8038 form and complete according to IRS guidelines. Contact your TM or Sales Support Representative for assistance. IRS Form 8038G

<http://www.irs.gov/pub/irs-pdf/f8038g.pdf>

IRS Form 8038GC <http://www.irs.gov/pub/irs-pdf/f8038gc.pdf>

This Explanation of Contents is prepared as an accommodation to the parties named herein. It is intended as an example of some of the documents that Caterpillar Financial Services Corporation, in its reasonable judgment, may require and is not intended to constitute legal advice. Please engage and use your own legal counsel. We understand that the laws of the various states are different so nothing herein shall be construed as a warranty or representation that the documents listed herein are the only documents that may be required in any particular transaction or that any particular transaction, if documented in accordance with this Explanation of Contents, will be a valid, binding and enforceable obligation enforceable against the parties named herein in accordance with the terms of the documents named herein.

Meeting Minutes

NEBRASKA MACHINERY COMPANY
11002 SAPP BROTHERS DR
OMAHA, NE 68138-4812

Reference:

CITY OF FALLS CITY

We are requesting a copy of the minutes of the appropriation meeting during which the funds for this deal were allocated.

A copy of this information is necessary to complete the documentation package and to fund the deal. Your ability to return a complete package will ensure timely payment to you.

Thank you for your assistance.

CATERPILLAR FINANCIAL SERVICES CORPORATION
DOCUMENTATION DEPARTMENT

Caterpillar Financial Services Corporation

INVOICE

Page	Date	Invoice No.
I	08/13/2026	001-70233914

CITY OF FALLS CITY
2307 BARADA STREET
FALLS CITY, NE 68355

Description	Serial	VIN	Due Date	Pmt. No.	Amount
(1) 2026 CATERPILLAR 303.5-07CR HYDRAULIC EXCAVATOR	RE907046		Upon Receipt.	1	\$7,250.00
WITHOUT THE APPROPRIATE TAX EXEMPTION CERTIFICATE, APPLICABLE SALES AND/OR USE TAX WILL BE CHARGED.					

PLEASE PAY THIS AMOUNT \$ **\$7,250.00**

Invoice No.	Total Enclosed
001-70233914 - 1	\$

CITY OF FALLS CITY
2307 BARADA STREET
FALLS CITY, NE 68355

Remit To: Caterpillar Financial Services Corporation
5th Floor Document Services
Doc Specialist: NEBRASKA MACHINERY COMPANY
2120 West End Ave.
Nashville, TN 37203

RETURN INVOICE AND CHECK FOR SPECIFIED PAYMENT(S) WITH SIGNED DOCUMENTS.

Your check will be cashed by Caterpillar Financial Services Corporation (CFSC) upon receipt, but that act will not constitute acceptance by CFSC of the Loan, Lease or Schedule. If CFSC accepts and executes the Loan, Lease or Schedule, the proceeds of this check will be applied to the specified payments. If CFSC does not accept the Loan, Lease or Schedule, CFSC will return an amount equal to this check.

Information Return for Small Tax-Exempt
Governmental Bond Issues, Leases, and Installment Sales
Under Internal Revenue Code section 149(e)
Caution: If the issue price of the issue is \$100,000 or more, use Form 8038-G.
Go to www.irs.gov/Form8038GC for instructions and the latest information.

OMB No. 1545-0047

Part I Reporting Authority		Check box if Amended Return ☐	
1 Issuer's name CITY OF FALLS CITY		2 Issuer's employer identification number (EIN)	
3 Number and street (or P.O. box if mail isn't delivered to street address)		Room/suite	
4 City, town, or post office, state, and ZIP code		5 Report number (For IRS Use Only)	
6 Name and title of officer or other employee of issuer or designated contact person whom the IRS may call for more information Courtney Bybee - Utility Account Clerk		7 Telephone number of officer or legal representative	

Part II Description of Obligations		Check one box: ☒ Single issue ☐ Consolidated return	
8a Issue price of obligation(s) (see instructions)	8a	66,250.00	
b Issue date (single issue) or calendar date (consolidated). Enter date in MM/DD/YYYY format (for example, 01/01/2009) (see instructions)			
9 Amount of the reported obligation(s) on line 8a that is:			
a For leases for vehicles	9a		
b For leases for office equipment	9b		
c For leases for real property	9c		
d For leases for other (see instructions)	9d		
e For bank loans for vehicles	9e		
f For bank loans for office equipment	9f		
g For bank loans for real property	9g		
h For bank loans for other (see instructions)	9h		
i Used to refund prior issue(s)	9i		
j Representing a loan from the proceeds of another tax-exempt obligation (for example, bond bank)	9j		
k Other	9k		
10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box ☐			
11 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box (see instructions) ☐			
12 Vendor's or bank's name:			
13 Vendor's or bank's employer identification number:			

Signature and Consent	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.			
	Signature of issuer's authorized representative		Date	
Paid Preparer Use Only	Print/Type preparer's name		Preparer's signature	Date
	Firm's name		Check ☐ if self-employed	
	Firm's address		Firm's EIN	
			Phone no.	
		Type or print name and title Courtney Bybee - Utility Account Clerk		

Future Developments

For the latest information about developments related to Form 8038-GC and its instructions, such as legislation enacted after they were published, go to www.irs.gov/Form8038GC.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

Who Must File

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Bonds.

Filing a separate return for a single issue.

Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to

pay a penalty in lieu of arbitrage rebate. See the instructions for line 11, later.

Filing a consolidated return for multiple issues. For all tax-exempt governmental obligations with issue prices of less than \$100,000 that aren't reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, if the issue is a construction issue, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.

When To File

To file a separate return for a single issue, file Form 8038-GC on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the issue is issued.

To file a consolidated return for multiple issues, file Form 8038-GC on or before February 15 of the calendar year following the year in which the issue is issued.

Late filing. An issuer may be granted an extension of time to file Form 8038-GC under section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file on time isn't due to willful neglect. Write at the top of the form, "Request for Relief under section 3 of Rev. Proc. 2002-48." Attach to the Form 8038-GC a letter briefly stating why the form wasn't submitted to the IRS on time. Also, indicate whether the obligation in question is under examination by the IRS. Don't submit copies of any bond documents, leases, or installment sale documents. See *Where To File* next.

Where To File

File Form 8038-GC and any attachments at the following address.

Department of the Treasury
Internal Revenue Service Center
Ogden, UT 84201

Private delivery services (PDS). You can use certain PDS designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These PDS include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The PDS can tell you how to get written proof of the mailing date.

Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the federal government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate. For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For a tax-exempt governmental obligation with an issue price of \$100,000 or more, use Form 8038-G.

Rounding to Whole Dollars

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher dollar. For example, \$1.49 becomes \$1 and \$2.50 becomes \$3. If two or more amounts must be added to figure the amount to enter on a line, include cents when adding the amounts and round off only the total.

Definitions

Obligations. This refers to a single tax-exempt governmental obligation if Form 8038-GC is used for separate reporting or to multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

Tax-exempt obligation. This is any obligation including a bond, installment purchase agreement, or financial lease on which the interest is excluded from income under section 103.

Tax-exempt governmental obligation. A tax-exempt obligation that isn't a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

Private activity bond. This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, and
- More than 10% of the payment of principal or interest of the issue is either (a) secured by an interest in property to be used for a private business use (or payments for such property) or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

Issue. Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

Arbitrage rebate. Generally, interest on a state or local bond isn't tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

Construction issue. This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds of the issue are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and
2. All of the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that aren't private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1-1/2% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

Specific Instructions

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date of issue. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

Part I-Reporting Authority

Amended return. An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the *Amended Return* box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new corrected information. Attach an explanation of the reason for the amended return and write across the top "Amended Return Explanation."

Line 1. The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

Line 2. An issuer that doesn't have an employer identification number (EIN) should apply for one online by visiting the IRS website at www.irs.gov/EIN. The organization may also apply for an EIN by faxing or mailing Form SS-4 to the IRS.

Lines 3 and 4. Enter the issuer's address or the address of the designated contact person listed on line 6. If the issuer wishes to use its own address and the issuer receives its mail in care of a third party authorized representative (such as an accountant or attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box. Include the suite, room, or other unit number after the street address. If the post office doesn't deliver

mail to the street address and the issuer has a P.O. box, show the box number instead of the street address. If a change in address occurs after the return is filed, use Form 8822, Change of Address, to notify the IRS of the new address.

Note: The address entered on lines 3 and 4 is the address the IRS will use for all written communications regarding the processing of this return, including any notices. By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to communicate directly with the individual listed on line 6, whose address is entered on lines 3 and 4 and consents to disclose the issuer's return information to that individual, as necessary, to process this return.

Line 5. This line is for IRS use only. Don't make any entries in this box.

Part II-Description of Obligations

Check the appropriate box designating this as a return on a single issue basis or a consolidated return basis.

Line Sa. The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

Line Sb. For a single issue, enter the date of issue (for example, 03/15/2020 for a single issue issued on March 15, 2020), generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds; for a lease or installment sale, enter the date interest starts to accrue. For issues reported on a consolidated basis, enter the first day of the calendar year during which the obligations were issued (for example, for calendar year 2020, enter 01/01/2020).

Lines 9a through 9h. Complete this section if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also, complete this section if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal.

Don't complete lines 9a through 9d if the proceeds of an obligation are received in the form of cash even if the term "lease" is used in the title of the issue. For lines 9a through 9d, enter the amount on the appropriate line that represents a lease or installment

purchase. For line 9d, enter the type of item that is leased. For lines 9e through 9h, enter the amount on the appropriate line that represents a bank loan. For line 9h, enter the type of bank loan.

Lines 9i and 9j. For line 9i, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Several lines may apply to a particular obligation. For example, report on lines 9i and 9j obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

Line 9k. Enter on line 9k the amount on line 8a that doesn't represent an obligation described on lines 9a through 9j.

Line 10. Check this box if the issuer has designated any issue as a "small issuer exception" under section 265(b)(3)(B)(i)(III).

Line 11. Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Don't make any payment of penalty in lieu of rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

Line 12. Enter the name of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

Line 13. Enter the employer identification number of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

Signature and Consent

An authorized representative of the issuer must sign Form 8038-GC and any applicable certification. Also, write the name and title of the person signing Form 8038-GC. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that has been designated in this form.

Note: If the issuer authorizes on line 6 the IRS to communicate with a person other than an officer or other employee of the issuer (such authorization shall include contact both in writing regardless of the address entered on lines 3 and 4, and by telephone), by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

Paid Preparer

If an authorized representative of the issuer filled in its return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization shouldn't sign the return. Certain others who prepare the return shouldn't sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., shouldn't sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return. A paid preparer cannot use a social security number in the *Paid Preparer Use Only* box. The paid preparer must use a preparer tax identification number (PTIN). If the paid preparer is self-employed, the preparer should enter his or her address in the box.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature, and
- Give a copy of the return to the issuer.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for tax exempt organizations filing this form is approved under OMB control number 1545-0047 and is included in the estimates shown in the instructions for their information return.

If you have suggestions for making this form simpler, we would be happy to hear from you. You can send us comments through www.irs.gov/FormComments. Or you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Do not send Form 8038-GC to this address. Instead, see *Where To File*, earlier.

Month / Year	kWh	mWh	x \$1.50	Tenaska	MEAN	NextEra	Evergy
'26 June	4,711,877	4,712	\$7,067.82	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'26 May	3,862,000	3,862	\$5,793.00	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'26 April	3,537,900	3,538	\$5,306.85	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'26 March	3,912,100	3,912	\$5,868.15	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'26 February	3,955,600	3,956	\$5,933.40	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'25 January	5,088,400	5,088	\$7,632.60	\$7,632.60	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'25 December	4,802,900	4,803	\$7,204.35	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'25 November	3,982,900	3,983	\$5,974.35	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'25 October	4,048,630	4,049	\$6,072.95	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'25 September	4,384,200	4,384	\$6,576.30	\$7,500.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'25 August	5,170,500	5,171	\$7,755.75	\$7,755.75	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
'25 July	5,884,000	5,884	\$8,826.00	\$8,826.00	\$ 6,465.72	\$ 20,000.00	\$ 9,000.00
Total	53,341,007	53,341	-	\$91,714.35	\$ 77,588.64	\$ 240,000.00	\$ 108,000.00
Set Up				\$15,000.00	-	\$50,000	\$ 15,000.00
First Year Total				\$106,714.35	-	\$ 290,000.00	\$ 123,000.00

ENERGY MANAGEMENT AND MARKET PARTICIPATION SUPPORT AGREEMENT

This Energy Management Agreement ("Agreement") is executed on **DATE** ("Effective Date") between **City of Falls City, Nebraska**, a public corporation and political subdivision of the State of Nebraska ("Customer"), and Tenaska Power Services Co. ("Energy Manager"), a Nebraska corporation. Customer and Energy Manager are also referred to in this Agreement individually as "Party" and collectively as the "Parties".

This Agreement consists of and is governed by the Base Agreement and the General Terms and Conditions attached hereto, together with attached exhibits incorporated by reference in this Agreement.

RECITALS

WHEREAS, Customer owns and controls various generating facility(ies) located within the SPP market as described further in Exhibit A hereto and including, but not limited to, Customer Generation (as defined below) (collectively, the "Resource(s)");

WHEREAS, Customer represents that Nebraska law requires Customer to serve electric load for the service territory identified on Exhibit A ("Load");

WHEREAS, Customer has existing generation, and capacity resulting from that generation (collectively, "Customer Generation"), and Customer anticipates that Energy Manager will register the Customer Generation with SPP and sell Customer Generation into the market to benefit Customer in accordance with and expressly subject to this Agreement;

WHEREAS, Customer desires Energy Manager to provide the Services described herein, and Energy Manager desires to provide Customer with such Services, in each case, in accordance with the terms of this Agreement.

NOW, THEREFORE, Customer and Energy Manager enter into this Agreement under which Energy Manager will provide Customer with the Services as described herein. Accordingly, for and in consideration of the premises, together with other good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges and accepts, Customer and Energy Manager agree as follows:

BASE AGREEMENT

1. DESIGNATION

Except as provided in this Section 1 of the Base Agreement, no Party shall be an agent, partner, joint venturer, or legal representative of any other Party for any purpose whatsoever, and no Party is authorized to assume or create any obligation, liability, or responsibility, expressed or implied, on behalf of or in the name of any other Party or to bind any other Party to any Third Party in any manner whatsoever; *provided, however*, that Customer authorizes Energy Manager to

act, and Energy Manager agrees to act, subject to the terms of this Agreement, as Customer's exclusive provider of the Services for the Resource(s), Load, and Transactions. The Parties shall conduct their respective duties, obligations, and operations related to this Agreement in accordance with the terms of this Agreement, the Governing Rules, and Prudent Industry Practice.

The relationship of Customer, on the one hand, with Energy Manager, on the other hand, as set forth in this Agreement is one of an independent contractor with Energy Manager serving as an independent contractor serving Customer.

2. SERVICES

- (a) Optimization Services. Energy Manager shall, in coordination with Customer and subject to Customer's approval, develop a daily plan optimizing the marketing and sale of Capacity, Energy, and Ancillary Services from the Resources, and the procurement of Products for the Load. Energy Manager shall participate in the Day-Ahead and Real-Time markets by offering the Resources and bidding the Load into these SPP markets consistent with the daily plan and Customer's daily instructions. Energy Manager shall report daily to Customer on the progress and performance of Optimization Services by Energy Manager in the Day-Ahead and the Real-Time markets.
- (b) Bilateral Transaction/Hedging Services. Energy Manager shall seek opportunities to optimize the Resources and may present Customer with appropriate potential Transactions to sell or buy Products. Energy Manager will present to Customer for its review relevant hedging opportunities which Energy Manager is able to identify. For any such Transaction opportunities identified by Energy Manager and approved by Customer, the Parties may mutually agree to enter into a Bilateral Transaction to purchase and/or sell Products at a price and other terms mutually agreed by the Parties.
- (c) Market Participant Services. Customer will be the Market Participant for the Resources and Load. Energy Manager will provide Customer with a Load Forecast (as provided by Section 2(j) of the Base Agreement) and will submit such data in the Load Forecast approved by Customer (including any adjustment(s) to such Load Forecast timely provided by Customer to Energy Manager from time to time) to SPP pursuant to the SPP Rules. Unless otherwise specified, all Services under this Agreement will utilize the Customer's Market Participant account. With respect to communications and Transactions, the following applies:
 - (i) Energy Manager will communicate and transact with SPP as Customer's representative and in accordance with all Governing Rules for the Resources and Load.
 - (ii) Energy Manager will timely relay SPP's instructions to the Resources in all events, including, but not limited to, in the event of emergencies, in a manner that is consistent with the standards, requirements or directions of SPP and that will permit Customer to perform its obligations under the SPP Rules.

- (iii) Energy Manager will communicate with SPP in matters concerning the provision of Products from the Resources, including, without limitation, information required in connection with dispatch of the Resources.
- (iv) Energy Manager will, in accordance with SPP Rules and subject to the other terms and conditions of this Agreement:
 - (A) report to SPP sources of Products available for operation; and
 - (B) provide to SPP scheduling and other information, including, but not limited to, scheduling and related information on Transactions for each Resource and Load, and submitting to SPP binding offers to sell Products with all applicable SPP designated specifications;

Energy Manager's role as representative of the Resources and Load for SPP activities is limited to administrative duties as authorized under this Agreement. Customer will provide Energy Manager with appropriate digital certificates and other authorizations to enable Energy Manager to have access to Customer's Market Participant account and enable Energy Manager to communicate and transact with SPP related to Customer's Market Participant account.

- (d) Scheduling Services. Energy Manager will submit all Energy and Ancillary Services bids and offers for the Resources and Load as furnished to Energy Manager by Customer consistent with the SPP Rules. Energy Manager will schedule all Transactions within SPP with the appropriate Third Parties, Transmission Providers, and balancing authorities.
- (e) Meter Agent Services. Energy Manager shall perform Meter Agent Services for Customer, *provided, however*, if Energy Manager is unable to serve as the Meter Agent for any reason, Energy Manager will enter into a Meter Agent Agreement with the Interconnection Utility whereby the Interconnection Utility will perform Meter Agent Services (as described in the Meter Agent Agreement) for the Resources and Load. Customer shall reimburse Energy Manager for all costs and charges associated with the Meter Agent Agreement. Customer shall provide revenue quality meter data in a format agreeable to Energy Manager or grant Energy Manager access to Customer's revenue quality meter and revenue quality meter data as may be required under the Meter Agent Agreement to enable performance of the Meter Agent Services. Customer shall assume the obligations of the Market Participant with respect to the Meter Agent Agreement. If Customer does not provide revenue quality meter data to Energy Manager in time for submissions, Energy Manager may, but shall not be obligated to, use an alternate source of meter data, such as telemetered generation from the Resources and/or Load, for submission to SPP, provided, however, Customer will be solely responsible for verifying the accuracy of meter data that is submitted by Energy Manager and used by SPP to settle the Resources and Load.
- (f) 24-Hour Monitoring. Energy Manager shall monitor the Resources and Load on a twenty-four (24) hour basis using available data connections or other means of communication as determined and mutually agreed upon by the Parties.

(g) Transition Services. The Parties acknowledge and agree that the Services contemplated by this Agreement cannot be provided until all necessary registrations, acknowledgements, agreements and other documentation ("Documentation") have been provided to and approved by SPP to enable Energy Manager to commence providing the Services. The period of time from the Effective Date of this Agreement until the Commencement Date shall be defined hereunder as the "Transition Period." Subject to the terms of this Agreement and starting on the Effective Date throughout the Transition Period, Energy Manager will provide to Customer the services necessary to ensure the commencement of the Services, described as follows (the "Transition Services"):

- (i) Establish and implement operational information technology and SPP interfaces;
- (ii) Establish itself as the representative for the Resources and Load;
- (iii) As mutually agreed by the Parties, assist Customer in registering to participate in SPP programs under the Governing Rules (e.g. Demand Response Load and Resource Adequacy);
- (iv) As mutually agreed by the Parties, assist Customer with applicable registrations for Customer and its Resources to comply with SPP Rules;
- (v) One (1) Business Day prior to the Commencement Date, submit the schedules applicable to the Resources and Load for the Commencement Date; and
- (vi) At Customer's election, Energy Manager shall provide the following Resource Adequacy support for Customer: coordination regarding, preparation and review of, and submission, subject to Customer's approval, of required SPP Resource Adequacy Workbook(s), updates, supporting documentation, and related data (to the extent such is timely provided to Energy Manager by Customer) necessary to satisfy the applicable SPP Resource Adequacy requirements.

During the Transition Period Customer shall register the Resources and Load in Customer's Market Participant account and will grant Energy Manager access to data at SPP concerning the Resources and Load. Customer shall also work diligently with Energy Manager to ensure that all necessary Documentation is completed, necessary SPP approvals authorizing Energy Manager to register as the representative of the Resources and Load are obtained expeditiously, and required SPP system changes are completed to reflect Energy Manager as the representative for the Resources and Load. Customer shall notify Energy Manager of the completion of all necessary approvals so that all other Services can commence. Energy Manager shall commence providing all Services other than Transition Services on the Commencement Date.

(h) Testing Services. Energy Manager will coordinate with SPP regarding the testing and other performance-related requirements for the Resources, such as ratings and emissions.

- (i) REC Marketing Services. During the Term and upon Customer's request, Energy Manager will market RECs generated by the Resources that have not otherwise been sold or committed. Customer shall specifically inform Energy Manager of, and make available to Energy Manager, those RECs which Customer has designated for sale by Energy Manager within the SPP region as determined by Customer in its sole discretion. Energy Manager may market RECs separately to Third Parties in conjunction with its marketing of Products to Third Parties (each such Transaction, a "REC Transaction"). The activities described in this Section 2(i) of the Base Agreement shall be referred to as "REC Marketing Services" under this Agreement. Energy Manager shall propose any potential REC Transaction and related REC Marketing Services to Customer for consideration and both Parties will discuss and, upon mutual agreement, enter into a Bilateral Transaction under the Implementation Agreement in order to implement any such REC Transaction and related REC Marketing Services.
- (j) Load Forecasting Services. Energy Manager will develop or cause to be developed an hourly weather-adjusted written load forecast of Energy requirements (the "Load Forecast") setting forth Customer's projected hourly Load Forecast for the following seven (7) Days; provided that Customer supplies Energy Manager with at least three years, and preferably up to five years of historic hourly consumption information. Energy Manager will present the Load Forecast to Customer for approval and, once approved, the Load Forecast will be used by Energy Manager in performing Services as described in Section 2(c) of the Base Agreement.
- (k) Demand Response Resource Dispatch Services. Energy Manager will assist Customer with Customer's participation in the SPP Demand Response program(s) to the extent these programs are advantageous to Customer, and/or Energy Manager will identify opportunities for the Resources to generate in order to reduce the forecasted demand for the Load. This shall include evaluation with Customer of the applicable program rules, the development of demand response strategies, and registration of Demand Response Resource(s). Once finalized by Customer, Energy Manager will assist Customer with Customer's implementation of Customer's demand resource program(s), if applicable. In accordance with Article VI of the General Terms and Conditions of this Agreement, Energy Manager will provide notification to the Resources of dispatch requirements as determined by Energy Manager or as requested or directed by SPP, the applicable Transmission Operator ("TO"), or the applicable Reliability Coordinator ("RC"). Customer will follow such dispatch instructions or will notify Energy Manager of Customer's reasons for non-compliance. For the avoidance of doubt, Customer will be responsible for any equipment cost and equipment installation necessary to participate in SPP's Demand Response program(s).

For the avoidance of doubt, Energy Manager shall have the exclusive right to sell eligible Products from Customer's Resources into the Energy Reserve Market and/or Operating Reserve Market operated by SPP during the Term of this Agreement. Energy Manager will (i) work with Customer to develop a curtailment plan for each of Customer's Resources consistent with the requirements applicable to Resources under the Governing Rules; (ii) offer each Resource each Day into the Operating Reserve market for the

following Day in accordance with Customer's instructions and the Governing Rules; (iii) if any Resource is dispatched as a Demand Response Resource by SPP, promptly communicate such dispatch and curtailment instructions to Customer; and (iv) process all payments in accordance herewith and the Governing Rules. For avoidance of doubt, during the Term: (i) only Customer's Resources designated on Exhibit A shall be represented by Energy Manager in providing Services under this Agreement; and (ii) Customer shall not schedule its Resources into the Operating Reserve Market directly with SPP or through any Person except Energy Manager.

- (l) Auction Revenue Rights and Transmission Congestion Rights Services. Upon transition of the Customer's Transmission Customer account to the Customer's Market Participant account, which is anticipated to be effective for the planning year beginning June 1, 2027, Energy Manager will assist Customer with the SPP ARR/TCR process by providing recommendations and submitting nominations consistent with Customer's strategy goals (i.e. risk mitigation) at Customer's direction for paths from Customer's Resource(s) to Customer's Load. In round three of the SPP Annual ARR Allocation Process, Energy Manager will provide Customer with a nomination strategy, including eligible ARR paths and volumes, for any remaining volumes up to Customer's round three nomination cap for each time of use.

Any transmission or ARR paths identified by Energy Manager and communicated to Customer shall remain confidential. Customer shall choose to either nominate all of the paths identified by Energy Manager or no paths in round three of the Annual ARR Allocation Process. If Customer agrees to nominate all paths and volumes identified by Energy Manager, all awarded volumes on these paths will be included in the Annual ARR Rd 3 NEB. On a Monthly basis, Energy Manager shall further assist Customer with nomination strategies for any ARRs not awarded in the Annual ARR allocation Process that are still available. Energy Manager and Customer agree to collect the Annual Auction Revenue and, if applicable, the Monthly Auction Revenue for all awarded volumes and not self-convert to TCR's unless mutually agreed.

- (m) Resource Adequacy Support. At Customer's election, Energy Manager shall provide the following Resource Adequacy support for Customer: coordination regarding, preparation and review of, and submission, subject to Customer's approval, of required SPP Resource Adequacy Workbook(s), updates, supporting documentation, and related data (to the extent such is timely provided to Energy Manager by Customer) necessary to satisfy the applicable SPP Resource Adequacy requirements. Energy Manager shall, at Customer's election, assist with the procurement and or sale of SPP Capacity, both Firm Capacity and Deliverable Capacity, to meet Customer's SPP Resource Adequacy obligation and/or market excess Capacity, if available, through Bilateral Transactions as mutually agreed by the Parties.
- (n) Implementation Agreement. The Parties agree that when Customer consents to its first Bilateral Transaction with Energy Manager related to this Agreement, the Parties will execute the Implementation Agreement if they have not done so already. All Bilateral Transactions between the Parties related to this Agreement shall be entered under and

governed by the Implementation Agreement. The Parties acknowledge that unless and until an Implementation Agreement is executed, the Parties will be unable to enter into Bilateral Transactions related to this Agreement.

- (o) Customer Generation. Notwithstanding anything in this Agreement, Customer may construct, acquire or procure additional generation of any type in its sole discretion and any such additional generation shall be deemed and treated hereunder as Customer Generation. If this occurs, Energy Manager shall conduct all of the activities under this Agreement in a manner that incorporates and includes any generation Customer may construct, acquire or procure, and all rights and attributes thereof. This additional service may require additional fees to Energy Manager, which Energy Manager and Customer will negotiate and agree to via an amendment to this Agreement in good faith and in a manner consistent with this Agreement.

3. SETTLEMENTS AND REPORTING

- (a) Shadow Settlement. Energy Manager shall use its proprietary data management and calculation engine, PowerTools Platform® (“PTP”®) to shadow settle all SPP settlement statement versions regarding the Resources and Load. Energy Manager will reconcile all SPP statements and Pass Through Amounts related to the Resources, Load, and Transactions, will alert Customer to any amounts which Energy Manager determines are erroneous or extraneous, and, if Customer requests, will provide Customer with SPP settlement data in the format provided by SPP to Energy Manager. If Customer wishes to pursue a dispute regarding the accuracy of any SPP statement or Pass Through Amount related to the Resources, Load, and Transactions, Customer, at its election, may request that Energy Manager provide Customer with assistance and/or support in respect of such dispute and, if Energy Manager agrees, Energy Manager shall provide such assistance and/or support to Customer (collectively, “Dispute Resolution Services”). Dispute Resolution Services may include, but are not limited to, any one or more of the following activities: (i) Energy Manager providing Customer with shadow settlement data in Energy Manager’s possession relating to a dispute, (ii) Energy Manager assisting Customer in formulating a dispute, (iii) Energy Manager filing a dispute with SPP prior to any deadline for contesting such statement(s) established in the Governing Rules, (iv) Energy Manager resolving a dispute with SPP for Customer, (v) Energy Manager contacting the applicable meter data agent to correct meter data submissions to match actual generation of the Resources (as determined by Energy Manager’s access to telemetry via the Telecommunications Package), or (vi) any other assistance and/or services provided by Energy Manager as mutually agreed by the Parties.
- (b) Regulatory Reporting. Energy Manager will assist in data collection for Customer’s regulatory reporting. Customer will be responsible for required state, federal or regional reports applicable to its licenses and business interests. For clarification, nothing herein shall obligate Energy Manager to prepare or submit any regulatory or governmental reports for Customer; *provided, however*, that Energy Manager shall timely provide to Customer all information in its possession that is reasonably requested by Customer for Customer’s regulatory or governmental reports.

4. **RESERVED**

5. **PAYMENT FOR SERVICES**

- (a) **Set Up Fee.** Energy Manager shall charge Customer a one-time fee for establishing and configuring the telemetry and other communication equipment and software linking the Resources and Load to Energy Manager (and to SPP where applicable) and for the provision of the Transition Services described in Section 2(g) of the Base Agreement (the “**Set Up Fee**”). Energy Manager will invoice Customer a Set Up Fee equal to fifteen thousand Dollars (\$15,000) for all Resources and Load identified in Exhibit A as of the Effective Date as part of Energy Manager’s first normal Monthly invoice issued following the Effective Date. Any Resource or Load which Customer may request to be added to Exhibit A after the Effective Date shall be subject to Energy Manager’s approval, an additional Set Up Fee negotiated between the Parties, and an amendment to this Agreement.
- (b) **Monthly Fee.** For the performance of Services described herein, for each Month of the Term, Customer shall pay Energy Manager the greater of (i) a fee equal to \$1.50/MWh multiplied by the MWh of Gross Load or (ii) a fee of seven thousand five hundred Dollars (\$7,500) (the “**Monthly Fee**”), in each case in arrears and prorated for any partial Month of service, beginning on the Commencement Date; *provided* that the multiplier described in romanette (i) and the amount described in romanette (ii) shall both increase by the Escalator on the first Day of the Month of each anniversary of the Commencement Date. Any Resource or Load which Customer may request to be added to Exhibit A after the Effective Date shall be subject to Energy Manager’s approval and an amendment to this Agreement, and may be subject to a change in the Monthly Fee negotiated between the Parties and memorialized in an amendment hereto.
- (c) **Demand Response Resource NEB Sharing.** For each Month commencing with the Initial Term through the remainder of the Term, Customer will pay Energy Manager an amount equal to Energy Manager’s NEB Share for such Month as determined pursuant to Exhibit C attached hereto.
- (d) **Pass Through Amounts and Reimbursements.** Except when specified otherwise under this Agreement, Customer shall pay Energy Manager (i) all amounts Energy Manager is required to pay SPP (or to Third Parties, if applicable) directly applicable to the procurement, scheduling, and delivery of Products, and (ii) all other applicable Pass Through Amounts incurred by Energy Manager. Notwithstanding anything to the contrary, no amounts shall be recovered twice pursuant to this paragraph.
- (e) **Dispute Resolution Success Fee.** To the extent Energy Manager performs any Dispute Resolution Services in any Month with respect to a dispute, Energy Manager shall receive a “**Dispute Resolution Fee**” of fifteen percent (15%) of any positive amounts recovered by or for Customer associated with the resolution of such dispute.

- (f) ARR/TCR Service Fees. Customer shall pay Energy Manager seventy (70%) of each of (i) the Annual ARR Rd 3 NEB, and (ii) the Monthly Auction Revenue created through the Monthly ARR Allocation Process, in each case associated with the paths awarded where such paths were recommended by Energy Manager (the “ARR/TCR Services Fee”). Customer shall retain thirty (30%) of each of the foregoing. Energy Manager will invoice Customer each Month during the applicable auction year for the ARR/TCR Services Fee due under this Section. If the net value of the Annual ARR Rd 3 NEB for the auction year is negative, or if participation in the Monthly ARR Allocation Process in accordance with the Energy Manager strategy results in a negative Monthly Auction Revenue, Energy Manager will reimburse Customer for such losses as invoiced to Customer by SPP and verified by Energy Manager.
- (g) Optimization Services Fee. For performance of the Optimization Services, Customer shall pay Energy Manager a fee each Month equal to twenty-five percent (25%) of the positive Net Optimization Benefit applicable to the Month (“Optimization Fee”). For purposes of this Agreement, the “Net Optimization Benefit” or “NOB” for a Month shall equal (i) the revenue resulting from the actual sale of Energy and Ancillary Services from or pertaining to the Resource in the Day-Ahead Energy Market and the Day-Ahead Ancillary Services market, *minus* (ii) the revenue that would have been received from the sale of Energy and Ancillary Services to SPP at the applicable Real-Time settlement point price for the Resource, summed for each settlement interval of the Month. Excluded from the calculation of the NOB is any uninstructed deviation charge or other penalty incurred due to any Resource failure to follow a SPP Dispatch Instruction. To the extent Customer enters into any Bilateral Transaction with Energy Manager during the Term of this Agreement intended to meet Customer’s risk management or operational objectives, such Bilateral Transaction will be priced as mutually agreed between the Parties at the time of each such Bilateral Transaction and shall be excluded from the NOB calculation.

6. TERM

- (a) All Services and the obligation to pay fees under this Agreement, other than the Set Up Fee, respectively, shall be effective as of the Commencement Date unless provided otherwise in this Agreement. All other terms, provisions, and obligations, including the Set Up Fee, and associated Pass Through Amounts, shall be effective as of the Effective Date of this Agreement. This Agreement shall have a primary term of three (3) consecutive calendar years, beginning on the Commencement Date and expiring at 11:59:59 PM EPT on the last Day of the Month in which the third (3rd) anniversary of the Commencement Date occurs (the “Initial Term”). Upon expiration of the Initial Term, this Agreement shall then automatically renew and extend for successive one (1) year terms (each a “Renewal Term”) unless either Party provides written notice of non-renewal to the other Party no later than ninety (90) Days prior to the expiration of the Initial Term or any Renewal Term (as applicable).
- (b) Notwithstanding anything to the contrary in any provision of this Agreement, but without limiting the Parties’ obligations under Section 6(c) below, if, on the date this Agreement would expire or otherwise terminate, SPP’s system still reflects Energy Manager as the

representative for Customer's Market Participant for the Resources or Load, then the Term of this Agreement shall be deemed to continue (and the terms of this Agreement shall survive) until the date that SPP reflects in its system that Energy Manager is no longer the representative for Customer's Market Participant for the Resources and Load.

- (c) For the avoidance of doubt, from and after the Effective Date and for the duration of the Term, no Party shall have any right to terminate this Agreement early or otherwise exercise a non-renewal of this Agreement except to the extent expressly permitted under the terms of this Agreement or as otherwise mutually agreed by the Parties in writing.

WITNESS that the Parties have executed this Agreement effective as of the Effective Date.

TENASKA POWER SERVICES CO.

CITY OF FALLS CITY, NEBRASKA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

GENERAL TERMS AND CONDITIONS

DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meanings set forth below. All other capitalized terms used in this Agreement, but not otherwise defined in this Agreement, shall have the same meaning as defined in the Governing Rules.

“Affected Party” shall have the meaning set forth in Section 3.4 of the General Terms and Conditions.

“Affiliate” shall mean, with respect to any Person, (i) any other Person, directly or indirectly, controlling, controlled by, or under common control with such Person or (ii) any other Person under the joint control, directly or indirectly, of such Person. As used in this definition, the term “control” and similar terms shall mean the ownership of more than fifty percent (50%) of the voting securities of such Person or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, through ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning set forth in the preamble of this Agreement.

“Ancillary Services” shall have the meaning set forth in the Governing Rules.

“Annual ARR Allocation Process” shall mean the process by which SPP awards ARRs that entitles the holder to a share of the auction revenues generated in the applicable TCR Auction(s) and/or entitles the holder to self-covert the ARRs into TCRs.

“Annual Auction Revenue” shall mean the sum of the credits or charges associated with each path in the nomination portfolio, calculated as the TCR Auction Clearing Price per a given auction at the source minus the TCR auction clearing price per a given auction at the sink (each expressed in \$/MW-period), for the applicable auction year multiplied by the MW volume awarded for the applicable period. A positive calculated amount shall mean a revenue and a negative calculated amount shall mean a charge.

“Annual ARR Allocation Round Three Net Economic Benefit” or “Annual ARR Rd 3 NEB” shall mean, for any Annual TCR Auction, an amount equal to the Annual Auction Revenue received by Customer from SPP in the Annual TCR Auction associated with paths awarded in round three (3) of the Annual ARR Allocation Process where such paths were recommended by Energy Manager.

“Annual TCR Auction” shall mean the process held each May by SPP whereby ARR holders can bid to purchase and self-convert their ARRs to TCRs.

“Applicable Laws” shall mean any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline, protocol, or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the

foregoing by any Governmental Authority with jurisdiction over the Resources, Load, or Energy Manager, or the Services to be performed under this Agreement.

“Assessments” shall have the meaning set forth in Section 3.4 of the General Terms and Conditions.

“Auction Revenue Rights” or **“ARRs”** shall mean the financial instrument(s) awarded by SPP that entitles the holder to a share of the auction revenues generated in the applicable TCR Auction(s) and/or entitles the holder to self-covert the ARR into TCRs.

“Bilateral Transaction” shall mean a Transaction or series of Transactions between Energy Manager and Customer pursuant to the terms of the Implementation Agreement.

“Business Day” shall mean any Day other than a Saturday, Sunday, or Day on which Federal Reserve member banks in Texas are closed for business.

“Business Hours” shall mean the consecutive hours from 8:00 a.m. to 5:00 p.m. Central Prevailing Time on Business Days.

“Capacity” shall mean any capacity used to meet reliability requirements or the ability to generate and provide or deliver a Product and includes the meaning defined in the Governing Rules.

“Central Prevailing Time” or **“CPT”** shall mean standard time or daylight saving time, as applicable to the central time zone of the United States.

“Commencement Date” shall mean the later of (i) May 1, 2027 or (ii) the date upon which Energy Manager receives notice that SPP authorizes Energy Manager to commence representing the Resources and Load within SPP’s system.

“Confidential Information” shall have the meaning set forth in Section 14.1(a) of the General Terms and Conditions.

“Credit Exposure” shall mean the net amount one Party would owe the other Party if all Transactions and Services between the Parties under this Agreement were closed out and terminated, and all obligations under this Agreement were accelerated and netted against amounts the other Party would owe such Party on the date of credit calculation to derive the amount of credit exposure faced by one Party to the other Party or a Third Party. This calculation will include amounts owed for delivered Products and Services whether billed or unbilled, the forward value of committed but undelivered Products and Services taking into account deviations in the current market value of a Product from the value or price of such Product prevailing at the time a Transaction was entered into. All credit obligations between the Parties with respect to Bilateral Transactions shall be governed by the Implementation Agreement.

“Credit Support” shall mean cash, pre-payments, letters of credit, and, if acceptable to the requesting Party, may include guarantees or other reasonable forms of security.

“Customer” shall have the meaning set forth in the preamble of this Agreement.

“Customer Generation” shall have the meaning set forth in the Recitals.

“Customer Resource” shall include those Resources listed on Exhibit A. For the avoidance of doubt, Load participating as a Demand Response Resource shall be considered a Customer Resource.

“Customer Revenue Meter” shall mean a revenue-quality meter installed and maintained by Customer, at Customer’s expense, for the measurement of Energy generation and/or Energy consumption at a Customer Resource or Load.

“DA RUC Process” shall have the meaning set forth in Section 4.2 of the General Terms and Conditions.

“Day” shall mean a calendar day.

“Day-Ahead” shall have the meaning set forth in the Governing Rules.

“Day-Ahead Market” shall have the meaning set forth in the Governing Rules.

“Day-Ahead Reliability Unit Commitment Schedules” or **“DA RUC Schedules”** shall have the meaning set forth in Section 4.2 of the General Terms and Conditions.

“Day-Ahead Schedule” shall have the meaning set forth in Section 4.1 of the General Terms and Conditions.

“Defaulting Party” shall have the meaning set forth in Section 12.2 of the General Terms and Conditions.

“Deliverable Capacity” means the Accredited Capacity of a Generation Facility, measured in MW, that is determined to be deliverable in either a Summer Season and/or a Winter Season Deliverability Study as defined in SPP Tariff Attachment AA.

“Delivery Point” shall mean, (a) with respect to the delivery or receipt of Energy or Capacity, the node recognized by SPP representing any Resource or Load or such other point as may be agreed to by the Parties in compliance with the Governing Rules, and (b) with respect to the delivery or receipt of any other Product, the point as may be agreed to by the Parties in compliance with the Governing Rules.

“Dispute Resolution Fee” shall have the meaning set forth in Section 5(e) of the Base Agreement.

“Dispute Resolution Services” shall have the meaning set forth in Section 3(a) of the Base Agreement.

“DNP 3.0” shall have the meaning set forth in Section 6.1 of the General Terms and Conditions.

“Documentation” shall have the meaning set forth in Section 2(g) of the Base Agreement.

“Due Date” shall mean the tenth (10th) Day after Customer’s receipt of Energy Manager’s invoice; *provided, however*, if such Day is not a Business Day, the next Business Day.

“Effective Date” shall have the meaning set forth in the preamble of this Agreement.

“Energy” shall mean electric energy.

“Energy Manager” shall have the meaning set forth in the preamble of this Agreement.

“Energy Manager’s NEB Share” shall have the meaning given that term in Exhibit C.

“Escalator” shall mean the greater of (i) the percentage change in the Consumer Price Index for Urban Areas or “CPI-U” published by the U.S. Department of Labor and applicable for the twelve consecutive Months ending prior to the first Day of the Month in which the Commencement Date occurs each year during the Term, from the annual average CPI-U prevailing for the prior twelve consecutive Month period, or (ii) two and one-half percent (2.50%).

“Event of Default” shall have the meaning set forth in Section 12.1 of the General Terms and Conditions.

“FERC” shall mean the Federal Energy Regulatory Commission or any successor thereto.

“Force Majeure” shall have the meaning set forth in Section 13.1 of the General Terms and Conditions.

“Firm Capacity” means the SPP-accredited generating capability of commercially operable generating units, or portions of generating units, measured in MW, adjusted to reflect purchases and sales of Capacity with another party, and that is deliverable with Firm transmission service to the Load Responsible Entity’s load.

“Governing Rules” shall mean all applicable SPP Rules, SPP Manuals, the SPP Tariff, and any other applicable rules, market guides, tariffs, protocols, business practice manuals, or other applicable rules or directives of SPP, the Transmission Provider or Interconnection Utility, the applicable state commission, market monitor, any reliability entity, NERC, FERC, or any successor thereto, as such protocols, rules or directives may be amended from time to time.

“Governmental Authority” shall mean any federal, state or local government, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory instrumentality, agency, authority or authorized arbitral body thereof, including without limitation, SPP, the applicable state commission, market monitor, any reliability entity, NERC, FERC, or any successor thereto.

“Gross Load” shall mean the total Energy required to meet the Customer’s Monthly demand and shall be calculated as the sum of the absolute value of the reported hourly Load provided to SPP

plus, during the applicable Month and without duplication, any Energy produced at a Customer Resource that reduces the reported hourly Load to SPP and/or Energy reduced at a Customer Resource as recorded by a Customer Revenue Meter for the applicable Month. Customer shall provide revenue quality meter data in a format agreeable to Energy Manager or grant Energy Manager access to Customer's Revenue Meter as may be required for Energy Manager to calculate Gross Load.

"Guarantor" shall mean any Person that provides a guaranty of a Party's obligations hereunder.

"Imaged Agreement" shall have the meaning set forth in Section 16.11 of the General Terms and Conditions.

"Implementation Agreement" shall mean the ISDA Master Agreement (copyright 2002 by the International Swaps and Derivatives Association, Inc.) including the Schedule, Credit Support Annex, and all other annexes attached thereto, or any other form of master agreement, entered into between Energy Manager and Customer, as such agreement may be amended from time to time.

"Initial Term" shall have the meaning set forth in Section 6(a) of the Base Agreement.

"Interconnection Utility" shall mean the utility within SPP to which a Resource or Load is interconnected at the Delivery Point.

"Interest Rate" shall mean, for any date, the lesser of (i) the per annum rate of interest equal to the "Prime Rate" as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such Day (or if not published on such Day, on the most recent preceding Day on which published), plus two percent (2%) or (ii) the maximum rate permitted by applicable law.

"Load" shall have the meaning set forth in the Recitals.

"Load Forecast" shall have the meaning given that term in Section 2(j) of the Base Agreement.

"Market Participant" shall have the meaning set forth in the SPP Rules.

"Material Adverse Change" shall mean with respect to a Party, the occurrence of one or more events which, in the commercially reasonable judgment of the other Party, constitutes a material adverse effect on the creditworthiness, financial liquidity, access to capital, financial responsibility or ability of a Party to perform its obligations.

"Meter Agent" shall have the meaning set forth in the Governing Rules.

"Meter Agent Agreement" shall have the meaning set forth in the Governing Rules.

"Month" shall mean a calendar month.

“Monthly ARR Allocation Process” shall mean the Monthly process by which SPP awards ARRs, that entitles the holder to a share of the auction revenues generated in the applicable TCR Auction(s) and/or entitles the holder to self-convert the ARRs into TCRs.

“Monthly Auction Revenue” shall mean the sum of the credits or charges associated with each path in the nomination portfolio, calculated as the TCR Auction Clearing Price per a given auction at the source minus the TCR auction clearing price per a given auction at the sink (each expressed in \$/MW-period), for the applicable auction Month multiplied by the MW volume awarded for the applicable period. A positive calculated amount shall mean a revenue and a negative calculated amount shall mean a charge.

“Monthly Fee” shall have the meaning set forth in Section 5(b) of the Base Agreement.

“Monthly Revenues” shall have the meaning given that term in Exhibit C.

“MW” shall mean one megawatt.

“MWh” shall mean megawatt-hour(s).

“NERC” shall mean the North American Electric Reliability Corporation or any successor thereto.

“Net Optimization Benefit” or **“NOB”** shall have the meaning set forth in Section 5(g) of the Base Agreement.

“Non-Defaulting Party” shall have the meaning set forth in Section 12.2 of the General Terms and Conditions.

“Optimization Fee” shall have the meaning set forth in Section 5(g) of the Base Agreement.

“Optimization Services” shall have the meaning set forth in Section 2(a) of the Base Agreement.

“Outage Event” shall mean any forced outage, trip, derating, or decrease in output at a Resource, whether or not caused by an event of Force Majeure, resulting in interruption, curtailment, reduction, or cessation of the production or provision of Products from a Resource.

“Outage Scheduling Services” shall have the meaning set forth in Section 5.2 of the General Terms and Conditions.

“Party” or **“Parties”** shall have the meaning set forth in the preamble of this Agreement.

“Pass Through Amounts” shall mean, without duplication, all actual, direct Third Party costs incurred by Energy Manager; all charges assessed against Energy Manager by SPP or any Governmental Authority and payable by Energy Manager; all credits received by Energy Manager from SPP; and, to the extent expressly stated to be a Pass Through Amount herein, amounts payable to any other Third Party; in each case, that arise due to Energy Manager’s performance of the Services in accordance with the terms of this Agreement and excluding energy Manager’s cost

of providing any Credit Support to Customer pursuant to Section 11.6 of the General Terms and Conditions or any Credit Support to SPP or of doing business in SPP generally.

“Permit” shall mean, unless otherwise provided, any approval, waiver, exemption, variance, franchise, permit, authorization, license, or similar order of or from any federal, state, county, municipal, or other governmental body, instrumentality, agency, authority, or court having jurisdiction over the matter in question.

“Permitted Termination” shall have the meaning set forth in Section 3.7 of the General Terms and Conditions.

“Person” shall mean an individual, corporation, voluntary association, joint stock company, business trust, partnership, limited liability company, municipality (including any municipal electric board, cooperative, power utility, agency, or subdivision), rural electric cooperative, or other entity.

“Pledgor” shall have the meaning set forth in Section 11.6(a) of the General Terms and Conditions.

“Product” shall mean Energy, Ancillary Services, Capacity, and any other power product allowed for sale or purchase in the SPP market (collectively and individually).

“Product Costs” shall have the meaning given that term in Exhibit C.

“Prudent Industry Practice” shall mean, in respect of the performance under this Agreement, the practices, methods, techniques, standards and acts that, at the time of the performance under this Agreement, are then engaged in or approved by a significant portion of the independent power production industry and that, in the exercise of reasonable judgment in light of the facts known at the time of performance, would have reasonably been expected to accomplish the desired results. Prudent Industry Practice is not intended to be limited to the optimum practices, methods, techniques, standards and acts to the exclusion of all others, but rather reflect the range of the practices, methods, techniques, standards and acts then generally accepted in the SPP region, having due regard for, among other things, contractual obligations, Applicable Laws, Permits, and the Governing Rules.

“PTP” shall have the meaning set forth in Section 3(a) of the Base Agreement.

“RC” shall have the meaning set forth in Section 2(k) of the Base Agreement.

“Real-Time” shall have the meaning set forth in the Governing Rules.

“Real-Time Balancing Market” shall have the meaning set forth in the Governing Rules.

“Real-Time Balancing Market Schedules” or **“RTBM Schedules”** shall have the meaning set forth in Section 4.3 of the General Terms and Conditions.

“REC Marketing Services” shall have the meaning set forth in Section 2(i) of the Base Agreement.

“REC Transaction” shall have the meaning set forth in Section 2(i) of the Base Agreement.

“Recording” shall have the meaning set forth in Section 16.10 of the General Terms and Conditions.

“Renewable Energy Credit” or **“REC”** shall mean a credit or certificate that represents all of the environmental attributes of renewable generation and all right to claim such attributes. For purposes of this definition, “environmental attributes” shall mean any fuel emissions, air quality or other environmental characteristics, credits or benefits associated with the generation of electricity from a Resource, other than Energy produced by a Resource.

“Renewal Term” shall have the meaning set forth in Section 6(a) of the Base Agreement.

“Replacement Products” shall have the meaning set forth in Section 2.4 of the General Terms and Conditions.

“Representatives” shall mean each Party’s respective directors, officers, and employees, including, without limitation, attorneys, accountants, partners, and consultants.

“Resource(s)” shall have the meaning set forth in the Recitals.

“Responsible Party” shall have the meaning set forth in Section 3.4 of the General Terms and Conditions.

“Secured Party” shall have the meaning set forth in Section 11.6(a) of the General Terms and Conditions.

“Service Fees” shall mean, with respect to a Month, the Monthly Fee.

“Services” shall mean one, all, or any combination of the services and other obligations to be performed by Energy Manager under this Agreement.

“Set Up Fee” shall have the meaning set forth in Section 5(a) of the Base Agreement.

“SPP” shall mean Southwest Power Pool, Inc.

“SPP Manuals” shall mean the manuals of instruction and operation published and provided as guidance to Market Participants by SPP.

“SPP Rules” shall mean the tariffs, market protocols, business practice manuals and other documents governing the operation of the SPP transmission system and SPP markets.

“SPP Tariff” shall mean the compilation of rules, rates, terms, and conditions governing operation of the SPP transmission system and markets, including the Market Protocols, as filed with and accepted by the FERC.

“TCR Auction Clearing Price” shall mean the prices generated at each source and sink settlement location in each round of the Annual TCR Auction and Monthly TCR Auction based upon the TCR offers and bids submitted.

“Telecommunications Package” shall have the meaning set forth in Section 6.1 of the General Terms and Conditions.

“Term” shall mean the period commencing on the Effective Date through and including the expiration of the Initial Term and any Renewal Term, as applicable, subject in all cases to any early termination of this Agreement as permitted herein and subject to Section 6(b) of the Base Agreement.

“Third Party” shall mean any Person other than Customer or Energy Manager.

“TO” shall have the meaning given that term in Section 2(k) of the Base Agreement.

“Transaction” shall mean a particular transaction relating to the scheduling, delivery, sale, and/or purchase of a Product, as applicable. A Transaction may be for any length of time, including, for example, durations as short as one SPP settlement interval, one hour, or one Day.

“Transition Period” shall have the meaning set forth in Section 2(g) of the Base Agreement.

“Transition Services” shall have the meaning set forth in Section 2(g) of the Base Agreement.

“Transmission Congestion Rights” or **“TCRs”** shall mean a financial right entitling the holder to a share of the congestion revenue collected in the Day-Ahead Market.

“Transmission Provider” shall mean any entity that provides transmission and/or distribution services for the delivery of Energy.

“VPN” shall have the meaning set forth in Section 6.1 of the General Terms and Conditions.

The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import. Any agreement, instrument, document, rule or law defined or referred to herein means such agreement, instrument, document, rule or law as from time to time amended, modified or supplemented. References to a Person include its successors and permitted assigns. “Hereof,” “herein,” “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular Article, Section or other subdivision thereof or attachment thereto. References in an instrument to “Article,” “Section” or another subdivision or to an attachment are, unless the context otherwise requires, to an article, section or subdivision of or an attachment to such agreement or instrument. All references to exhibits, appendices, or attachments in this Agreement, or any agreement or instrument that is governed by this Agreement, are to exhibits, appendices or other attachments (however named) attached to this Agreement or such instrument or agreement governed by this Agreement (as applicable). References to any

gender include, unless the context otherwise requires, references to all genders. References to "\$" or to "Dollars" or "Cents" shall mean the lawful currency of the United States of America.

ARTICLE I
TITLE; STANDARD OF PERFORMANCE

1.1 Title.

- (a) Where Transactions involving a Product from or pertaining to a Resource or Load are transacted and/or settled with SPP, Customer's Market Participant account shall represent a Resource or Load and Transactions, and Energy Manager will not take title to such Products sold or delivered to SPP from Transactions utilizing Customer's Market Participant account or provided by SPP to a Resource or Load through Customer's Market Participant account.
- (b) Where Transactions involving a Product from or pertaining to a Resource or Load are transacted between Energy Manager and Customer pursuant to a Bilateral Transaction, Energy Manager, acting on its own behalf as principal and not as agent for Customer, shall (i) purchase Products from Customer under a Bilateral Transaction, or (ii) sell Products to Customer under a Bilateral Transaction, in each case as applicable. All Bilateral Transactions between the Parties shall be entered into under and governed by the Implementation Agreement.
- (c) Where Transactions involving a Product from or pertaining to a Resource or Load are transacted between Customer and a Third Party (other than SPP), Energy Manager shall not take title to such Products under such Transactions.
- (d) For the avoidance of doubt, Energy Manager shall schedule all of Customer's Transactions (including but not limited to Bilateral Transactions) which require scheduling with SPP for Customer subject to and in accordance with this Agreement.

1.2 Standard of Performance Obligations. Energy Manager shall discharge its obligations hereunder in good faith and in a commercially reasonable manner and shall perform the Services in a good, workmanlike manner and in accordance with (i) Prudent Industry Practice, (ii) instructions from Customer, and (iii) the terms of this Agreement.

1.3 Exclusivity. For the Resources and Load, subject to the other terms and conditions of this Agreement, Customer grants Energy Manager the exclusive right to:

- (a) act as Customer's provider of Services; whereas,
 - (i) only the Resources and Load designated in Exhibit A attached hereto will be represented by Energy Manager under this Agreement,
 - (ii) Customer will cause each such Resource and Load to schedule all Transactions through and with Energy Manager, and

- (iii) Customer will not schedule Transactions directly with SPP, or through any other Person except Energy Manager, as long as there is no Force Majeure event or Event of Default that has occurred and is continuing with respect to Energy Manager;
- (b) serve as Customer's representative, limited to the purpose of representing the Customer in communications and Transactions with SPP, as provided under Section 2 of the Base Agreement;
- (c) schedule the Products per Customer's instruction described in this Agreement; and
- (d) administer the purchase or sale of Products pertaining to the Resources and Load with SPP or other Third Parties accordance with the terms of this Agreement and the Governing Rules.

ARTICLE II TRANSACTION PROCEDURES

- 2.1 SPP Submissions. Pursuant to Article IV of the General Terms and Conditions, Customer shall be deemed to have delegated to Energy Manager the authority to submit, adjust, and maintain with SPP all Day-Ahead Schedules, DA RUC Schedules, and RTBM Schedules from or pertaining to the Resources and Load as provided to Energy Manager by Customer.
- 2.2 Reserved.
- 2.3 Bilateral Transactions. The Parties may enter into Bilateral Transactions for the purchase or sale of a Product pursuant to and governed by the Implementation Agreement.
- 2.4 Replacement Products. To the extent that a Resource is unable to make available or deliver, or decides not to make available or deliver, a quantity of any Product committed for delivery and which Energy Manager has scheduled for sale or delivery into the SPP region hereunder (including a projected shortfall of the ability of a Resource to provide a Product or any other reason for Customer to request Energy Manager to procure a Product in response to such a shortfall), whether committed for sale or delivery to SPP or to a Third Party (as applicable), Customer may request that Energy Manager source Products from Third Parties other than SPP to fill such shortfall ("Replacement Products"). To the extent Energy Manager is able to source Replacement Products and the Parties mutually agree on the terms of a Bilateral Transaction for such Replacement Products, the Parties shall enter into such Bilateral Transaction for Replacement Products pursuant to the Implementation Agreement.
- 2.5 Reports. Energy Manager and Customer may, from time to time, mutually agree to the form, content and periodicity of distribution of reports which detail Transactions and settlement with SPP under the Customer's Market Participant.
- 2.6 Transactions Beyond Term of Agreement. As to any Transaction scheduled hereunder that continues by its terms beyond any expiration or earlier termination of this Agreement, then

this Agreement shall remain in full force and effect as to that Transaction and shall continue to govern that Transaction for its duration. Further, any obligations accrued during the Term (including fees, charges, or reimbursement applicable under this Agreement) shall become due and payable when assessed, even if assessment occurs after the expiration or earlier termination of this Agreement. The obligations associated with such Transactions hereunder shall survive the expiration or earlier termination of this Agreement. For the avoidance of doubt, this Section does not apply to Bilateral Transactions, which shall remain subject to the terms and conditions of the Implementation Agreement.

ARTICLE III **GOVERNING RULES**

- 3.1 **Governing Rules.** Both Parties agree to abide by all applicable Governing Rules. For purposes of determining responsibility and rights of the Parties at any given time, in addition to the terms and conditions of this Agreement, the Governing Rules that are in effect at the time of performance or non-performance of an action, subject to the continuation of any grandfathered provisions, shall govern with respect to that action. In the event of a direct and irreconcilable conflict between the Governing Rules and the terms and conditions set forth in this Agreement, the Governing Rules shall prevail.
- 3.2 **Compliance Support.** Energy Manager shall assist Customer in any audit of a Resource conducted or initiated by a regional reliability coordinator or NERC, including preparation of responses to NERC or regional reliability coordinator data requests related to NERC standards for which Energy Manager has information useful to Customer for the demonstration of compliance. In addition to the foregoing, if the regional reliability coordinator requests a NERC audit for a time period during which Energy Manager served as Customer's provider of Services, then upon Customer's request, with respect to such audits that call for production of records of communications with SPP, Energy Manager shall support Customer with relevant information and assistance including assisting Customer in responding to a NERC audit by providing Customer with Energy Manager's pertinent documentation of Energy Manager's communications with SPP or a Resource. Nothing contained in this Agreement shall be construed to make Energy Manager a "generation owner," "generation operator," or any similar entity, or to make Energy Manager subject to any classification under applicable NERC rules as a result of Energy Manager's execution of this Agreement or Energy Manager's performance of the Services or otherwise, and Customer shall not register Energy Manager or require Energy Manager to register with NERC as a "generation owner" or "generation operator" with respect to a Resource.
- 3.3 **SPP Dispatch Instructions.** The Parties acknowledge that from time to time, SPP or a Governmental Authority may issue instructions or orders to Energy Manager affecting or requiring specific actions with respect to operation of a Resource or Load (collectively, "**SPP Dispatch Instructions**"). Where any such SPP Dispatch Instructions are issued requiring changes in the dispatch or operation of a Resource or Load, Energy Manager shall relay instructions to a Resource or Load to generate, make available, or provide Energy (or other applicable Product), or to cease generating or providing Energy (or other

applicable Product), as mandated by such instructions. SPP Dispatch Instructions will be communicated to Customer promptly following receipt of such by Energy Manager. Based on the SPP Dispatch Instructions, Energy Manager shall communicate to Customer the quantities of Energy (or any other Product) to generate or provide, or to cease generating or providing, and the time period during which such instructions are to be followed, and Customer shall cause a Resource or Load to promptly comply with such instructions, consistent with the operational limitations of a Resource or Load, as appropriate; unless in the sole and reasonable judgment of Customer, such compliance would create a threat to safety, risk of bodily harm or damage to equipment, or is not otherwise in compliance with the SPP Rules, in which case Customer will notify Energy Manager immediately of the reason for non-compliance and Energy Manager will communicate such reason to SPP in accordance with the SPP Rules. Energy Manager shall not be liable to Customer for any damages resulting from compliance or non-compliance with any SPP Dispatch Instruction.

- 3.4 Compliance with Laws. Energy Manager and Customer shall at all times comply with all Applicable Laws. In the event that actions or omissions of one Party ("Responsible Party") cause the other Party ("Affected Party") to (a) be materially non-compliant with the Governing Rules or Applicable Laws affecting the Services, the Resources, or Load or (b) have assessed or brought against it any fines, penalties, reprimands, censures, sanctions, assessments, or other material adverse actions by SPP, market monitor, or any other Governmental Authority ("Assessments") (which, for the avoidance of doubt, shall not include ordinary course settlement charges or penalties, such as imbalance penalties or charges, mismatched schedule charges, uninstructed deviation charges, or late fees), then, in addition to any other rights or remedies hereunder (including the right, if any, to indemnification against such Assessments), the Affected Party shall have the right to (x) give written notice to the Responsible Party setting forth the circumstances of non-compliance and, if practicable, demand that the Responsible Party cure such non-compliance; and (y) demand that the Responsible Party use commercially reasonable efforts to cooperate in the Affected Party's defense against such allegation or Assessment (provided the foregoing shall not require the Affected Party to incur material expenses unless reimbursed by the Responsible Party nor to take any position in any regulatory proceeding contrary to its interests or policies). The Responsible Party shall reimburse the Affected Party for any Assessments paid by the Affected Party; *provided, however*, that any payment required shall remain subject to the limitation of liability in Section 9.2 of the General Terms and Conditions.
- 3.5 Energy Manager Affiliates. Notwithstanding any provision of this Agreement to the contrary, Energy Manager shall in all cases remain obligated for the performance of the Services and its obligations under this Agreement regardless of whether such Services or obligations are performed by its Affiliates.
- 3.6 Operation of the Resources. Notwithstanding anything in this Agreement to the contrary, Customer retains and shall retain ultimate decision-making authority and control with respect to the Resources and Load relating to the operation, maintenance, and dispatch of the Resources and Load and the sale of Products from or pertaining to the Resources or Load. Accordingly, all control over and with respect to the dispatch, maintenance, and

operation of the Resources or Load, the undertaking of any particular arrangement or Transaction, the ultimate decision making authority hereunder, and the execution of any Transaction shall reside exclusively with Customer. Energy Manager shall have no dispatch control over the Resources or Load during any period of the Term, whether in practice as a result of the performance or undertaking of the Services, or otherwise pursuant to the terms of this Agreement. Customer's operation, maintenance, and dispatch of the Resources or Load shall be in accordance with Prudent Industry Practice and the Governing Rules and comply with all applicable Permits.

- 3.7 Change in Laws or Regulations. In the event a change in Applicable Laws or the Governing Rules (a) materially impairs a Party's ability to perform under this Agreement, (b) materially increases a Party's costs or risks of performing under this Agreement, or (c) materially decreases the economic benefits obtained by a Party under this Agreement, the adversely affected Party may notify the other Party of the adverse effect and propose amendments to this Agreement to address the adverse effect of the change in Applicable Laws or Governing Rules. The Parties shall negotiate in good faith to amend this Agreement to restore the Parties to the relative economic values and risk position each had enjoyed under this Agreement prior to the change in Applicable Laws or Governing Rules. If the Parties have not reached agreement on an amendment by the thirtieth (30th) Day after the effectiveness of the notice sent by the affected Party, then the affected Party may, upon written notice to the other Party, terminate this Agreement by designating a termination date that is no earlier than ten (10) Days after the date of such written notice ("Permitted Termination"). Neither Party shall owe damages to the other Party in the event of a Permitted Termination; *provided*, that neither Party shall be relieved of any payment obligations accruing under this Agreement prior to the date of such termination or that by their nature survive such termination. The Permitted Termination applies solely to Services under this Agreement and not to Bilateral Transactions under the Implementation Agreement. Bilateral Transactions under the Implementation Agreement will continue despite a Permitted Termination of Services, unless the Parties negotiate a termination or unwinding of those Bilateral Transactions pursuant to the Implementation Agreement. Upon a Permitted Termination, Energy Manager will reasonably cooperate with Customer to transition the Resources, Load, and the Services to a replacement provider of Services

ARTICLE IV SCHEDULING

- 4.1 Day-Ahead Requirements. Subject to Customer's election to participate in the Day-Ahead Market with respect to any Product relating to the Resources or Load or otherwise as may be required under the Governing Rules, Customer shall provide Energy Manager all bids, offers, Resource parameters, and/or other such information relevant to or required by the Governing Rules, pertaining to any Product relating to a Resource to be included for submission to SPP to satisfy all relevant data and information required for participation in the Day-Ahead Market (collectively, "Day-Ahead Schedules") to the extent Energy Manager does not otherwise possess such information. Such Day-Ahead Schedules shall be provided to Energy Manager (to the extent required pursuant to the immediately preceding sentence) in those time increments, quantities, duration, and terms required by

the Governing Rules, for the Resources in accordance with this Agreement and in compliance with the Governing Rules in all material respects; each component of Customer's Day-Ahead Schedules (collectively and individually) shall satisfy the requirements of the Governing Rules when provided to Energy Manager. If Energy Manager determines that Customer's Day-Ahead Schedules conflict with the requirements of the Governing Rules, Energy Manager shall promptly notify Customer by telephone or in writing and shall coordinate with Customer to modify Customer's Day-Ahead Schedules. If such Day-Ahead Schedules cannot be modified then Energy Manager shall have the right to reject Customer's Day-Ahead Schedules to the extent reasonably necessary to remedy any conflict therewith. Customer shall provide or make available to Energy Manager all Day-Ahead Schedules required to be delivered pursuant to this Section 4.1 using the format, software, and communication format and specifications, and other technical criteria mutually agreed between the Parties. Customer shall provide Energy Manager the Day-Ahead Schedules required to be delivered pursuant to this Section 4.1 at least two (2) hours prior to any applicable deadline specified under the Governing Rules; *provided, however*, nothing herein shall be construed as restricting Customer from providing updated Day-Ahead Schedules to Energy Manager at any time. In lieu of providing the Day-Ahead Schedules, Customer and Energy Manager may agree that Customer will provide Energy Manager specific procedures and operating rules to be used by Energy Manager to generate all or a portion of the Day-Ahead Schedules.

- 4.2 Day-Ahead Reliability Unit Commitment Process Requirements. Customer shall provide Energy Manager all offers, Resource parameters, and/or other such information relevant to or required by the Governing Rules, pertaining to any Product relating to a Resource to be included for submission to SPP (or to update existing information with SPP) to satisfy all relevant data and information required for participation in any applicable Day-Ahead Reliability Unit Commitment Process ("DA RUC Process") and/or to satisfy the obligation to submit, update, and/or maintain data and information to SPP for the DA RUC Process (collectively, "Day-Ahead Reliability Unit Commitment Schedules" or "DA RUC Schedules"). Such DA RUC Schedules shall be provided to Energy Manager (to the extent required pursuant to the immediately preceding sentence) in those time increments, quantities, duration, and terms required by the Governing Rules in all material respects, for a Resource, in accordance with this Agreement and in compliance with the Governing Rules in all material respects; each component of Customer's DA RUC Schedules (collectively and individually) shall satisfy the requirements of the Governing Rules when provided to Energy Manager. If Energy Manager determines that Customer's DA RUC Schedules conflict with the requirements of the Governing Rules, Energy Manager shall promptly notify Customer by telephone or in writing and shall coordinate with Customer to modify Customer's DA RUC Schedules. If such DA RUC Schedules cannot be modified, then Energy Manager shall have the right to reject Customer's DA RUC Schedules to the extent reasonably necessary to remedy any conflict therewith. Customer shall provide or make available to Energy Manager all DA RUC Schedules required to be delivered pursuant to this Section 4.2 using the format, software and communication format and specifications, and other technical criteria mutually agreed between the Parties. Customer shall provide Energy Manager the DA RUC Schedules required to be delivered pursuant to this Section 4.2 at least one (1) hour prior to the earlier of (i) any applicable

deadline specified by the Governing Rules or (ii) any deadline directed by Customer pertaining to a specific Transaction. Nothing herein shall be construed as restricting Customer from providing updated DA RUC Schedules to Energy Manager at any time, and Energy Manager shall implement such Schedules as soon as reasonably practicable. In lieu of providing the DA RUC Schedules, Customer and Energy Manager may agree that Customer will provide Energy Manager specific procedures and operating rules to be used by Energy Manager to generate all or a portion of the DA RUC Schedules.

- 4.3 Real-Time Balancing Market Requirements. Customer shall provide Energy Manager all offers, Resource parameters, and/or other such information relevant to or required by the Governing Rules, pertaining to any Product relating to a Resource to be included for submission to SPP (or to update existing information with SPP) to satisfy all relevant data and information required for participation in any applicable Real-Time Balancing Market or service and/or to satisfy the obligation to submit, update, and/or maintain data and information to SPP for the Real-Time Balancing Market (collectively, “Real-Time Balancing Market Schedules” or “RTBM Schedules”). Such RTBM Schedules shall be provided to Energy Manager (to the extent required pursuant to the immediately preceding sentence) in those time increments, quantities, duration, and terms required by the Governing Rules in all material respects, for a Resource or Load, in accordance with this Agreement and in compliance with the Governing Rules in all material respects; each component of Customer’s RTBM Schedules (collectively and individually) shall satisfy the requirements of the Governing Rules when provided to Energy Manager. If Energy Manager determines that Customer’s RTBM Schedules conflict with the requirements of the Governing Rules, Energy Manager shall promptly notify Customer by telephone or in writing and shall coordinate with Customer to modify Customer’s RTBM Schedules. If such RTBM Schedules cannot be modified, then Energy Manager shall have the right to reject Customer’s RTBM Schedules to the extent reasonably necessary to remedy any conflict therewith. Customer shall provide or make available to Energy Manager all RTBM Schedules required to be delivered pursuant to this Section 4.3 using the format, software and communication format and specifications, and other technical criteria mutually agreed between the Parties. Customer shall provide Energy Manager the RTBM Schedules required to be delivered pursuant to this Section 4.3 at least one (1) hour prior to the earlier of (i) any applicable deadline specified by the Governing Rules or (ii) any deadline directed by Customer pertaining to a specific Transaction. Nothing herein shall be construed as restricting Customer from providing updated RTBM Schedules to Energy Manager at any time, and Energy Manager shall implement such Schedules as soon as reasonably practicable. In lieu of providing the RTBM Schedules, Customer and Energy Manager may agree that Customer will provide Energy Manager specific procedures and operating rules to be used by Energy Manager to generate all or a portion of the RTBM Schedules.
- 4.4 Schedule Changes. Subject to Sections 4.1, 4.2, and 4.3, herein, Customer may change information provided to Energy Manager as part of its schedules as allowable under the Governing Rules. Energy Manager will implement any such change as soon as reasonably practicable. Notices shall be made to Energy Manager by telephone and followed up by written communication via email or through other mutually agreed electronic

communication. In the event that any schedule or schedule change provided to Energy Manager differs from a prior schedule for the same time period, such subsequent schedule shall supersede the prior schedule, and Energy Manager will rely upon and implement the most recent schedule when submitting such to SPP for Customer and any Pass Through Amounts arising from or attributable to such a schedule change shall be Customer's responsibility.

- 4.5 Scheduling Validation. Energy Manager will schedule Customer's Product obligations (including each of Customer's Transactions which require scheduling with SPP) for Customer pursuant to Customer's schedules provided to Energy Manager pursuant to Sections 4.1, 4.2, and 4.3 of the General Terms and Conditions; *provided, however*, if Customer's schedules cannot be submitted to SPP because Energy Manager determines that they fail to meet the validation requirements of SPP, Energy Manager shall promptly notify Customer and shall coordinate with Customer to modify Customer's schedules. If such schedules cannot be modified, then Energy Manager may rescind any component of Customer's schedules to the extent such schedules fail to meet any validation requirement of SPP. In addition, Energy Manager shall not be required to employ extraordinary means or to incur hardship or loss to schedule a modified Transaction for Customer.
- 4.6 Incorrect or Incomplete Data. Data provided by Customer to Energy Manager for any submission to SPP shall be complete and correct in all material respects to enable a timely submission acceptable to SPP and in compliance with the Governing Rules in all material respects. In the event Energy Manager determines that such information provided by Customer to Energy Manager relating to the scheduling of or offer to provide any quantity of Product(s) by Energy Manager for Customer becomes incorrect or is incomplete or is not anticipated to meet the compliance requirements of the Governing Rules applicable to the Resource or Load and Customer's Market Participant representing the Resources or Load, Energy Manager shall promptly notify Customer and provide Customer an opportunity to correct or complete such data. Except in the case of Energy Manager's fraud, gross negligence or willful misconduct, Customer agrees to reimburse Energy Manager for any Replacement Product costs, Pass Through Amounts, or other costs incurred by Energy Manager in accordance with this Agreement resulting from submissions to SPP based upon such incorrect or incomplete Customer data.

ARTICLE V

RESOURCE INFORMATION

- 5.1 Customer's Resource(s). Customer shall provide, or cause to be provided, to Energy Manager all SPP registration and network modeling information applicable to a Resource as soon as reasonably practicable after the Effective Date, or at such time that an additional Resource is requested to be added to Exhibit A (as applicable). Customer shall provide to Energy Manager the Resource parameters, telemetry information, and Delivery Point(s) applicable to the Resource as may be required by the Governing Rules, along with any other information about the Resource Customer reasonably believes would be helpful for Energy Manager to know or that Energy Manager reasonably requests in connection with the Services provided under this Agreement. Energy Manager may rely on the most recent

information Customer has supplied to Energy Manager. Energy Manager will provide assistance to Customer to identify required information and shall provide typical data values where available to Energy Manager. Resources may only be added or removed from this Agreement through a written amendment of this Agreement executed by the Parties.

- 5.2 Outage Scheduling Services. Energy Manager shall provide “Outage Scheduling Services” to Customer, which shall consist of submitting to SPP, in such electronic data transmission format as is authorized by SPP for the provision of the Resource outage information, all information furnished to Energy Manager by Customer, and providing to Customer all electronic data received from SPP, concerning outages at or pertaining to a Resource, including planned outages, scheduled maintenance outages, or emergency maintenance outages. When a Resource experiences or projects a planned outage, forced outage, event of Force Majeure or any other event or condition affecting the operation of the Resource, Customer shall notify Energy Manager as soon as practicable after Customer becomes aware of such an event, and provide all necessary and available information concerning the associated reduction in, or limitation of, the operating capability or output of Products from the Resource, and any other anticipated effects of the event which may affect the performance of the Resource. Energy Manager shall transmit Resource outage data to SPP concerning any Outage Event (planned, unplanned, or maintenance) within the time periods specified under the SPP Rules, provided that Customer has furnished such data to Energy Manager in sufficient time to permit Energy Manager to comply with applicable timing requirements of the SPP Rules.

ARTICLE VI EQUIPMENT AND DATA TRANSMISSION

- 6.1 Market Information System Equipment. The Parties agree and understand that Energy Manager will provide an Energy Manager-owned and managed, contracted, or licensed telecommunications solution (“Telecommunications Package”) and will remotely support Customer in the installation of such Telecommunications Package on Customer’s premises intended to satisfy the requirement herein for telecommunication circuits to Energy Manager’s primary and backup locations. Energy Manager will pass through to Customer the actual, direct Third Party monthly communications service cost for interfacing with the Telecommunications Package as a Pass Through Amount under this Agreement. Customer may provide Energy Manager with a high speed Internet connection at the location of the Telecommunications Package in which case Energy Manager can provide Customer with an additional communications path using a Virtual Private Network (“VPN”) connection over the Internet, at no additional cost to Customer. If Customer desires to use a communications method or equipment other than the Telecommunications Package in order to communicate Customer’s Real-Time operational data and scheduling information timely to Energy Manager, (i) Customer must use commercially reasonable efforts to install and maintain, at Customer’s sole expense, the equipment and software at the Customer’s site, and the telecommunication circuits to Energy Manager’s primary and backup locations, necessary for all required voice and data communications with SPP; and (ii) subject to prior Energy Manager approval, Customer may request that Energy Manager

arrange and remit payment for such telecommunication equipment and service, including but not limited to telecommunication circuits, and Energy Manager shall invoice Customer for any such amounts. Customer must provide or make available to Energy Manager all telemetry and status signals specified in the Governing Rules, and install and/or maintain, at Customer's sole expense, any other communication equipment necessary to deliver required Real-Time data to Energy Manager, using the communication protocol known in the industry as "DNP 3.0" unless the Parties mutually agree to use an alternate communication protocol.

- 6.2 Real-Time Data Transmission. The Parties agree that Energy Manager shall send telemetered data directly to SPP. Customer will use commercially reasonable efforts to continually transmit operational Resource and Load data to Energy Manager on a Real-Time basis as required by the Governing Rules.
- 6.3 Communication Cost. Customer shall provide Energy Manager with access to all SPP systems available to Customer which Energy Manager specifies in writing as being necessary to provide Services or required by the Governing Rules. Customer shall reimburse Energy Manager for all additional reasonable Third Party costs or expenses incurred by Energy Manager for equipment or facilities located at Customer's site and/or directly related to providing communications to a Resource or Load, or to adjust for changes in (i) communication technology, (ii) SPP or NERC communication criteria or standards, or (iii) communication technology implemented by Customer during the Term to the extent Energy Manager's provision of additional equipment or facilities has been authorized by Customer. Prior to incurring any such Third Party costs subject to reimbursement by Customer, Energy Manager shall provide Customer with an estimate of and an explanation of the need for such costs and obtain Customer's written approval for such costs, which shall not be unreasonably withheld. For such communication costs, Energy Manager will invoice Customer and provide Customer with supporting details from Energy Manager's invoices from Third Party communications providers or vendors. Included in communications costs reimbursable by Customer are any applicable incremental SPP WAN costs attributable to Customer which are specified by supporting cost documentation from SPP.

ARTICLE VII

SPP SETTLEMENTS AND RECONCILIATION

- 7.1 SPP Settlements. Customer shall be responsible for directly remitting and receiving settlement statements and payments with SPP for all activities involving Customer's Market Participant account related to the Resources and Load. Energy Manager shall not be responsible to Customer for errors in meter data supplied by or to SPP, if applicable, for use in settlement calculations.
- 7.2 Reconciliation. Energy Manager will reconcile SPP statements and Pass Through Amounts as provided in Section 3(a) of the Base Agreement.

ARTICLE VIII

TAXES

- 8.1 Taxes. As between the Parties, Customer will pay or cause to be paid all taxes imposed by any Governmental Authority on, or with respect to, any Product, Transaction, Customer's Market Participant, the Resources, or Load; *provided, however*, for the avoidance of doubt, each Party's responsibility for taxes with respect to Bilateral Transactions shall be governed by the Implementation Agreement.

Each Party agrees to provide a state sales tax exemption certificate upon the other Party's request. The Party failing to provide a sales tax exemption form shall be liable for any state sales tax it is assessed on Transactions.

Each Party agrees to indemnify the other Party for any taxes, penalties, late fees, or other charges assessed to the indemnitee by a Governmental Authority for uncollected and owed taxes associated with this Agreement which were the obligation of the indemnitor and which the indemnitor did not properly remit. This Section 8 shall survive the expiration or earlier termination of this Agreement and shall stay in full force and effect for five (5) years following the expiration or earlier termination of this Agreement.

ARTICLE IX

INDEMNITIES, LIABILITIES, AND WARRANTY DISCLAIMER

- 9.1 INDEMNITIES. SUBJECT TO THE LIABILITY LIMITATIONS SET FORTH IN SECTION 9.2 BELOW, EACH PARTY UNDERSTANDS AND AGREES THAT IT SHALL DEFEND, RELEASE, INDEMNIFY, AND HOLD THE OTHER PARTY HARMLESS FROM (I) ALL THIRD PARTY LIABILITIES, COSTS, CLAIMS, LOSSES, OR CAUSES OF ACTION ARISING FROM PERSONAL INJURY, PROPERTY LOSS, PROPERTY DAMAGE, OR DEATH, HOWEVER CAUSED, AND RELATED TO ANY EVENT, CIRCUMSTANCE, ACT OR INCIDENT FIRST OCCURRING OR EXISTING DURING THE PERIOD OF TIME WHEN CONTROL AND TITLE TO ANY PRODUCT IS VESTED IN SUCH INDEMNIFYING PARTY, OR (II) ANY OTHER THIRD PARTY LIABILITIES, COSTS, CLAIMS, LOSSES, OR CAUSES OF ACTION, TO THE EXTENT CAUSED BY SUCH INDEMNIFYING PARTY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.
- 9.2 LIMITATION OF LIABILITY. EXCEPT FOR INDEMNITIES PROVIDED IN SECTION 9.1 HEREOF, THE LIABILITY OF EACH PARTY TO THE OTHER PARTY FOR ANY CLAIM OR CAUSE OF ACTION RELATED TO THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES ARE WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, LOST PROFIT, LOST OPPORTUNITY, BUSINESS INTERRUPTION, OR EXEMPLARY DAMAGES FOR ANY CLAIM OR CAUSE OF ACTION RELATED TO THIS AGREEMENT WHETHER ARISING FROM BREACH OF CONTRACT OR WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE AND STRICT

LIABILITY), STATUTE, OR OTHERWISE. MOREOVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCLUDING ANY LIABILITY FOR PAYMENTS OR CREDITS DUE TO CUSTOMER UNDER THE BASE AGREEMENT, UNLESS CLAIMS OR OBLIGATIONS ARE CAUSED BY ENERGY MANAGER'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, FOR EACH MONTH OF SERVICE, THE LIABILITY OF ENERGY MANAGER TO CUSTOMER FOR ANY OBLIGATIONS OR CLAIMS UNDER THIS AGREEMENT (INCLUDING INDEMNITIES) SHALL BE LIMITED TO A MAXIMUM OF THE SERVICE FEES RECEIVED BY ENERGY MANAGER FROM CUSTOMER FOR THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED. FOR THE AVOIDANCE OF DOUBT, OTHER THAN WITH RESPECT TO ENERGY MANAGER'S PAYMENT OBLIGATIONS EXPRESSLY EXCLUDED FROM THE LIMITATION OF LIABILITY ABOVE, ENERGY MANAGER WILL NOT BE OBLIGATED TO PAY OUT IN THE AGGREGATE FOR DAMAGE CLAIMS IN ANY MONTH MORE THAN THE SERVICE FEES ENERGY MANAGER HAS RECEIVED FROM CUSTOMER FOR SUCH MONTH.

- 9.3 WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. ENERGY MANAGER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ENERGY MANAGER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT THE PROVISION OF SERVICES WILL ALWAYS BE EXECUTED WITHOUT HUMAN ERRORS OR OMISSIONS.
- 9.4 ADDITIONAL INDEMNITIES. AN INDEMNIFYING PARTY'S INDEMNITY OBLIGATIONS AND ANY WAIVERS AND RELEASES OF CLAIMS IN THIS AGREEMENT WILL EXTEND TO THE INDEMNIFIED PARTY, ITS AFFILIATED COMPANIES, INCLUDING ANY ENTITY CONTROLLING, UNDER THE CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH PARTY, AND TO THE RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OWNERS, SHAREHOLDERS AND INSURERS OF EACH THEREOF.
- 9.5 Survival. The provisions of this Article IX shall survive the expiration or earlier termination of this Agreement.

ARTICLE X

NOTICES

- 10.1 Notices. Unless otherwise provided in this Agreement, any notices given under this Agreement must be in writing and personally delivered or sent by mail or email, to such

Persons or locations designated on Exhibit B and shall be deemed given and effective when delivered by hand or upon:

- (a) three (3) Business Days after such notice is deposited in the United States mail with postage prepaid for transmittal by registered or certified mail, return receipt requested;
- (b) one (1) Business Day after such notice is placed in the hands of a recognized commercial mail or courier service for overnight delivery; or
- (c) the Business Day on the date such notice was sent by mail or email with confirmation of receipt of such mail or email by confirmed mail or email transmission, provided that such receipt occurred during Business Hours of such Business Day. For mail or email transmissions received after such Business Hours of such Business Day at the receiving location, notice will be deemed effective upon the opening of Business Hours of the next Business Day.

For the avoidance of doubt, either Party may update its notice information contained in Exhibit B at any time without the need for a formal amendment by sending written notice to the other Party in accordance with this Section 10.1.

ARTICLE XI

BILLING; PAYMENT; CREDIT

- 11.1 **Invoices.** For the convenience of the Parties, and to allow for netting of payment obligations pursuant to Section 11.4 of the General Terms and Conditions, for so long as there are any Transactions outstanding under the Implementation Agreement, the Parties agree to invoice net amounts due under this Agreement and the Implementation Agreement in a single Monthly invoice as provided herein. All Services hereunder and Transactions hereunder or under the Implementation Agreement shall be accounted for consistent with the settlement procedures set by the Governing Rules. The accounting period for the Services, Transactions, and settlements hereunder shall be one (1) Month. Energy Manager's Monthly invoices will detail the Services and quantity of Products scheduled and settled for Customer under this Agreement and under the Implementation Agreement during the applicable billing Month together with any adjustments for prior Months' Services or Transactions to account for revised settlement billing statements received from Third Parties and from SPP, and any applicable Pass Through Amounts. In the event an SPP statement conflicts with Customer's records, the SPP statement shall govern subject to any dispute Customer timely raises with Energy Manager for submission to SPP regarding such statement; *provided however* that submission of a dispute shall not relieve a Party of its payment obligation until such dispute is resolved and to the extent adjustments are made to amounts owed. Energy Manager's invoice will show the amount that each Party owes (or is owed) pursuant to this Agreement and pursuant to the Implementation Agreement.

- 11.2 Payment Date. All payments to either Party, as set forth in the Energy Manager invoices, shall be made by ACH or wire transfer on or before the Due Date.
- 11.3 Late Payment. Amounts owed but not paid on or before the Due Date shall be payable with interest at the Interest Rate calculated daily from the Due Date until payment is received.
- 11.4 Offset. In the event that Customer and Energy Manager are each required to pay an amount to the other in the same Month pursuant to this Agreement and/or the Implementation Agreement, then such amounts shall be aggregated and the Parties shall discharge their obligations to pay through offset. In such an offset, the Party owing the greater aggregate amount shall pay to the other Party the net difference between the amounts owed. The Parties agree that this Agreement constitutes a master netting agreement for purposes of offsetting such payments under this Agreement.
- 11.5 Billing Disputes. In the event Customer, in good faith, disputes any Energy Manager invoice, Customer shall provide Energy Manager with written notice of the disputed amounts, together with a statement describing the particulars of the dispute, including the calculations with respect to any errors or inaccuracies, and any such amounts (other than Pass Through Amounts) so disputed shall not be required to be paid until resolution of the dispute. Energy Manager agrees to work diligently with Customer to clarify and/or correct any error or suspected errors on the invoices before the Due Date. Except to the extent that Energy Manager agrees that any Pass Through Amount is not due, the Party owing any amount shall pay all Pass Through Amounts assessed pursuant to Section 5(d) of the Base Agreement, even if disputed, set forth in the Energy Manager invoice on or before the Due Date. If it is subsequently determined that Customer has overpaid or underpaid amounts actually due, the Parties will make any necessary adjustments within ten (10) Days after determination of any overpayment or underpayment. Subject to Section 11.3 of the General Terms and Conditions, the Party in receipt of any overpayments shall refund such overpayments with interest accrued at the Interest Rate from the date payment was received. The obligations under this Section 11.5 shall survive the expiration or earlier termination of this Agreement.
- 11.6 Credit Terms.
- (a) Credit Support and Limits. The obligation of each Party (as "Secured Party") to provide or receive Services hereunder is conditioned upon compliance by the other Party (as "Pledgor") with Secured Party's credit policies and requirements. If a Pledgor experiences a Material Adverse Change in creditworthiness, as determined by the Secured Party using commercially reasonable standards of measuring creditworthiness, then such Secured Party may request that the Pledgor provide Credit Support in an amount sufficient to cover such Secured Party's Credit Exposure. A failure by Pledgor to provide Credit Support pursuant to this Section 11.6(a) within two (2) Business Days of receiving a request hereunder will be an Event of Default pursuant to Section 12.1(a) of the General Terms and Conditions.

- (b) Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Credit Support hereunder, Pledgor hereby grants to the Secured Party a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Credit Support, including any such rights and remedies under law then in effect; (ii) draw on any outstanding letter of credit issued for its benefit; and (iii) liquidate all Credit Support then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under this Agreement (the Pledgor remaining liable for any remaining amounts owing to the Secured Party after such application, if any), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

11.7 Maintenance of Records; Audit.

- (a) Energy Manager and Customer shall each maintain in accordance with Prudent Industry Practice complete, accurate and up-to-date supporting records that are pertinent to the Services and payment obligations hereunder, including all Pass Through Amounts. Energy Manager shall ensure that such supporting books and records are distinguishable from Energy Manager's other activities not associated with a Resource or Load. The Parties shall each retain such books and records for a minimum of four (4) years after the Term, or if longer, the relevant period required by Applicable Law or Governing Rules.
- (b) Each Party has the right, at its sole expense and during Business Hours and upon reasonable written notice to the other Party, to examine the records of the other Party or its own records as necessary to verify the accuracy of any invoice, charge, or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and the payments thereof shall be promptly made together with interest at the Interest Rate, if applicable, from the original date of payment; *provided*, that no adjustment for any invoice or payment shall be made unless objection to the accuracy thereof was made prior to the lapse of two (2) years from the date that the disputed invoice was delivered; and, *provided further*, that no adjustment shall be made to invoices or

summaries related to SPP settlement statements that SPP has deemed final under the Governing Rules. Notwithstanding anything in this Agreement or the Implementation Agreement to the contrary, adjustments to any invoice may be made up to four (4) years from the date that the particular Transactions were completed to adjust for (i) corrections made by SPP to prior SPP statements and/or (ii) tax claims. This paragraph of this Agreement shall survive the expiration or earlier termination of this Agreement for a period of four (4) years from the date of such expiration or earlier termination of this Agreement for the purpose of the right to examine records and such invoice and payment objections and corrections. [For so long as the Parties mutually agree that invoicing and payment of amounts owed under the Implementation Agreement are subject to the net invoicing and payment terms of this Agreement, then in the event of any direct conflict between the terms of this Article and the terms of the Implementation Agreement, the terms of this Article shall control.

11.8 Reserved.

- 11.9 Statements Received After Termination of this Agreement. After the expiration or earlier termination of this Agreement, if Energy Manager receives any statements from Third Parties, whether adjustments or revisions, attributable to Transactions or Services under this Agreement, Energy Manager will invoice Customer accordingly. Energy Manager will continue to send Monthly invoices to Customer reflecting any revisions, corrections, or adjustments to prior Months' statements from Third Parties until Energy Manager has transmitted invoices which reflect corrections for any Month made by any Third Party, applicable to Customer for such Month. For each invoice provided to Customer after the expiration or earlier termination of this Agreement, Customer shall pay Energy Manager any amounts owed, and Energy Manager shall pay Customer any amounts owed, as the case may be, by the Due Date. This Section 11.9 shall survive the expiration or earlier termination of this Agreement until accounting and billing for all Transactions and Services for all Months of Service under this Agreement is complete, invoices have been issued to Customer, and payments between the Parties have been resolved.

ARTICLE XII

DEFAULTS AND REMEDIES

- 12.1 Events of Default. A Party shall be deemed in default under this Agreement upon the occurrence of any one or more of the following events (each an "Event of Default"):
- (a) the failure by a Party to make a timely payment of any amounts due or provide required Credit Support to the other Party under this Agreement;
 - (b) the failure of a Party to perform its obligations under this Agreement, which failure causes SPP to suspend or disqualify a Resource, Load, or the Market Participant from market participation;

- (c) the breach of any representation or warranty of such Party that results in a material adverse impact on the other Party, or the failure by such Party to materially perform any other provision of this Agreement, which failure is not excused by the terms of this Agreement;
- (d) the appointment (voluntary or involuntary) of a receiver or liquidator or trustee of such Party or of any of the property of such Party by order of a court of competent jurisdiction;
- (e) the filing of a petition or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of federal or state bankruptcy or insolvency laws, as any such laws now exist or as those laws may be amended, or the filing of an answer admitting the material allegations of a petition filed against it in such proceeding; the general assignment by a Party for the benefit of its creditors; or the admission by such Party in writing of its inability to pay its debts generally as they become due;
- (f) the occurrence of either (i) an "Event of Default" with respect to such Party, or (ii) if applicable, a "Termination Event" where such Party is a single "Affected Party", and as a result thereof the other Party hereto designates an "Early Termination Date" pursuant to the Implementation Agreement, in each case as such terms are defined in the Implementation Agreement; and/or
- (g) the commission of a fraudulent act or omission by a Party in the performance of its obligations hereunder.

12.2 Rights of Non-Defaulting Party. If an Event of Default occurs and is continuing with respect to a Party (the "Defaulting Party"), the Party not subject to the Event of Default (the "Non-Defaulting Party") shall have the right to take any one or more of the following actions:

- (a) upon the occurrence of an Event of Default as specified in Sections 12.1(a), 12.1(b), 12.1(d), 12.1(e), 12.1(f), or 12.1(g), to suspend performance immediately and without notice;
- (b) upon the occurrence of an Event of Default as specified in Section 12.1(c), upon three (3) Business Days' notice, to suspend performance of any obligation which, if performance continued, would expose the Non-Defaulting Party to material risks or material unrecovered costs;
- (c) upon the occurrence of an Event of Default as specified under Sections 12.1(a), 12.1(b), or 12.1(g), to terminate this Agreement by giving the Defaulting Party written notice setting forth a description of the Event of Default and designating a termination date, provided that the Defaulting Party shall have three (3) Business Days after the date of such notice in which to cure the Event of Default;
- (d) upon the occurrence of an Event of Default as specified under Section 12.1(c), to terminate this Agreement by giving the Defaulting Party written notice setting forth

a description of the Event of Default and designating a termination date, provided that the Defaulting Party shall have fifteen (15) Days after the date of such notice in which to cure the Event of Default;

- (e) upon the occurrence of an Event of Default as specified in Sections 12.1(d), 12.1(e), or 12.1(f), to terminate this Agreement immediately and without notice;
- (f) to pursue collection of direct, actual damages and seek any other remedy at law or in equity (except to the extent limited by, or waived under, this Agreement);
- (g) to pursue collection of reasonable attorney's fees and costs if any action is brought to enforce any term or provision of this Agreement or collect amounts due (whether at the trial court level or any appeal there from); and/or
- (h) to pursue any other remedy provided under this Agreement.

- 12.3 Acceleration of Amounts Due. If a termination of this Agreement occurs pursuant to this Article XII, the Non-Defaulting Party may accelerate all amounts owing between the Parties, offset amounts owed by the Defaulting Party against amounts due the Defaulting Party and against any Credit Support held between the Parties, and liquidate and terminate all Services, Transactions and/or scheduled quantities of Products where commercially reasonable to do so. To the extent applicable, where scheduled Transactions or scheduled quantities cannot be liquidated or terminated in a commercially reasonable manner, or may not be liquidated and terminated without causing a breach of any contract with a Third Party under which such scheduled Transactions or scheduled quantities have been committed, then this Agreement will continue in force as to those scheduled Transactions and scheduled quantities for the duration of the contractual commitment to Third Parties.

ARTICLE XIII **FORCE MAJEURE**

- 13.1 Force Majeure. Subject to Section 13.2 of the General Terms and Conditions, neither Party shall be considered to be in default in the performance of any obligations under this Agreement (other than the obligation to make a payment of amounts owed) to the extent and for the duration that such failure of performance results from Force Majeure. The term "*Force Majeure*" means causes that are beyond the reasonable control of the Party affected that, by exercise of due diligence, such Party could not reasonably have been expected to avoid and that, by exercise of due diligence, it has been unable to overcome and not the result of the fault or negligence of such Party including, but not limited to: flood, earthquake, tornado, hurricane, storm, or fire; acts of terrorism; civil disobedience, strikes, or other labor dispute; labor or material shortage; sabotage; pandemic, epidemic or other public health emergency; restraint, order, rule, or regulation of any court, governmental body, or public authority, including SPP (whether valid or invalid); material equipment malfunction or failure not caused by the act or omission of the Party claiming Force Majeure (including computer hardware or software malfunction) and not reasonably susceptible to cure by the exercise of diligent efforts by the Party claiming Force Majeure.

- 13.2 Due Diligence. No Party, however, shall be relieved of liability for failure of performance hereunder based on Force Majeure if such failure is due to causes arising out of its own negligence or due to removable or remediable causes that it fails to remove or remedy within a reasonable time period. A Party claiming Force Majeure must exercise due diligence to overcome the Force Majeure event. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.
- 13.3 Obligations During Force Majeure. Notwithstanding any other provisions as stated in this Article XIII, an event of Force Majeure does not relieve a Party of any of its obligations under the Governing Rules and this Agreement that the Party can reasonably perform during a Force Majeure event, and does not excuse a Party of its obligations to make payments for obligations arising prior to the Force Majeure event, or of any payment obligations for non-performance arising pursuant to the Governing Rules and this Agreement.
- 13.4 Bilateral Transactions. For the avoidance of doubt, this Article XIII shall not apply to Bilateral Transactions governed by the Implementation Agreement, and any applicable force majeure provisions contained in the Implementation Agreement shall apply to such Bilateral Transactions.

ARTICLE XIV **CONFIDENTIALITY**

- 14.1 Confidentiality.
- (a) Subject to the remaining provisions of this Section 14.1, each Party agrees, for itself, its Affiliates, and its Representatives, to keep confidential this Agreement, all negotiations concerning this Agreement, and all other information furnished by either Party related to schedules, Services, credit and financial obligations, Customer's Transactions, or other Transactions under this Agreement ("**Confidential Information**"); *provided, however*, such confidentiality obligation shall expire three (3) years immediately following the expiration or earlier termination of this Agreement.
 - (b) The receiving Party, its Affiliates, and its Representatives shall not disclose any Confidential Information to any Third Party without the prior written consent of the disclosing Party unless requested or required by a Governmental Authority or self regulatory organization or as permitted in accordance hereof, except that a Party may disclose Confidential Information to any Affiliate, Representative, current or future financing sources, insurer, auditor, or potential purchaser of or investor in a Party and its parent or Affiliates (and its and their Representatives who need to know such information) who agree to keep such Confidential Information confidential on terms no less restrictive, as a whole, than those set forth in this Section 14.1, without such prior written consent. Except with regard to disclosures

permitted by this Section 14.1, the disclosing Party shall require such Third Party to agree to treat the Confidential Information in accordance with this Agreement. Each Party shall be responsible for the compliance by its Affiliates and Representatives with this Section 14.1 of the General Terms and Conditions.

- (c) In the event any Party is requested or required to disclose such Confidential Information by law or by a court, agency, or other governing body having or purporting to have jurisdiction over the Party, to the extent permitted by law such Party shall notify the other Party prior to any disclosure so as to allow the other Party to resist such disclosure before the governing body and/or to seek appropriate protection from further disclosure.
- (d) The Parties agree that disclosure of Confidential Information in breach of the confidentiality provisions of this Agreement constitutes an irreparable injury and that injunctive relief is an appropriate remedy to prevent the unwarranted disclosure of any Confidential Information.
- (e) The confidentiality provisions of this Agreement shall not apply to any Confidential Information (i) the receiving Party developed independently without using the Confidential Information, (ii) that was in the public domain at the time of disclosure hereunder, (iii) that passes into the public domain by acts other than the acts of or caused by the Party receiving said Confidential Information, or (iv) that thereafter is disclosed to the receiving Party by a Third Party, provided that the receiving Party does not know (or has no reasonable basis to know) that the information was received or disclosed unlawfully.

ARTICLE XV

REPRESENTATIONS AND WARRANTIES

15.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party continuously throughout the Term that:

- (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in the state(s) in which it is performing or receiving Services (as applicable);
- (b) it has the full power and authority to enter into this Agreement and perform all of the specified obligations, representations, warranties, and covenants under this Agreement;
- (c) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action of its governing body, and the Person signing this Agreement on its behalf was duly authorized to execute and deliver this Agreement on its behalf;

- (d) it has obtained, or shall obtain prior to the Commencement Date, all required licenses, registrations, certifications, Permits, and other authorizations; and has taken, or shall take prior to the Commencement Date, all actions required by Applicable Laws, the Governing Rules or governmental regulations with the exception of licenses, registrations, certifications, Permits, or other authorizations that do not materially affect performance under this Agreement;
 - (e) it is not in violation of any contracts, laws, ordinances, or governmental rules, regulations, or orders of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;
 - (f) it is not bankrupt, does not contemplate becoming bankrupt nor, to its knowledge, will become bankrupt;
 - (g) it is solely responsible for keeping itself informed of and understanding its respective responsibilities under the Governing Rules and any laws, rules, regulations, and tariffs approved by any Governmental Authority with jurisdiction over the matters specified herein; and
 - (h) it is not registered as a commodity trading advisor under the U.S. Commodity Exchange Act and is not holding itself out as in the business of advising others as to the value or advisability of trading swaps, options, futures or cash settled forwards or any other commodity transaction. Any oral or written communications by Energy Manager with respect to this Agreement are not intended to be commodity trading advice.
- 15.2 Additional Customer Representations and Warranties. Customer represents and warrants that Customer will work in good faith with Energy Manager to make, prior to the Commencement Date, all required registrations with, and receive all required certifications and approvals from, SPP to perform this Agreement.
- 15.3 Additional Energy Manager Representations and Warranties. Energy Manager represents and warrants that Energy Manager has made or will make prior to the Commencement Date all required registrations with, and received all other required certifications and approvals from, SPP to perform this Agreement.

ARTICLE XVI

MISCELLANEOUS

- 16.1 Disclaimer. This Agreement shall not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties, and the rights and obligations of the Parties with respect to this Agreement shall be limited to those set forth in this Agreement.
- 16.2 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld,

conditioned or delayed; *provided, however*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party so long as such Affiliate's creditworthiness as of the date of such proposed transfer or assignment is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any; *provided, however*, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request and, in the case of Energy Manager, the assignee possesses all licenses and expertise necessary to perform all obligations of Energy Manager under this Agreement. Any purported assignment in contravention of this Section shall be null and void and the non-assigning Party is not obligated to recognize the purported assignment of this Agreement.

- 16.3 Governing Law, Jury Trial Waiver, Expenses. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION, CLAIM OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. IF EITHER PARTY BRINGS ANY LEGAL ACTION TO ENFORCE ITS RIGHTS UNDER THIS AGREEMENT OR SEEKS ENFORCEMENT UNDER THE TERMS OF ANY CREDIT SUPPORT PROVIDED BY THE OTHER PARTY, THE PREVAILING PARTY SHALL BE ENTITLED TO REIMBURSEMENT FROM THE OTHER PARTY OF REASONABLE ATTORNEYS' FEES AND LITIGATION COSTS AND EXPENSES, INCLUDING WITNESS FEES OF ANY KIND, IN AN AMOUNT TO BE DETERMINED BY THE APPLICABLE COURT OR BY AGREEMENT OF THE PARTIES.
- 16.4 Counterparts. This Agreement may be executed in multiple counterparts, including PDF documents exchanged by email, each one of which shall be considered an original Agreement, but all of which together shall constitute one and the same instrument.

- 16.5 Waiver. No waiver by either Party of any one or more defaults by the other in the performance of any provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. The rights and remedies of the Parties are cumulative and not alternative. Neither any failure nor any delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. Failure by a Party to enforce any of the terms, covenants, conditions or other provisions of this Agreement at any time will not in any way affect, limit, modify or waive that Party's right thereafter to enforce strict compliance with every term, covenant or condition of this Agreement, notwithstanding any course of dealing or custom of the trade.
- 16.6 Amendments. This Agreement shall not be amended without the written consent of both Parties.
- 16.7 Severability. Any provision, article, or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties, or deemed unlawful because of a statutory change, shall not otherwise affect the other lawful obligations that arise under this Agreement. In the event any provision of this Agreement is declared invalid, the Parties shall promptly negotiate to restore this Agreement as near as possible to its original intent.
- 16.8 Entire Agreement. This Agreement contains the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, negotiations and agreements, whether oral or written, between the Parties with respect to such subject matter.
- 16.9 Headings. The section headings of this Agreement are for convenience of reference only, and do not form a part of this Agreement, and do not in any manner modify, interpret, or construe the intent or agreement of the Parties.
- 16.10 Recordings. Each Party consents to the recording and retention of any telephone conversations, e-mail or electronic message between the Parties ("Recording"), and each Party will obtain any required consents to such Recordings from such Party's affected personnel, contractors, or agents. Subject to other applicable rules of evidence, such as the rule of relevance, the contents of such Recording transmitted between the Parties concerning this Agreement may be utilized to determine the intent of the Parties in any dispute arising under this Agreement, and such telephone or electronic record will be deemed a written business record of any information, confirmation, consent, bid, authorization, instruction, notice or Transaction under this Agreement, which may be submitted in evidence in any proceeding or action related to this Agreement. Each Party waives objection to the admission in court of such Recording based on the "Best Evidence Rule" or other legal principles. Such Recording will be the controlling evidence of the Parties' agreement with respect to any particular information, confirmation, consent, notice, or Transaction in the event a written confirmation of that information, confirmation,

consent, or other Transaction is not fully executed or accepted by both Parties. A written confirmation executed by both Parties will prevail over a Recording of a Transaction. Each Party waives any further notice of monitoring or recording and agrees to notify its officers and employees and obtain any required consent to any such monitoring or recording.

- 16.11 Imaged Agreement. Any original executed Agreement, confirmation or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the confirmation if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party will object to the admissibility of the Recording, the confirmation or the Imaged Agreement (or photocopies of the transcription of the recording, the confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.
- 16.12 Survival of Contract Terms. In addition to Sections of this Agreement which specifically state that they shall survive the expiration or earlier termination of this Agreement, the Parties also agree that these General Terms and Conditions shall survive the expiration or earlier termination of this Agreement as and to the extent necessary to give proper effect to the intent of the Parties with respect to their respective rights and obligations arising prior to the expiration or earlier termination of this Agreement.
- 16.13 No Fiduciary Duty. Both Parties recognize the commercial nature of this Agreement and neither Party will owe any essential fiduciary duty to the other Party or any Third Party with respect to the performance of any of its obligations hereunder. The Parties hereby waive, to the fullest extent permitted by Applicable Laws, any and all fiduciary duties that, absent such waiver, may be implied by law, and in doing so, recognize, acknowledge and agree that their duties and obligations to one another are only as expressly set forth in this Agreement. Customer acknowledges and agrees that this Agreement shall not preclude Energy Manager from providing services or making sales of a like nature to any other Person, either currently or in the future. Energy Manager may, notwithstanding this Agreement, engage in whatever activities it may choose, including, without limitation, providing the same or similar sales or services in the same geographic region (or other competing activities) for its own account (or for the account of others). Neither this Agreement nor any activity undertaken related to this Agreement will prevent Energy Manager from engaging in such activities, or require Energy Manager to disclose the same.
- 16.14 Joint Preparation of Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

- 16.15 No Public Utility Designation. Each Party agrees that it shall not claim in any bankruptcy proceeding related to such Party that the other Party is serving as a public utility for such Party by selling Energy or providing Services under this Agreement.
- 16.16 Exclusion of Third Party Rights. The provisions of this Agreement will not impart rights enforceable by any Person or entity not a Party or bound as a Party hereto unless such Person or entity is a permitted successor or assignee of a Party bound by this Agreement, and the Parties do not intend to create any Third Party beneficiary under this Agreement, except to the extent (i) security interests in this Agreement have been granted to Customer's lenders, and (ii) certain rights to raise contractual rights and/or defenses under this Agreement have been extended to a Party's Guarantor under any guaranty provided as Credit Support hereunder.

Exhibit A
Resources and Load

Resources:

Facility Name	NC2
Location	
Physical Address	
Nominal Nameplate Capacity	5.8 MW
Facility Type	coal
Interconnecting Transmission Utility	

Facility Name	Customer Generation
Location	
Physical Address	
Nominal Nameplate Capacity	21.5 MW
Facility Type	diesel/natural gas
Interconnecting Transmission Utility	

Facility Name	WAPA
Location	
Physical Address	
Nominal Nameplate Capacity	3 MW
Facility Type	hydro
Interconnecting Transmission Utility	

Load:

Summer season: 15 MW

Winter season: 10.5 MW

Exhibit B
Notice Information

Tenaska Power Services Co.	City of Falls, Nebraska
Notice Address: 300 E. John Carpenter Freeway, Suite 1100 Irving, TX 75062	Notice Address:
Attn: Director, Contract Administration	Attn:
Phone: (817) 303-1860	Phone:
Email: TPSContractAdmins@tnsk.com	Email:
CICI Number: 549300K7NFSB93YGBN35	CICI Number:
CFTC Designation: End User	CFTC Designation:
Duns: 01-501-6913	Duns:
Federal Tax ID Number: 47-0824081 (The above is the Tax ID for Tenaska Energy, Inc., the parent company of TPS. TPS is a disregarded entity for federal tax purposes.)	Federal Tax ID Number:
Confirmations: Attn: Confirms Phone: (817) 303-3609 Email: confirms@tnsk.com	Confirmations: Attn: Phone: Email:
Real-Time Trading: Phone: (817) 462-1528	Real-Time Trading: Phone:
Payments: Attn: Accounts Receivable 14302 FNB Parkway Omaha, NE 68154 Phone: (402) 938-1621	Payments:
Invoices: Attn: Accounts Payable Phone: (817) 462-1521 Email: tps-accounting@tnsk.com	Invoices: Attn: Phone: Email:

Wire/ACH Transfer: Bank: US Bank, Omaha, NE ABA No: 042000013 Account No: 130111671306 Account Name: Tenaska Power Services Co.	Wire/ACH Transfer: Bank: ABA No: Account No: Account Name:
Credit and Collections: Attn: Credit Department Phone: (817) 303-1113 Email: credit@tnsk.com	Credit and Collections: Attn: Phone Email:
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Vice President and General Counsel Phone: (817) 462-8053 Email: eodnotices@tnsk.com	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Email:

Exhibit C
Energy Manager's NEB Share Calculation

1. "**Energy Manager's NEB Share**" for a given Month shall equal thirty-five percent (35%) of the positive Net Economic Benefit achieved for any Demand Response Resource participation or any load reduction activities directed by Energy Manager for such Month.
2. "**Net Economic Benefit**" or "**NEB**" for a given Month shall equal (i) Monthly Revenues for such Month, *minus* (ii) Product Costs for such Month.

For purposes of the foregoing NEB calculation, the following definitions, terms and conditions shall apply:

- (a) "**Monthly Revenues**" shall mean, with respect to a Month, the total net revenues received by Customer in such Month from sales of Product provided by the Resources when operating and/or participating in the SPP Energy and/or Operating Reserve Markets.
- (b) "**Product Costs**" shall mean, with respect to any Month, (1) the Resource(s) cost associated with production or provision of applicable Products included in the SPP market offer used to clear or dispatch the Resource(s) by SPP, including but not limited to: (i) variable operation and maintenance costs, including the variable costs under any long term service agreement for the Resources, in each case that are used in the submission to the SPP market as part of the Resource(s) offer, and (ii) Resource(s) start-up costs that are used in the submission to the SPP market as part of the Resource(s) offer; or (2) if such Products were not physically produced or provided, then the costs of replacing such Products to provide or settle such Products.
- (c) **Exclusions From NEB Calculations.** Customer may generate Energy from the Resource(s) during a time period which Energy Manager has advised it would not be economical to run such Resource(s) (e.g., when Customer is testing the Resource(s) or dealing with operational or safety issues at the Resource(s)). If in any Month Customer generates Energy from the Resource(s) during periods in which Energy Manager has advised such generation would be uneconomic, then all costs and revenues associated with such action (whether positive or negative) shall be borne solely by Customer and excluded from the NEB calculation for such Month. For operational reasons or otherwise, Customer may request Energy Manager to intentionally consummate a sale of a Product for a price that is less than the Customer's cost of producing the Product at the Resource(s), or to purchase a Product at a price in excess of the cost of production in the Resource(s). If these or similar intentional cases should arise, Customer will bear all costs and losses resulting from such Transaction, and such Transactions will be excluded from the calculation of the NEB for the applicable Month.

- (d) Netting of Losses. If in any Month a Transaction results in a NEB that is negative, such negative amounts shall be netted against the positive NEB amounts for such Month; provided, however, that Energy Manager's NEB Share in such Month shall never be negative.



City of Falls City
2307 Barada Street
Falls City, NE 68355
(402) 245-2851
After Hrs Phone: (402) 245-3521
www.fallscitynebraska.org
Hours: 7 AM - 4 PM Monday-Friday



Nazarene Church
1812 Wilson St
Falls City, NE 68355-2258

Account Number	AMOUNT DUE
	\$2,334.60
Due Date	After Due Date Pay
7/15/2026	PAID BY DRAFT
Service Address	
1812 Wilson St	

There will be a charge on all returned checks.
Please return this portion with your payment.
When paying in person, please bring both portions of this bill.

City of Falls City
2307 Barada Street
Falls City, NE 68355

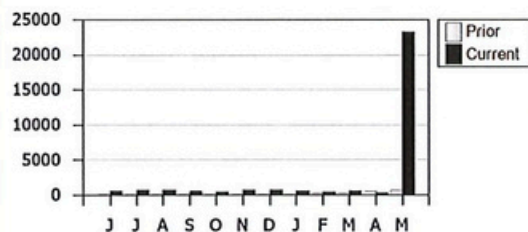
CUSTOMER ACCOUNT INFORMATION - RETAIN FOR YOUR RECORDS



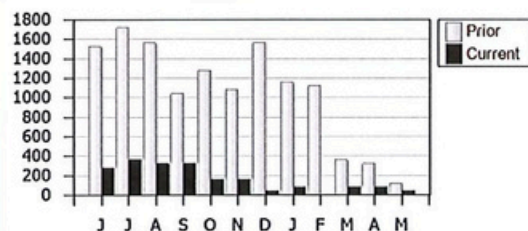
City of Falls City - 2307 Barada Street - Falls City, NE 68355 - (402) 245-2851 - www.fallscitynebraska.org

Name			Service Address			Account Number
Nazarene Church			1812 Wilson St			
Status	Billing Period From	Billing Period To	# Days	Bill Date	Penalty Date	Due Date
Active	5/14/2026	6/15/2026	32	6/26/2026	7/16/2026	7/15/2026

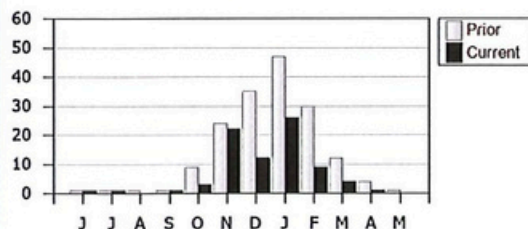
Water



Electric



Gas



PREVIOUS BALANCE	\$187.46
PAYMENTS	\$187.46-
ADJUSTMENTS	\$0.00
PENALTIES	\$0.00
PAST DUE AMOUNT	\$0.00

CURRENT READING	PREVIOUS READING	USAGE		
8,399	6,080	23,190	WATER	1,245.75
			PCA	0.06
1,889	1,888	40	ELECTRIC	46.45
124	124	0	GAS	35.00
			LIGHT RENT	14.14
			SEWER	921.73
			EXF	2.00
			WATER INFRASTRUCTURE	49.83
			ELEC INFRASTRUCTURE	1.21
			SEWER INFRASTRUCTURE	18.43
			CURRENT BILL	\$2,334.60
			AMOUNT DUE	\$2,334.60
				PAID BY DRAFT



Completed

Job Date: 7/1/2026 08:00 AM
Job Code: WTR-CHK METER - WTR-CHECK RADIOHEAD/FIX WIRE
Group: Utility Office
Staff: UO-1ST AVAIL

Service Order #: SO0009653
Job Action: Miscellaneous
Issued By: OFFICE STAFF
Requested By: NAZARENE CHURCH

Location: 1812 WILSON ST FALLS CITY NE 68355
Account: NAZARENE CHURCH

Services

Service	Action	Current Meter #	Meter Serial #	C #	Scale	Last Read	Reading	New Meter #	Set Reading
100 -Water	No Action	61528260	18352740	91240268	10	8399			
Meter Location: WA N BLDG									
200 -Electric	No Action	9000680	9000680	4246315	40	1889			
Meter Location: EL POLE @ ALLEY									
300 -Gas	No Action	943559	943559	27572291	1	124			
Meter Location: GS E @ BLDG.									
201 -Light Rent	No Action								
400 -Sewer	No Action								
500 -Excise tax	No Action								
INF -Infrastructure	No Action								

Order Notes: July's bill consumption for water was over 23000 units, making the bill over \$2300...all they found was a leaking toilet stopper but we are thinking there has to be more of an issue. We would like to get a current meter read and maybe check for any leaks by the meter...?

Completion Notes: Informed customer that they have been using water. I shown them the data log, water usage stopped about 6/18/26 and hasn't had any since. Customer stated they shut off a toilet about that time. Discussed with courtney the situation. Ns

Completion Date: _____

Worked By: _____

Approved By: _____

☐ Payment
 ☐ Service Orders
 ☐ Services
 ☐ Transactions

Summary Profile
 General
 Options
 Credit History
 Payment
 Donations
 Account Notes
 Additional Contacts
 User Defined
 Alerts
 Financial
 Billing
 Services
 Contracts
 Energy Assistance
 AMP
 Past Due
 History
 Transactions
 Notifications
 Service Orders
 Account Service Billin
 Billing History
 Legacy Transaction H
 Legacy Transaction D
 Documents

Balance: \$603.48

Add Edit Delete Collapse All

Description		
Created Date	Created By	Subject
6/18/2026	Courtney Bybee	2026.06.18 Unusually high water consumption
The water consumption is usually in the high 400s to 600s but this month it is 23190. I left a VM with Rachel Jackson at 1056 and another VM with Dustin (the church's superintendent) at 1136. Left VM with Hilary Courtney at 1200.		
7/1/2026	Courtney Bybee	2026.07.01 ACH
Turned off ACH for now because the bill is super high due to a leak. Once we have an arrangement for it and/or it is taken care of then we will need to see if they want that turned back on.		
7/2/2026	Courtney Bybee	2026.07.02 High water bill
After Next looked at the situation and got a meter reading. It was determined that the issue was a constantly running toilet. Because this water usage went through the sewer, we cannot offer any potential adjustments. The toilet water supply was turned off on June 18th after I called about the high water consumption and they have not had any consumption since.		