

**WATER AND RESOURCE RECOVERY CENTER GAS SYSTEM DEVELOPMENT AND
OPERATING AGREEMENT
BETWEEN
CITY OF DUBUQUE
AND
BRD THREE, LLC**

This **WRRC GAS SYSTEM DEVELOPMENT AND OPERATING AGREEMENT** (the “Agreement”) is made and executed this ____ day of _____, 2016 (the “Effective Date”), by and between the City of Dubuque, a governmental entity (“City”), and BRD Three, LLC, a limited liability company (“BRD”).

WHEREAS, City is the owner of the Dubuque Water and Resource Recovery Center (the “WRRC”) and is responsible for operating, monitoring and maintaining the WRRC, including digester gas management;

WHEREAS, City and BRD desire to develop a project to collect Digester Gas from the WRRC, process such gas into natural gas and distribute such gas for environmentally beneficial uses (the “Project”);

WHEREAS, City and BRD desire to enter in this Agreement for BRD to (1) assess the feasibility of developing the Project, and (2) subject to the results of BRD’s feasibility study, to develop and operate a system, incorporating all of the current gas management system at the WRRC (the “WRRC Gas Management System”), to collect, process and distribute the Digester Gas (the “BRD Gas System”) as provided herein;

WHEREAS, provided BRD confirms the feasibility of the Project and in consideration of the right to develop and operate the BRD Gas System and the lease granted hereunder, BRD has agreed to pay City an operating fee and rent as provided for herein; and

WHEREAS, provided City accepts the Operations Plan (as defined below) and approves a lease for the purposes stated herein (the “Lease”).

NOW, THEREFORE, the parties hereto, for themselves, their successors and permitted assigns, in and for the consideration of the performance of the mutual covenants, duties and responsibilities set forth herein, the receipt and adequacy of such consideration being hereby acknowledged, do hereby covenant and agree as follows:

1. Feasibility Study.

(a) City hereby grants BRD the right to perform a feasibility study for the Project (the “Feasibility Study”). City shall provide BRD with such information and access to the WRRC property necessary for BRD to perform the Feasibility Study. BRD shall complete the Feasibility Study within three (3) months of the Effective Date of this Agreement. Upon the completion of the Feasibility Study, BRD shall deliver to City (i) the Feasibility Study, (ii) provided the Project’s feasibility has been confirmed in BRD’s sole discretion, a copy of the BRD Gas System operations plan (the “Operations Plan”), and (iii) the description of the WRRC property for the Lease. The Operations Plan shall be reviewed and accepted by the Dubuque City Manager within forty-five (45) days of the City’s receipt of the Operations Plan, which acceptance shall not be unreasonably withheld, conditioned or delayed. If the Operations Plan is not accepted in accordance with the previous sentence, the parties shall work diligently and in good faith to modify and/or amend the proposed Operations Plan so as to be mutually agreeable to

the parties, If the Operations Plan is not accepted by the City within one hundred twenty (120) days from the City's receipt of the Operations Plan, this Agreement may be terminated by either party upon five (5) days prior written notice to the other party. The as-approved Operations Plan shall set forth the commencement date for construction of the BRD Gas System (the "Commencement Date"), which shall not be more than 12 months from the date of this Agreement.

(b) At any time during the Term hereof, BRD may, in its sole discretion, conduct such studies, including commissioning studies by third parties, as are necessary to reassess the continuing feasibility, or development, of the Project and BRD Gas System and, if necessary, shall notify City of any material updates or modifications to the Operations Plan.

(c) If the Project is determined by BRD, in its sole discretion, not to be, or no longer, feasible, BRD may terminate this Agreement pursuant to the terms and conditions set forth in Section 8 without any liability or penalty.

(d) For the avoidance of any doubt, BRD shall perform the Feasibility Study, and any future feasibility studies, at BRD's sole expense.

2. Grant of Rights to Develop and Operate BRD Gas System.

(a) City hereby grants to BRD for the Term the right to construct and operate the BRD Gas System in accordance with the terms of this Agreement. The rights granted to BRD pursuant to this Agreement are exclusive and City hereby agrees that during the Term, BRD shall have the sole and exclusive right to perform, directly and through its subcontractors, all development and operating activities with respect to the BRD Gas System including, without limitation, any and all activities contained in or consistent with the Operations Plan and to the extent permitted by law. The parties hereby acknowledge and agree that the right granted to BRD hereunder to operate the BRD Gas System includes the right to (i) connect the BRD Gas System to the WRRRC Gas Management System; (ii) collect and process all of the Digester Gas from the WRRRC Gas Management System; (iii) subject to the terms of Section 4(a)(iv), limited rights to perform such repairs, replacement, maintenance and modifications to the WRRRC Gas Management System in accordance with the policies and procedures set forth in the Operations Plan; and (iv) lease the (1) relevant portions of the Project site required by BRD to operate the BRD Gas System (the "Site") and (2) WRRRC property, for the Term and under the conditions provided in the Lease.

(b) City hereby further grants, transfers and conveys to BRD the exclusive right for the Term, to use all of the gas collected by the WRRRC Gas Management System (the "Digester Gas") for the collection and processing of such Digester Gas, and the marketing, distribution and sale of any and all products derived therefrom. Furthermore, City hereby grants, transfers and conveys to BRD, and hereby releases any interest, ownership rights or claims of City in and to any and all products created by BRD from the Digester Gas, including, but not limited to, natural gas or other gases or gas related products created by BRD as developer and operator of the BRD Gas System (the "BRD Products"). In the event that the BRD Gas System shall be inoperable for any reason during the Term, City's use and access rights to use the Digester gas to operate the WRRRC Gas Management System and the other City facilities at the Site, shall automatically be reinstated for only such time at the BRD System is out of operation. Any such use of the Digester Gas by City shall directly offset the amounts to be paid by BRD for Replacement Gas (as hereinafter defined) pursuant to Section 6. Upon BRD's recommencement of operations, BRD's use and access rights to the Digester Gas shall automatically be reinstated. The parties hereby agree to promptly (i) notify the other of any downtime in the WRRRC Gas Management System and BRD System and any event requiring the temporary reinstatement of use and access rights provided herein, and (ii) take all actions necessary to reinstate the use and access rights in accordance with the terms of this Section.

(c) City agrees that during the Term it will not negotiate or enter into any agreement with any other person(s) to lease, sell or otherwise encumber or alienate any interest in the WRRC or WRRC property, whether as buyer, lessee, broker, agent or otherwise, that adversely affects BRD's ability to develop and operate the Project without the prior written consent of BRD, which consent BRD may not unreasonably withhold or delay.

(d) The parties hereby acknowledge and agree that the exclusive rights to (i) operate the BRD Gas System, including such limited rights to maintain and repair the WRRC Gas Management System set forth in Section 4(a)(vi), (ii) make use of the Digester Gas and (iii) title to the BRD Products granted by City to BRD pursuant to this Section 2 is an essential term of this Agreement and of the bargained for benefits and obligations contained herein.

3. Development and Operating Performance Requirements.

(a) **Construction of the BRD Gas System.** BRD shall construct the BRD Gas System. Any construction or development by BRD at the Site or WRRC property hereunder, shall be in accordance with the Operations Plan and in compliance with all applicable laws, regulations and permits. Such construction shall begin upon the Commencement Date and be completed within the construction schedule set forth in the Operations Plan.

(b) **Equipment and Personnel.** Except for the WRRC Gas Management System, BRD shall supply all equipment, materials and supplies (collectively the "BRD Equipment") necessary to (i) to develop and operate the BRD Gas System, and (ii) perform the Feasibility Study. The BRD Equipment shall be kept in good condition and working order and shall be replaced as may be necessary. BRD shall provide all personnel necessary to operate the BRD Gas System and perform the Feasibility Study. Such personnel shall have the experience and background necessary to perform the responsibilities in a good and workmanlike matter, and in accordance with industry standards and Iowa law. In the event any services are performed by a subcontractor, BRD shall be responsible for ensuring compliance by all subcontractors with the terms and conditions of this Agreement, and shall be liable for any failure by any subcontractor to comply with the terms and conditions of this Agreement.

(c) **Operations.** Once the BRD Gas System has been constructed, BRD shall operate the BRD Gas System in compliance with this Agreement and the Operations Plan. In the event of any conflicts between this Agreement and the Operations Plan, then this Agreement shall control.

(d) **Cost and Expenses.** BRD shall pay for all costs and expenses for constructing, operating and maintaining the BRD Gas System and the Site, performing the Feasibility Study and otherwise performing its obligations under the Operations Plan and under this Agreement; provided, however, except for any repairs or replacements directly arising out of BRD's negligent acts or omissions, City shall be responsible for the costs and expenses for any repairs or replacements necessary to keep the WRRC Gas Management System in good working order.

(e) **No Interference.** BRD's development of the Site and operations under this Agreement shall not interfere with City's continuing obligations at the WRRC. Subject to the terms of this Agreement, City shall not interfere with BRD's operations under this Agreement.

(f) **Permits.** BRD shall obtain and comply with all applicable permits, licenses, or other approvals necessary to construct and operate the BRD Gas System, and for BRD to otherwise provide the services contemplated under this Agreement. City shall reasonably cooperate with BRD at BRD's sole cost and expense (excluding time of City personnel) in obtaining such permits, licenses and approvals (other than those permits, licenses and approvals which are issued by City).

4. WRRC Gas Management System and Services.

(a) City hereby acknowledges and agrees that it shall continue to be responsible for the performance during and after the Term of the WRRC gas management services as specified in Exhibit A attached hereto and incorporated herein by this reference (the “WRRC Gas Management Services”). City hereby further agrees that, during the term, it shall, and shall cause its authorized agent or service provider to, perform the WRRC Gas Management Services in accordance with the following terms and conditions:

(i) The WRRC Gas Management Services shall be performed (1) by qualified personnel with the experience and background necessary to perform the work, (2) in a good and workmanlike matter, (3) in accordance with industry standards, and (4) in compliance with all applicable laws, regulations and permits;

(ii) City shall cause its service providers to deliver to BRD Digester Gas meeting or exceeding the gas quality and quantity specifications set forth on Exhibit A, except during scheduled maintenance or servicing notified to BRD in accordance with Section 4(iv) or due to force majeure events;

(iii) The WRRC Gas Management System shall be maintained in good working order and condition, and subject to City’s prior written approval, which shall not be unreasonably withheld, conditioned or delayed, BRD shall, at its sole cost and expense, have the right to undertake any maintenance, repairs, replacements, modifications or improvements to the WRRC Gas Management System (other than those obligations of City set forth herein) necessary to operate the BRD Gas System;

(iv) The parties shall use their commercial best efforts to cooperate in the scheduling of any maintenance, repair or replacement of the WRRC Gas Management System, and, without limiting any of the foregoing, City shall provide BRD with no less than ten (10) business days prior written notice of any such scheduled maintenance, repair or replacement; BRD shall provide written confirmation that its actions will cause no negative effect to existing equipment warranties;

(v) City shall immediately notify BRD of, and the parties shall use their commercial best efforts to remediate and resolve as soon as possible, any event or occurrence that may result in downtime of the WRRC Gas Management System and/or an adverse change in the quality and/or quantity of Digester Gas collected at the WRRC; and

(vi) City hereby grants BRD and its agents access to the WRRC Gas Management System as provided in the Operations Plan for purposes of exigent or emergency circumstances and where City or its authorized agent or service provider is otherwise unavailable to attend or resolve the situation, for the sole purpose of remedying any defect in the operation or performance of the WRRC Gas Management System.

(b) Except for any repairs, replacements, modifications or other services that BRD may request from time-to-time to improve the operational efficiency of the WRRC Gas Management System, City shall be responsible for all costs and expenses related to the performance of the WRRC Gas Management Services and repair, replacement and maintenance of the WRRC Gas Management System.

5. City Obligations. At all times during the Term, City shall:

(a) Upon BRD’s reasonable request, make available within a reasonable time period to BRD any and all documents in City’s custody or control relating to the WRRC, the Site, the WRRC property and the WRRC Gas Management System, including, but not limited to plans, surveys, consultant or other

third party reports, service plans which affect the WRRC, the Site, Gas Management System, or WRRC property, soils and/or environmental reports, correspondence or memoranda, and copies of all existing easement agreements, site development agreements and any other agreements affecting development and operation of the Project;

(b) Upon BRD's reasonable request, provide such assistance to BRD as may be reasonably necessary in providing or securing information from City, the State of Iowa, the Federal Government and any third parties to whom City has reasonable access concerning the WRRC, the Site and WRRC property, including public tax-exempt and taxable and other financing and grant sources and programs that may be available for the BRD Gas System (including the WRRC Gas Management System), including without limitation sales tax exemptions, tax-increment financing, public improvement fees, community development block grants, sustainability and energy assistance funds under the American Recovery and Reinvestment Act of 2009 or otherwise, and other sources of information, materials and approval authority regarding the WRRC, and the Project development, compliance, financing and operations;

(c) As provided in the lease, grant BRD all access rights to the WRRC, the Site and WRRC property, and such easements and use rights, necessary to develop and operate the BRD Gas System and perform the Feasibility Study including, without limitation, all rights of ingress and egress, and use of existing roadways over City land, to access the WRRC, the Site and WRRC property, and assisting in obtaining any other easements and rights of way necessary to develop the Project and BRD Gas System; for the avoidance of doubt access rights granted hereunder shall be 24 hour access rights for BRD and its authorized agents; and

(d) Provide reasonable assistance to BRD to pursue and approve, within its designated authority, such public and other approvals deemed required or desirable by BRD under this Agreement and to perform its obligations hereunder, including any assistance as may be necessary for BRD to obtain sales tax exemptions, environmental permits or authorizations.

6. Operating Fee and Rent.

(a) As consideration for the exclusive right to develop and operate the BRD Gas System, BRD hereby agrees to pay City an operating fee (the "Operating Fee"), calculated annually, of Ten Thousand Dollars (\$10,000) plus five percent (5%) of the Gross Revenue received by BRD from the sale of the BRD Products. The \$10,000 portion of the Operating Fee shall be paid on the Commencement Date of this Agreement and annually on the anniversary date thereof during the Term. The 5% portion of the annual Operating Fee shall be paid as set forth in Section 6(c).

(b) In addition to the Operating Fee, and as consideration for the Lease and the exclusive rights to all of the Digester Gas granted hereunder, commencing on the Commencement Date, BRD shall pay City the rent and any other costs and expenses set forth in the Lease in accordance with the terms thereof.

(c) For each calendar year ending on March 31st (or portion thereof) during the Term, BRD shall calculate the 5% portion of the Operating Fee pursuant to Section 6(a), and within sixty (60) days following the expiration of such calendar year, BRD shall deliver to City a written statement certified by its accountants showing the calculation of such amounts. BRD shall pay to City the Operating Fee within thirty (30) days of the date of each such statement but in no event later than June 30th, in accordance with the City's payment instructions. For purposes of this Agreement, "Gross Revenue" shall mean the gross revenue received by BRD from the sale of the BRD Products, including any regulatory credits received by BRD.

7. **Term.** The initial term of this Agreement is fifteen (15) years from the date hereof (the “Initial Term”). BRD shall have the option to renew this Agreement for one (1) additional five (5) year period (“Renewal Term”) upon the same terms and conditions contained herein (“Renewal Option”). BRD may exercise its Renewal Option by delivering to City within ninety (90) days of the expiration of the then current term a written notice exercising its Renewal Option hereunder. Within ninety (90) days prior to the expiration of the Renewal Term, the parties agree to negotiate in good faith the terms for any subsequent renewal terms. “Term” shall be defined to include the Initial Term and any Renewal Term.

8. **Termination.**

(a) Upon the occurrence of a material default hereunder, which default is not cured within thirty (30) days following written notice of default, or, if such default is not reasonably capable of cure during such period, within ninety (90) days following written notice of default provided that the defaulting party is exercising good faith and due diligence to cure the default, the non-defaulting party may terminate this Agreement.

(b) BRD may terminate this Agreement upon thirty (30) days’ written notice in the event BRD determines, in its reasonable discretion, that (i) the Project is not, or no longer, feasible pursuant to Section 1 or (ii) permits or authorizations deemed necessary or desirable by BRD with respect to the development and operation of the Project have not been obtained or, in BRD’s reasonable opinion, are unlikely to be obtained without undue delay or material adverse effect to the Project.

(c) City may terminate this Agreement with immediate effect if BRD (i) makes an assignment or any general arrangement for the benefit of creditors, (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) is unable to pay its debts as they fall due.

(d) In the event of termination by the parties pursuant to this Section 8, BRD shall cease to be obligated to perform hereunder and shall have no further liability or obligations to City, including the payment of any rent or expenses under the Lease after the termination date, except as otherwise provided for in this Agreement.

(e) Notwithstanding the termination or expiration of this Agreement, and except as otherwise stated in this Agreement, those obligations contained herein that by their terms or nature are intended to survive such termination or expiration and shall be binding upon the parties and their legal representatives, heirs, successors and assigns.

9. **Removal of BRD Gas System Assets.**

(a) Within six (6) months after the expiration or earlier termination of the Term, except for the WRRC Gas Management System, BRD shall, at its own expense, remove all physical material pertaining to the BRD Gas System from the Site (the “Gas System Assets”), leave the area formerly occupied by the Gas System Assets in substantially the same physical condition which existed immediately before the installation of the Gas System Assets (the “Removal Obligations”); provided, however, in the event the parties agree that any Gas System Asset shall remain on the Site, such Gas System Asset(s) shall not be subject to the Removal Obligations hereunder and thereafter shall become the property of City. With respect to any equipment or materials that are installed by BRD to connect the BRD Gas System with the WRRC Gas Management System, City shall make final determinations as to

which physical materials shall remain where the Gas System Assets interconnect with the WRRC Gas Management System.

(b) City shall grant BRD all necessary or reasonably required easements and access rights to and from the WRRC property in order for BRD to perform its aforesaid Removal Obligations and for the purposes of effecting or completing any required decommissioning under any permit, license or agreement issued in connection with the Project.

(c) City hereby acknowledges and agrees that BRD shall not be responsible in any manner for the removal from the WRRC property of the WRRC Gas Management System or other WRRC assets or property currently in place at the WRRC property (the "WRRC Assets") or for the restoration of the WRRC property arising out of the removal of the WRRC Assets by City or any third party; provided, however, that in the event the BRD Gas System or BRD's Removal Obligations cause any damage to the WRRC Assets, BRD shall remedy such damage and/or restore the WRRC Assets.

(d) BRD's Removal Obligations pursuant to this section shall be secured by the security deposit agreed by the Parties and set forth in the Lease.

10. Representations and Warranties.

(a) Each of the parties represents and warrants to the other that (i) it has the full right, power and authority to enter into this Agreement and to consummate or cause to be consummated the transaction contemplated herein, (ii) this Agreement is the legal, valid and binding obligation of such party, enforceable in accordance with its terms, and (iii) no consent, authorization, license, permit, registration or approval of, or exemption or other action is required in connection with its execution and delivery of this Agreement and the performance of its obligations hereunder.

(b) BRD represents and warrants that (i) it possesses the professional and technical skills required to perform its obligations under this Agreement; (ii) it understands the currently known hazards which are presented to persons, property, and the environment in connection with its performance under this Agreement; (iii) it is aware of all laws, regulations, orders, and other governmental requirements pertaining to performance of this Agreement; (iv) it will perform its obligations hereunder in full compliance with all applicable laws, regulations, orders, permits, and other governmental requirements; (v) any subcontractors, agents or personnel employed by BRD will meet the same standards as apply to BRD; and (vi) it and its subcontractors, agents and personnel shall (1) replace, repair and maintain the WRRC Gas Management System (to the limited extent provided for herein) in accordance with the applicable manufacturer's warranties therefor and (2) develop and operate the BRD Gas System so as not to adversely affect such manufacturer's warranties.

11. Insurance. BRD shall procure and maintain during the Term, at its own expense, insurance as required by the Insurance Schedule attached hereto as Exhibit B.

12. Indemnity.

(a) Each party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other party, its elected and appointed officials, managers, members, officers, affiliates, employees, successors, legal representatives and assigns (the "Indemnified Party"), from and against any all claims, damages, liabilities, losses, judgments, settlements and costs (including, without limitation, reasonable attorney's fees and disbursements) ("Claims") relating to (a) an Indemnifying Party's, or its personnel or agent's breach of this Agreement, including, but not limited to, the Parties obligations under Section 13 of this Agreement, and/or (b) bodily injury or death of any person or damage to real and/or tangible personal

property arising from the negligence or willful misconduct of the Indemnifying Party, its personnel or agents during the Term of this Agreement.

(b) The Indemnified Party must provide notice to the Indemnifying Party promptly upon learning of any Claim for which defense or settlement may be sought, but failure to do so will have no effect except to the extent the Indemnifying Party is prejudiced by the delay. The Indemnified Party seeking defense or settlement will allow the Indemnifying Party to control the defense and settlement of the Claim and will reasonably cooperate with the defense. The Indemnifying Party will use counsel reasonably experienced in the subject matter at issue and will not settle a Claim without the written consent of the Indemnified Party, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim where relief against the Indemnified Party is limited to monetary damages that are paid by the Indemnifying Party under this Section 12. The Indemnifying Party shall have no obligation to indemnify for any settlement made without its prior written consent.

13. Environmental.

(a) City's Covenants, Representations and Warranties.

(i) The City represents and warrants, to the best of its actual knowledge, that there are no Environmental Conditions currently existing on the WRRC property. The City further covenants that it shall not cause nor by its act or omission permit to be caused any Environmental Conditions to occur or exist on the WRRC property during the Term of this Agreement. The City shall comply with any and all federal, state and local environmental laws and regulations applicable to City's operations at the WRRC, and, specifically, shall not take any action or make any omission which may cause the WRRC to violate an environmental permit, law or regulation. For the purposes of this Agreement, "Environmental Conditions" shall mean the presence, release or threatened of hazardous substances or materials, created or caused by any party, that does or may reasonably be expected to (i) require abatement or correction under any environmental law or regulation, (ii) give rise to any civil or criminal liability on the part of any party under any environmental law, or (iii) create a public or private nuisance.

(ii) The City shall obtain and comply with any and all permits currently held, and subsequently required to be held during the Term hereof, by the City related to the operation of the WRRC, except the City shall not be responsible for obtaining any permits related to the development and operation of the BRD Gas System. The City shall provide BRD all assistance necessary in order to obtain any and all permits or authorizations necessary to construct and operate the BRD Gas System.

(b) BRD Covenants, Representations and Warranties:

(i) BRD, its directors, officers, owners, employees and agents shall not cause nor by its act or omission permit to be caused an Environmental Condition on the WRRC Property.

(ii) BRD shall comply with any and all federal, state and local environmental laws and regulations applicable to the WRRC, and, specifically, shall not take any action or make any omission which may cause the WRRC to violate an environmental permit, law or regulation.

(iii) BRD shall obtain all applicable environmental permits and authorizations necessary for the development and operation of the BRD Gas System and the services to be performed hereunder.

(iv) BRD shall sign the existing Consent Decree which shall be attached as Exhibit C, and to the extent applicable to BRD's operations at the Site, BRD shall comply with the terms thereof.

(c) City hereby covenants and agrees to indemnify and hold harmless BRD and its managers, members, officers, affiliates, employees, successors, legal representatives and assigns from and against all claims, damages, liabilities, losses, judgments, settlements and costs (including, without limitation, reasonable attorney's fees and disbursements) related to Environmental Conditions at the WRRC, or any portion thereof, whether currently existing or subsequently caused, known, or unknown, and howsoever caused, to the extent not directly caused by BRD.

14. Limitation on Liability. To the fullest extent allowable by law, and notwithstanding any other provision of this Agreement, the parties agree that, whether as a result of breach of contract, warranty, tort (including negligence or patent infringement), strict liability or otherwise, neither party shall be liable to the other party for any special, consequential, incidental, indirect or exemplary damages including but not limited to loss of profit, loss of revenue or loss of use of equipment, whether or not either party was advised of the possibility of such damages, relating to the performance of this Agreement.

15. Confidentiality.

(a) The parties agree not to disclose any confidential information furnished by the other party, except as provided under this Agreement. For purposes hereof, "Confidential Information" includes, but is not limited to, each party's know how, trade secrets, customer lists, prices, purchasing patterns, designs, data, methodologies, sales and marketing plans, technical, business and financial information, whether or not marked or labeled as confidential. Access to the Confidential Information shall be restricted to City and BRD personnel (including such personnel employed by affiliated entities) on a need to know basis solely for the performance of their obligations hereunder and development and operation of the Project.

(b) Nothing in this Agreement shall prohibit or limit either party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously known to it without an obligation of confidence, (ii) independently developed by or for it, (iii) acquired by it from a third party which is not under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of this Agreement.

(c) If either party (the "Receiving Party") receives a request, subpoena or other legal process demanding Confidential Information of the other party (the "Disclosing Party"), it shall promptly notify the other party to enable such disclosing party to seek protective legal remedies and the recipient party shall reasonably cooperate in connection therewith. However, if the Receiving Party reasonably concludes that it is legally compelled pursuant to applicable law, rule, or regulation, to disclose any Confidential Information, it shall provide the Disclosing Party with prompt notice of each such request so that the Disclosing Party may seek an appropriate protective order, at the Disclosing Party's sole cost and expense, and/or waive the Receiving Party's obligation to comply with the provisions of this Agreement. Failure of the Disclosing Party to commence appropriate proceedings to seek an appropriate protective order within fourteen (14) days of receipt of notice from the Receiving Party shall permit the Receiving Party to disclose such Confidential Information; provided, however, that (i) the parties shall cooperate in good faith following any such request for Confidential Information to review and address the terms of any request and the legal conclusion compelling the disclosure of any Confidential Information and (ii) that the Receiving Party shall disclose no more Confidential Information than is necessary to comply with law.

(d) All Confidential Information shall remain the property of the disclosing party, and no right to license or use the Confidential Information is granted to the recipient other than for purposes described in this Section. Recipient shall promptly return to the disclosing party, upon request, any and all tangible material concerning such Confidential Information, including all copies and notes, or destroy the

same and provide the disclosing party with a written certification that such destruction has occurred. Under no circumstances shall any Confidential Information or copy thereof be retained, except with the express written approval of the disclosing party.

(e) In the event of any breach of this section, the parties agree that monetary damages may not be sufficient to remedy such breach and that the non-breaching party may suffer irreparable damages. The parties agree that the non-breaching party will be entitled to seek equitable and injunctive relief. In addition, unless expressly required by applicable law, neither party shall, without the prior written consent of the other, issue press releases, marketing literature, public statements, or in any way engage in any other form of public disclosure relating to this Agreement.

16. Further Assurances. City and BRD agree to use their commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective the arrangements contemplated by this Agreement. In addition, City and BRD will at any time, and from time to time after the Effective Date, upon written request of the other party, execute, acknowledge and deliver all such further documents and assurances and take all such further action, as may be required to carry out the intent of this Agreement and to protect the right, title and interest in and enjoyment of the rights provided pursuant to this Agreement; provided, however, that this Agreement shall be effective regardless of whether any such additional documents are executed.

17. Miscellaneous.

(a) **Entire Agreement; Amendment; Order of Precedence.** This Agreement sets forth the entire understanding between the parties hereto and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. This Agreement may not be modified or amended except in a writing signed by the parties. The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any Exhibits, or other documentation attached hereto or delivered hereunder: (i) First, the terms contained in the body of this Agreement; (ii) Second, the terms of the Operations Plan; (iii) Third, the terms of the remaining Exhibits or other attachments to this Agreement, provided that no order of precedence shall be applied among such Exhibits or attachments; and (iv) Fourth, any other documentation provided hereunder.

(b) **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Iowa and the venue for any litigation with respect to this Agreement shall be in the courts of Dubuque County, Iowa.

(c) **Waiver.** No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced, and no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision.

(d) **Assignment.** Except as specifically provided otherwise in this Agreement, neither this Agreement nor any interest herein shall be subcontracted or assigned, in whole or in part, by BRD without the prior written consent of City, which consent may not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the restriction on assignment set forth in this Section shall not be deemed violated by virtue of a merger or change in control or ownership of BRD's parent or any successor entity.

(e) **Force Majeure.** A party shall be excused from performing its contractual obligations if it is prevented or delayed in such performance by conditions that constitute *force majeure*, such as acts of God, acts of terrorism, acts of the public enemy, labor disturbances, authority of law, fire or explosion, war or warlike act, insurrection, a party's reasonable response (by way of example and not limitation, such as taking evasive action or canceling meetings or events) to a governmental warning affecting local or national security, or any like causes beyond its control. A party wishing to take advantage of the relief provided in this Section must as soon as practical advise the other party in writing of the existence of the *force majeure* condition and the estimated time of its duration. The parties shall cooperate to ascertain the facts and the effect of the delay on, and make appropriate adjustments where necessary.

(f) **Successors and Assigns.** Each of the terms, provisions, and obligations of this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

(g) **Notices.** All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been given or made if in writing and delivered personally or sent by registered or express mail (postage prepaid) or by facsimile to the parties at the following addresses and facsimile numbers:

If to BRD:	BRD Three, LLC 5062 S. 108 th Street, #113 Omaha, Nebraska 68137 Attn: Gregory S. MacLean Facsimile: (402) 540-0400
Copy to:	Fraser Stryker PC LLO 500 Energy Plaza 409 S. 17 th Street Omaha, NE 68102 Attn: Stephen M. Bruckner, Esq. Facsimile: (402) 341-8290
If to City:	Michael C. Van Milligen City Manager, City of Dubuque 50 W. 13th St Dubuque, IA 52001
Copy to :	Barry Lindahl City Attorney, City of Dubuque Suite 330, Harbor View Place 300 Main Street Dubuque, Iowa 52001-6944

(h) **Severability.** If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

(i) **Cumulative Remedies.** No remedy made available hereunder by any of the provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be

cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

(j) **No Third-Party Beneficiaries.** Except as specifically provided in this Agreement, nothing in this Agreement will be construed as giving any person, other than the parties hereto and their respective heirs, successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.

(k) **Independent Contractor.** The relationship between City and BRD shall be that of an independent contractor. This Agreement is not intended to create and shall not be construed as creating between the parties a relationship of principal and agent, joint venturers, co-partners, master and servant, franchisor and franchisee, or any other similar relationship, the existence of which is hereby expressly denied by the parties. Employees of BRD are not employees of City. No party will have any right or authority to assume or create any binding obligations or to make any representations or warranties on behalf of the other party whether express, implied, by appearance, or otherwise.

(l) **Time is of the Essence.** In the performance of each part of this Agreement, time shall be of the essence. Each party hereto acknowledges and agrees that the periods of time set forth in this Agreement for the performance contemplated hereunder are reasonable.

(m) **Counterparts.** This Agreement may be executed in one or more counterparts, including counterparts by facsimile each of which shall be deemed an original, but all of which together shall constitute a single agreement.

(n) **Dispute Resolution.** In the event of any dispute, question or difference of opinion between the City and BRD arising out of or under this Agreement (each a "Dispute"), a party may give to the other party a notice ("Dispute Notice") specifying the Dispute and requiring its resolution under this Section 17(n). If the Dispute is not resolved within seven (7) days after a Dispute Notice is given to the other party, each party must nominate one representative from its senior management to resolve the Dispute (each, a "Dispute Representative"). If the Dispute is not resolved within sixty (60) days of the Dispute being referred to the respective Dispute Representatives, then either party may request binding arbitration to resolve the dispute by delivering written notice of its intention to refer the matter to arbitration (the "Arbitration Notice") to the other party and thereafter the Dispute shall be referred to arbitration for final settlement binding on the parties in accordance with American Arbitration Association's Commercial Arbitration Rules, subject to the following: the arbitration tribunal shall consist of one (1) Arbitrator who shall be jointly selected by the parties (the "Arbitrator"). If the parties cannot agree on the Arbitrator within thirty (30) days after the delivery of the Arbitration Notice, either party may apply to a court of competent jurisdiction to appoint the Arbitrator. The Arbitrator shall be instructed that the arbitration is confidential and that time is of the essence in proceeding with the determination of any Dispute. The Arbitrator shall determine and communicate the rules governing the arbitration prior to its commencement to each party, and all hearings shall take place in Des Moines, Iowa unless otherwise determined by the written agreement of the parties; the arbitration award shall be in writing and shall be final, binding on the parties, not subject to any appeal or review, and shall deal with the question of costs of arbitration, pre-award interest and all other matters related thereto (the "Arbitration Decision"). The non-prevailing party shall pay all reasonable legal fees and expenses (including all expert witness fees and other related and miscellaneous expenses) of the prevailing party to the prevailing party. Judgement upon the Arbitration Decision rendered may be entered into any

court of competent jurisdiction, or application may be made to such court for a judicial recognition of the Arbitration Decision or an order of enforcement thereof, as the case may be, if a party fails to abide by the Arbitration Decision. During the existence of any Dispute, including arbitration, the parties must continue to perform all of their obligations under this Agreement without prejudice to their position in respect of such Dispute, unless the parties otherwise agree in writing. Nothing in this Section 17(n) prevents a party from seeking any urgent interlocutory relief which may be required in relation to this Agreement, including without limitation, enforcement of the rights set forth in this Section and Sections 2 and 15.

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

City of Dubuque, Iowa
a governmental entity

By: _____
Name: _____
Title: _____

BRD Three, LLC,
an Iowa limited liability company

By: _____
Name: Gregory S. MacLean
Title: Manager

EXHIBIT A

WRRC Gas Management Services and Specifications

SYSTEM OVERVIEW

The Unison Solutions, model BGS-350-112-HS, gas conditioning system is designed to supply up to 350 scfm of clean, dry, gas compressed to 3 psig. The system will be installed at the Dubuque WPCP in Dubuque, IA. The compression/moisture removal skid is designed for indoor operation in a Class I, Division 1 area. The H₂S and siloxane removal systems are designed for outdoor operation in a Class 1, Division 1 area. The gas conditioning system control panel is designed for indoor operation in an unclassified area. The glycol chiller is designed for outdoor operation in an unclassified area. The gas conditioning system is comprised of several parts including: the H₂S removal system, the gas conditioning skid which pressurizes the gas, removes moisture, and regulates the discharge pressure, the siloxane removal system, the glycol chiller which supplies cold glycol for use by the gas conditioning skid, and the gas conditioning system control panel which controls the system.

Gas is supplied to the system through a 6" inlet where it passes through the inlet scrubber (FLT 300) where any free moisture and particulates larger than 3 μ in the biogas are removed. The gas then enters two H₂S removal vessels piped in lead/lag configuration.

The gas then enters the gas conditioning skid and passes through a 6" fail closed actuated butterfly valve before entering the suction scrubber which removes moisture and any particulates left over from the H₂S removal process. The gas enters a blower (BLR 331) where it is compressed to approximately 4 psig at a temperature of about 169 °F.

After leaving the blower, the gas enters the drying process. The process begins with gas passing through a dual core, gas to glycol heat exchanger (HX 341). The first stage uses the hot gas after compression to reheat the cool dry gas to its final reheat temperature. Gas then travels through the second stage of the heat exchanger which uses cold glycol from a remote glycol chiller to cool the gas to its dew point of approximately 40 °F. Condensate from the heat exchanger is removed via a float drain (FD 741). The gas then completes the process by being reheated via the hot compressed gas to a temperature of approximately 80 °F.

Once the gas has been dried, it flows through two siloxane vessels (FLT 361 & 362), which remove the siloxanes and other VOC's from the gas stream. The vessels are piped in lead/lag configuration. After exiting the siloxane removal vessels, the gas flows through a final particulate filter (FLT 351) to ensure that any carryover siloxane media/dust is removed from the gas stream. The gas is then ready for delivery to the end use equipment at a temperature of about 80 °F and a pressure of 3 psig.

The gas conditioning system control panel is equipped with a Programmable Logic Controller (PLC) that receives data from transmitters, RTD's, and digital inputs. The PLC also protects the equipment during process interruptions. The control panel includes auxiliary terminals for a remote run command input, and a customer fault input. Dry contact outputs are included for run status, warning status, fault status, and turbine run outputs. An Allen Bradley Ethernet IP connection is available for connection to the facility SCADA system. The customer is responsible for providing a broadband internet connection to the gas conditioning system control panel. This will create a VPN between the site and Unison; creating a faster response time to customer's requests by allowing Unison to remotely log onto the PLC, Human Machine Interface (HMI), and individual devices.

SYSTEM MANUAL VALVE LISTING

Valve #	Normal operating position	Function
VY 3001	OPEN	Close to isolate the H ₂ S Removal System
VI 3001	OPEN	Close to isolate PDI 300
VI 3002	CLOSED	Open to vent PDI 300
VI 3003	OPEN	Close to isolate PDI 300
VI 3004	CLOSED	Open to vent PDI 300
VB 301	CLOSED	Open to vent H ₂ S piping
VB 302	CLOSED	Open to vent FLT 301
VB 303	CLOSED	Open to vent FLT 301
VB 304	CLOSED	Open to vent H ₂ S piping
VB 305	CLOSED	Open to vent H ₂ S piping
VB 306	CLOSED	Open to vent FLT 302
VB 307	CLOSED	Open to vent FLT 302
VB 308	CLOSED	Open to vent H ₂ S piping
VI 3005	OPEN	Close to isolate PDI 301
VI 3006	CLOSED	Open to vent PDI 301
VI 3007	OPEN	Close to isolate PDI 301
VI 3008	CLOSED	Open to vent PDI 301
VI 3009	OPEN	Close to isolate PDI 302
VI 3010	CLOSED	Open to vent PDI 302
VI 3011	OPEN	Close to isolate PDI 302
VI 3012	CLOSED	Open to vent PDI 302
VB 701	OPEN	Close to isolate STR 701 and FD 701
VB 702	CLOSED	Open to manually drain condensate from FLT 300
VB 703	OPEN	Close to isolate FD 701
VB 704	CLOSED	Open to manually drain condensate from FLT 301
VB 705	CLOSED	Open to manually drain condensate from FLT 301
VB 706	CLOSED	Open to manually drain condensate from FLT 302

VB 707	CLOSED	Open to manually drain condensate from FLT 302
VY 3008	OPEN	Close to divert gas to future H ₂ S vessel
VY 3009	CLOSED	Open to connect a future H ₂ S vessel to the system
VY 3010	CLOSED	Open to connect a future H ₂ S vessel to the system
VB 3601	CLOSED	Open to fill FLT 361 with nitrogen
VB 3602	CLOSED	Open to fill FLT 362 with nitrogen
VB 3603	CLOSED	Open to vent siloxane piping
VB 3604	CLOSED	Open to vent siloxane piping
VB 3605	CLOSED	Open to drain FLT 361
VB 3606	CLOSED	Open to drain FLT 362
VB 3607	CLOSED	Open to allow flow to QC 361
VB 3608	CLOSED	Open to allow flow to QC 362
VB 3609	CLOSED	Open to allow flow to QC 363
VB 3610	CLOSED	Open to allow flow to QC 364
VY 3607	CLOSED	Open to connect a future siloxane vessel to the system
VY 3608	OPEN	Close to divert gas to future siloxane vessel
VY 3609	CLOSED	Open to connect a future siloxane vessel to the system
VY 3610	OPEN	Close to isolate the siloxane removal system
VI 321	OPEN	Close to isolate PDI 321
VI 322	CLOSED	Open to vent PDI 321
VI 323	OPEN	Close to isolate PDI 321
VI 324	CLOSED	Open to vent PDI 321
VB 721	CLOSED	Open to manually drain condensate from FLT 321
VB 722	OPEN	Close to isolate STR 721 and PMP 721
VB 741	OPEN	Close to isolate STR 741 and FD 741
VB 742	CLOSED	Open to manually drain condensate from HX 341
VB 743	OPEN	Close to isolate FD 741
VB 231	CLOSED	Open to drain oil from BLR 331
VB 731	CLOSED	Open to manually drain condensate from SIL 331

VB 331	OPEN	Close to isolate blower bearing chamber from inlet
VI 331	CLOSED	Open to test gas
VB 341	CLOSED	Open to vent to atmosphere
VI 341	CLOSED	Open to test gas
VY 341	VARIABLE	Adjust to change gas reheat temperature
VY 342	OPEN	Close to isolate siloxane removal system
VY 343	CLOSED	Open to by-pass gas around siloxane removal system
VY 351	OPEN	Close to isolate siloxane removal system
VY 352	OPEN	Close to isolate end use equipment
VY 353	CLOSED	Open to discharge gas to a future high pressure system
VI 351	OPEN	Close to isolate PDI 351
VI 352	CLOSED	Open to vent PDI 351
VI 353	OPEN	Close to isolate PDI 351
VI 354	CLOSED	Open to vent PDI 351
VB 351	CLOSED	Open to vent to atmosphere
VB 751	CLOSED	Open to manually drain condensate from FLT 351
VB 141	CLOSED	Open to manually drain glycol piping
VB 142	CLOSED	Open to vent glycol piping
VB 143	CLOSED	Open to manually drain glycol piping

Select the H₂S removal vessel configuration from the following list:

Mode 1: FLT-301 is primary and FLT-302 is secondary

Mode 2: FLT-302 is primary and FLT-301 is secondary

Mode 3: FLT-301 and FLT-302 are in parallel

	Mode 1 Position	Mode 2 Position	Mode 3 Position
VY 3002	OPEN	CLOSED	OPEN
VY 3003	CLOSED	OPEN	OPEN
VY 3004	CLOSED	OPEN	OPEN
VY 3005	OPEN	CLOSED	OPEN
VY 3006	CLOSED	OPEN	CLOSED
VY 3007	OPEN	CLOSED	CLOSED

Select the siloxane removal vessel configuration from the following list:

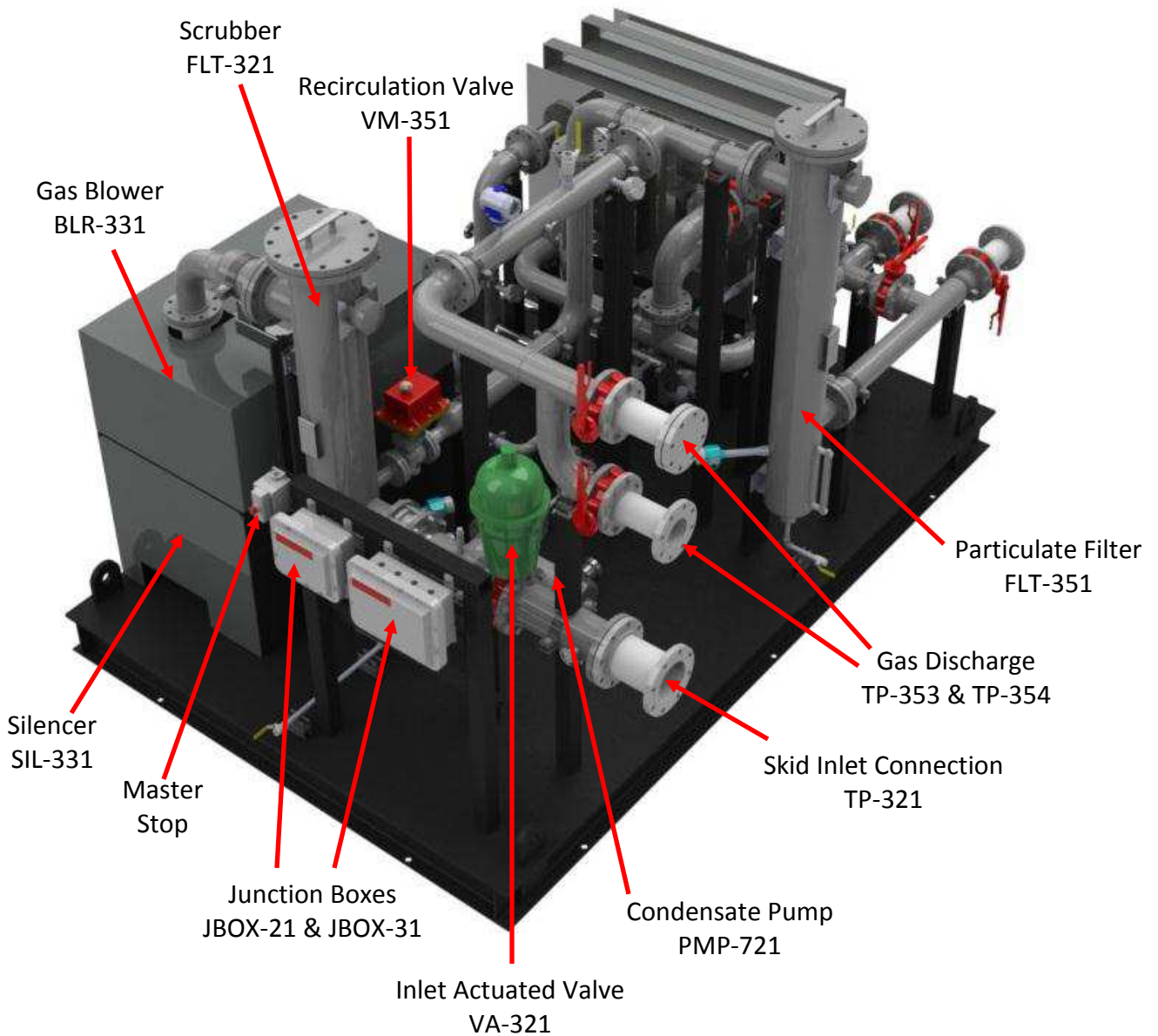
Mode 1: FLT-361 is primary and FLT-362 is secondary

Mode 2: FLT-362 is primary and FLT-361 is secondary

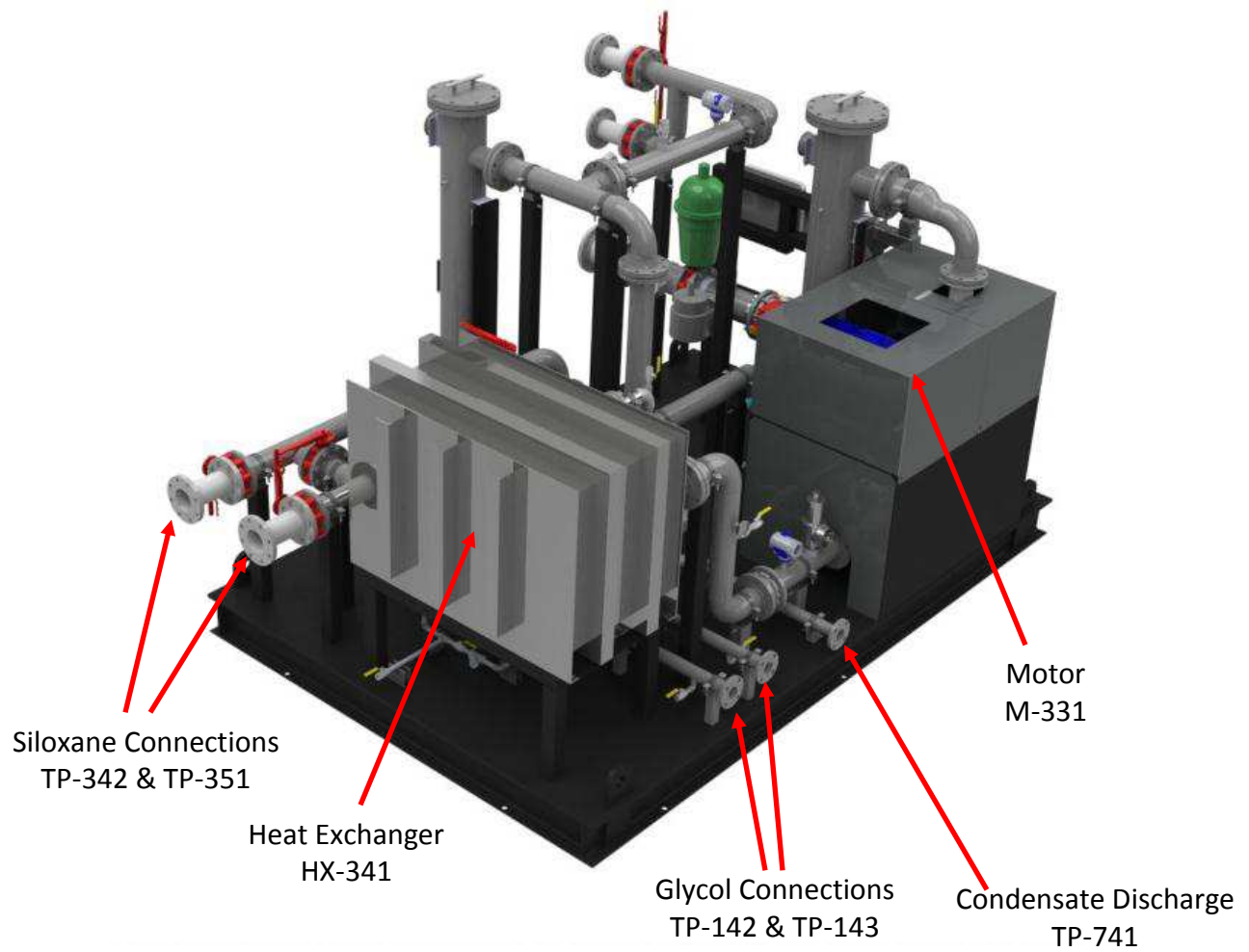
Mode 3: FLT-361 and FLT-362 are in parallel

	Mode 1 Position	Mode 2 Position	Mode 3 Position
VY 3601	OPEN	CLOSED	OPEN
VY 3602	CLOSED	OPEN	OPEN
VY 3603	OPEN	CLOSED	CLOSED
VY 3604	CLOSED	OPEN	CLOSED
VY 3605	CLOSED	OPEN	OPEN
VY 3606	OPEN	CLOSED	OPEN

UNDERSTANDING THE SYSTEM



(GAS CONDITIONING SYSTEM CONTROL PANEL, GLYCOL CHILLER, H₂S REMOVAL FILTERS, AND
SILOXANE REMOVAL FILTERS NOT SHOWN)



(GAS CONDITIONING SYSTEM CONTROL PANEL, GLYCOL CHILLER, H₂S REMOVAL FILTERS, AND
SILOXANE REMOVAL FILTERS NOT SHOWN)

SYSTEM SUMMARY

Inlet Conditions		Discharge Conditions	
Design Flow	350 scfm	Design Flow	350 scfm
Design Pressure	0.36 psig	Design Pressure	3.05 psig
Design Temperature	98°F	Design Temperature	80°F
Design R.H.	100%	Design R.H.	23%
Maximum allowable incoming Temperature		98°F	
Maximum allowable incoming Pressure		0.36 psig	
Inlet Process Connection		6" Class 150 RF Flange	
Discharge Process Connection		4" Class 150 RF Flange	
Condensate Process Connections		2" Class 150 RF Flange	
Glycol Process Connections		2" Class 150 RF Flange	

SYSTEM OVERVIEW

The Unison Solutions, model CGS-350-178, gas conditioning system is designed to compress and cool up to 350 scfm of gas compressed to 100 psig. The system includes the following: gas compression skid consisting of an inlet moisture/particulate filter, flooded screw compressor, oil separator, oil heat exchanger (using effluent water), oil mist eliminator and a remote mounted air to gas after-cooler. In addition, the system includes a remote mounted gas conditioning system control panel which provides power and control to the system. The gas compression skid is designed for indoor operation in a Class I, Division 1 area. The gas conditioning system control panel is designed for indoor operation in an unclassified area.

Gas enters the gas compression skid through a 4" electrically actuated, fail close, butterfly valve (VA 371). Gas travels to a moisture/particulate filter (FLT 371) sized for 350 SCFM and used to capture 99% of particulates 3 micron and larger. Condensate formed in this filter collects in the bottom of the filter and exits thru a float drain (FD 771). After leaving the moisture/particulate filter, the gas enters a flooded screw compressor (CMP 371) where it is compressed to approximately 105 psig at a temperature of 200°F.

Upon exiting the compressor, the gas enters an oil-gas separator (FLT 271) to remove any remaining oil from the gas stream. Gas then travels to a remote mounted air/gas after-cooler which cools the gas to approximately 122°F. Gas then re-enters the compression skid thru an oil mist eliminator (FLT 372) which removes any remaining oil and particulate 0.3 μ or greater. The process (at the discharge of the skid) produces a final temperature of 122°F with a relative humidity of approximately 44%. The gas exits the skid through a 2" flanged connection. The gas then travels to a field mounted sour gas fuel kit which will provide final filtration and regulates the pressure to the desired set point (approximately 75-85 psig) for the Capstone CR1000 micro-turbines.

The gas conditioning system control panel is equipped with a Programmable Logic Controller (PLC) that receives data from transmitters, RTDs, and digital inputs. The PLC also protects the equipment during process interruptions. The gas conditioning system control panel includes auxiliary terminals for a remote run command input and a customer fault input. Dry contact outputs are included for skid run status, skid warning status and skid alarm status.

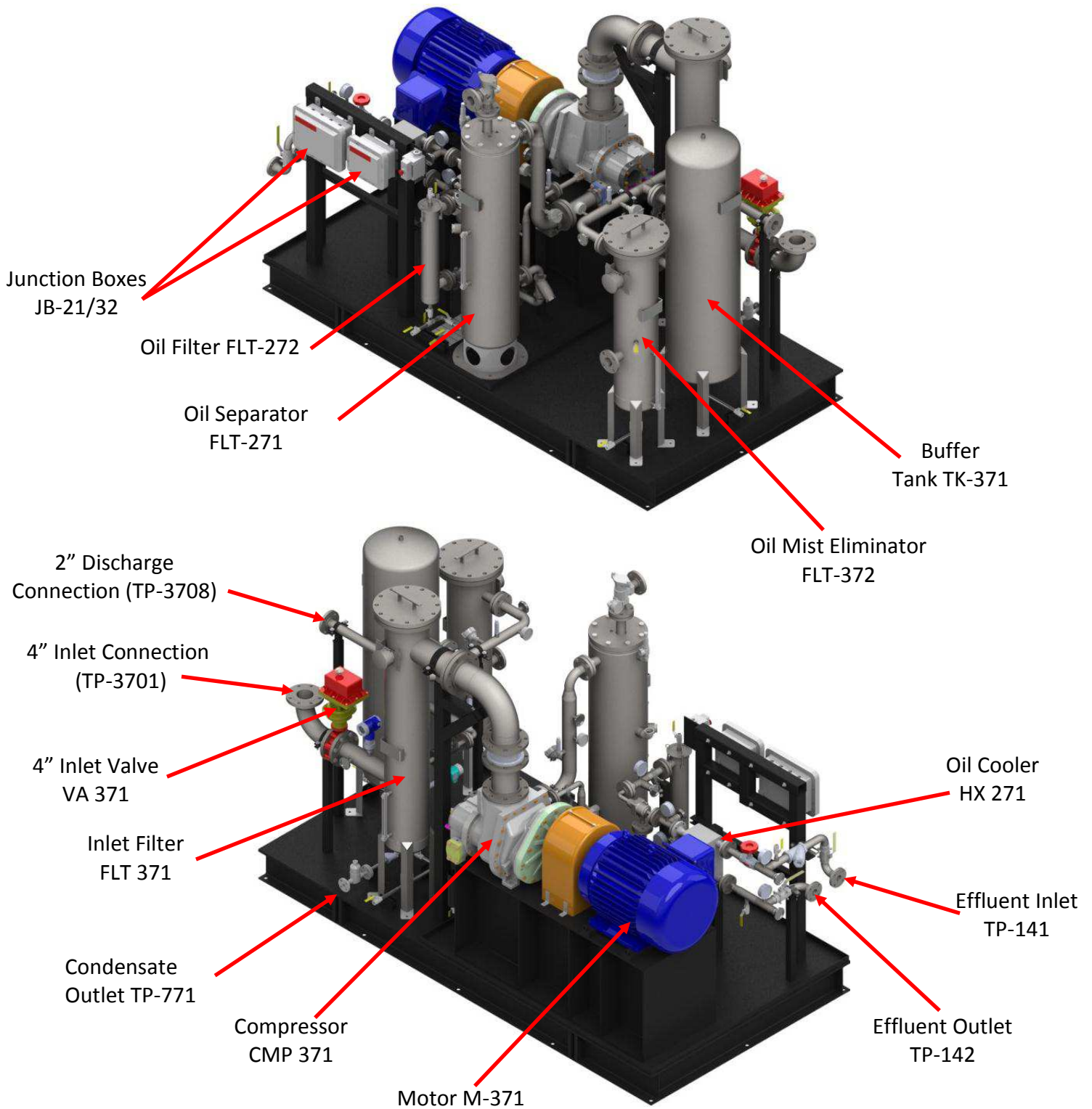
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SYSTEM MANUAL VALVE LISTING

Valve #	Normal operating position	Function
Effluent Water Line Valves		
VB 141	Open	Close to Isolate STR 141 or system piping
VG 141	Variable	Close to Isolate STR 141 or adjust water flow
VB 142	Open	Close to Isolate system piping
VB 143	Closed	Open to vent water piping
VB 144	Closed	Open to drain water piping
Oil Line Valves		
VB 270	Closed	Open to drain STR 271
VB 271	Closed	Open to drain oil from FLT 271
VB 272	Closed	Open to drain or add oil from/to FLT 271
VB 273	Closed	Open to drain oil from FLT 271 or FLT 272
VB 274	Closed	Open to drain oil from FLT 272
VB 275	Closed	Open to vent FLT 272
VB 276	Closed	Open to drain TK 271
VB 277	Closed	Open to drain down-stream side of FLT 372
VB 278	Closed	Open to drain up-stream side of FLT 372
Gas Line Valves		
VB 371	Closed	Open to vent FLT 271
VB 372	Open	Close to isolate HX 372
VB 373	Open	Close to isolate HX 372
VB 374	Open	Close to isolate skid from end use device
VB 381	Open	Close to isolate from skid discharge
VB 382	Open	Close to isolate FLT 381
VB 383	Open	Close to isolate FLT 382
VB 384	Open	Close to isolate FLT 381
VB 385	Open	Close to isolate FLT 382
VB 386	Closed	Open to vent FLT 381
VB 387	Closed	Open to vent FLT 382
VB 388	Closed	Open to drain fuel kit
Condensate Line Valves		
VB 771	Open	Close to isolate FD 771 and STR 771
VB 772	Closed	Open to manually drain FD 771
VB 773	Open	Close to isolate FD 771
VB 774	Closed	Open to manually drain condensate from HX 372
VB 775	Closed	Open to manually drain condensate from TK 371
Instrument Valves		
VI 371	Open	Close to isolate PDI 371
VI 372	Closed	Open to calibrate PDI 371 (while isolated) or to sample gas
VI 373	Open	Close to isolate PDI 371
VI 374	Closed	Open to calibrate PDI 371 (while isolated)
VI 375	Open	Close to isolate PDI 372
VI 376	Closed	Open to calibrate PDI 372 (while isolated)
VI 377	Open	Close to isolate PDI 372
VI 378	Closed	Open to calibrate PDI 372 (while isolated)

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UNDERSTANDING THE SYSTEM



(GAS CONDITIONING SYSTEM CONTROL PANEL NOT SHOWN)

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SYSTEM SUMMARY

Inlet Conditions		Discharge Conditions	
Design Flow	350 scfm	Design Flow	350 scfm
Design Pressure	3.0 psig	Design Pressure	100 psig
Design Temperature	80°F	Design Temperature	122°F
Design R.H.	23%	Design R.H.	44%
Inlet Process Connection		4" Class 150 pattern Lug Valve	
Discharge Process Connection		2" Class 150 pattern Lug Valve	
Condensate Process Connections		1/2" Class 150 RF Flange	
Effluent Water (Oil Cooler) Process Connections		2" Class 150 RF Flange	

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EXHIBIT B

Insurance

Insurance Schedule B

Class A:

Asbestos Removal	Earthwork	Piles & Caissons	Steel
Asphalt Paving	Electrical	Plumbing	Storm sewers
Concrete	Elevators	Retaining Walls	Structural Steel
Construction Managers	Fiber Optics	Reinforcement	Trails
Cranes	Fire Protection	Roofing	Tunneling
Culverts	Fireproofing	Sanitary Sewers	Water main
Decking	General Contractors	Sheet Metal	
Demolition	HVAC	Site Utilities	
Deconstruction	Mechanical	Shoring	
	Paving & Surfacing	Special construction	

Class B:

Chemical Spraying	Landscaping	Rough Carpentry
Doors, Window & Glazing	Masonry	Stump Grinding
Drywall Systems	Vehicular Snow Removal	Tank Coating
Fertilizer Application	Painting & Wall Covering	Tree Removal
Geotech Boring	Pest Control	Tree Trimming
Insulation	Scaffolding	Tuckpointing
Finish Carpentry	Sidewalks	Waterproofing
	Plastering	Well Drilling

Class C:

Carpet Cleaning
Carpet & Resilient Flooring
Caulking & Sealants
Acoustical Ceiling
Filter Cleaning
General Cleaning
Grass Cutting
Janitorial
Non Vehicular Snow & Ice Removal
Office Furnishings
Power Washing
Tile & Terrazzo Flooring
Window Washing

Insurance Schedule B (continued)

INSTRUCTIONS FOR INSURANCE SUBMITTAL:

1. Contractor shall furnish a signed Certificate of Insurance to the City of Dubuque, Iowa for the coverage required in Exhibit I prior to commencing work and at the end of the project if the term of work is longer than 60 days. Providers presenting annual certificates shall present a Certificate at the end of each project with the final billing. Each Certificate shall be prepared on the most current ACORD form approved by the Iowa Department of Insurance or an equivalent. The issued certificate must clearly indicate the project number, project name, or project description for which it is being provided Eg: Project # _____ Project name: _____ or Project Location at _____ or construction of _____.
2. All policies of insurance required hereunder shall be with a carrier authorized to do business in Iowa and all carriers shall have a rating of A or better in the current A.M. Best's Rating Guide.
3. Each Certificate required shall be furnished to the City of Dubuque _____ Department.
4. Failure to provide minimum coverage shall not be deemed a waiver of these requirements by the City of Dubuque. Failure to obtain or maintain the required insurance shall be considered a material breach of this contract.
5. Subcontractor(s) and sub subcontractor(s) performing work or service shall provide a Certificate of Insurance in accord with its' respective classification. The City of Dubuque may request a copy of a subcontractor(s) Certificate of Insurance from the general contractor.
6. All required endorsements to various policies shall be attached to the Certificate of insurance.
7. Whenever an ISO form is referenced the current edition must be used.
8. Provider shall be required to carry the minimum coverage/limit, or greater if required by law or other legal agreement, in Exhibit I - Insurance Schedule B. If the provider's limit of liability is higher than the required minimum limit then the provider's limit shall be this agreement's required limit.

Insurance Schedule B (continued)

Exhibit I

A) COMMERCIAL GENERAL LIABILITY

General Aggregate Limit	\$2,000,000
Products-Completed Operations Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage Limit (any one occurrence)	\$ 50,000
Medical Payments	\$ 5,000

- a) Coverage shall be written on an occurrence, not claims made, form. The general liability coverage shall be written in accord with ISO form CG0001 or business owners form BP0002. All deviations from the standard ISO commercial general liability form CG 0001, or Business owners form BP 0002, shall be clearly identified.
- b) Include ISO endorsement form CG 25 04 "Designated Location(s) General Aggregate Limit" or CG 25 03 "Designated Construction Project (s) General Aggregate Limit" as appropriate.
- c) Include endorsement indicating that coverage is primary and non-contributory.
- d) Include endorsement to preserve Governmental Immunity. (Sample attached).
- e) Include an endorsement that deletes any fellow employee exclusion.
- f) Include additional insured endorsement for:
 - The City of Dubuque, including all its elected and appointed officials, all its employees and volunteers, all its boards, commissions and/or authorities and their board members, employees and volunteers. Use ISO form CG 20 10. Ongoing operations.
- g) All contractors shall include The City of Dubuque (per the above verbiage) as an additional insured for completed operations under ISO form CG 2037 during the project term and for a period of two years after the completion of the project.

B) AUTOMOBILE LIABILITY \$1,000,000 (Combined Single Limit)

C) WORKERS' COMPENSATION & EMPLOYERS LIABILITY

Statutory Benefits covering all employees injured on the job by accident or disease as prescribed by Iowa Code Chapter 85.

Coverage A	Statutory—State of Iowa	
Coverage B	Employers Liability	
	Each Accident	\$100,000
	Each Employee-Disease	\$100,000
	Policy Limit-Disease	\$500,000

Policy shall include an endorsement providing a waiver of subrogation to the City of Dubuque. Coverage B limits shall be greater if required by Umbrella Carrier.

D) Umbrella Liability

Umbrella liability coverage must be at least following form with the underlying policies included herein.

All Class A contractors with contract values in excess of \$10,000,000 must have an umbrella of \$10,000,000.

All Class A and Class B contractors with contract values between \$500,000 and \$10,000,000 must have an umbrella of \$3,000,000.

All Class A and B contractors with contract values less than \$500,000 must have an umbrella of \$1,000,000.

All Class C contractors are not required to have an umbrella.

E) Pollution Liability

Coverage required: ____yes ____no

Pollution Liability coverage shall be required if project involves any pollution exposures including abatement of hazardous or contaminated materials including, but not limited to, the removal of lead, asbestos, or PCB's. Pollution product and complete operations coverage shall also be covered.

\$2,000,000 each occurrence
\$4,000,000 policy aggregate

- a) Policy to include premises and transportation coverage.
- b) Include additional insured as stated in Ae above.
- c) Include preservation of governmental immunity as stated in Ad above.

F) Railroad Protective Liability

Coverage required: _____yes _____no

Any Contract for construction or demolition work on or within Fifty feet (50') from the edge of the tracks of a railroad and effecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass, or crossing for which an easement or license or indemnification of the railroad is required, shall require evidence of the following additional coverages.

Railroad Protective Liability:

\$_____ each occurrence (per limits required by Railroad)

\$_____ policy aggregate (per limits required by Railroad)

OR

An endorsement to the Commercial General Liability policy equal to ISO CG 2417 (Contractual Liability-Railroads). A copy of this endorsement shall be attached to the Certificate of Insurance.

Preservation of Governmental Immunities Endorsement

1. Nonwaiver of Governmental Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Dubuque, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Dubuque, Iowa under Code of Iowa Section 670.4 as it is now exists and as it may be amended from time to time.
2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
3. Assertion of Government Immunity. The City of Dubuque, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier.
4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Dubuque, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Dubuque, Iowa.

No Other Change in Policy. The above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

Addendum to Exhibit B
Notice of Insurance Coverage for City of Dubuque

BRD acknowledges that City is a member of the Iowa Communities Assurance Pool (ICAP). City shall maintain its membership in ICAP or at its option purchase general liability insurance with equivalent coverage. City shall provide BRD with a certificate showing City's ICAP coverage.

EXHIBIT C
Consent Decree

**CONSENT DECREE
RELATING TO THE
CITY OF DUBUQUE, IOWA
WATER & RESOURCE RECOVERY CENTER
AND
SANITARY SEWER COLLECTION SYSTEM**

NO CONTRACTOR OR CONSULTANT MAY PERFORM ANY WORK FOR THE CITY OF DUBUQUE RELATED TO THE WATER & RESOURCE RECOVERY CENTER OR THE SEWER COLLECTION SYSTEM UNLESS COPY OF THIS DOCUMENT IS RETURNED TO THE CITY OF DUBUQUE ENGINEERING DEPARTMENT

The City of Dubuque, Iowa has entered into a Consent Decree in the case of The United States of America, and the State of Iowa v. The City of Dubuque, Iowa, Civil Action No. Case 2:11-cv-01011-EMJ, Civil Action Number 2008V00041, DOJ Case Number 90-5-1-1-09339, United States District Court for the Northern District of Iowa. The provisions of the Consent Decree apply to and are binding upon the City and its officers, directors, employees, agents, servants, successors, assigns, and all persons, firms and corporations under contract with the City to perform the obligations of the Consent Decree.

The City is required to provide a copy of the Consent Decree to any contractor or consultant retained to perform work required by the Consent Decree.

A copy of the Consent Decree can be found at <http://www.cityofdubuque.org/DocumentCenter/Home/View/3173>. A paper copy is available upon request from the City of Dubuque Engineering Department.

The City must condition any contract to perform work required under the Consent Decree upon performance of the work in conformity with the provisions of the Consent Decree.

The Consent Decree also provides that until five years after the termination of the Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, reports, data, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree, including any underlying research and analytical data. This information-retention requirement shall apply regardless of any contrary City, corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the City shall provide copies of any documents, reports, analytical data, or other information required to be maintained under the Consent Decree. At the conclusion of

the information-retention period, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to such requirements and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to the EPA or IDNR.

CERTIFICATION BY CONTRACTOR OR CONSULTANT


The undersigned, on behalf of the Contractor or Consultant, with full authority to act on behalf of the Contractor or Consultant, certifies to the City of Dubuque as follows:

1. I have received a copy of the Consent Decree in the case of The United States of America, and the State of Iowa v. The City of Dubuque, Iowa, Civil Action No. Case 2:11-cv-01011-EMJ, Civil Action Number 2008V00041, DOJ Case Number 90-5-1-1-09339, United States District Court for the Northern District of Iowa.

2. All work performed will be in conformity with the provisions of the Consent Decree.

3. All documents, reports, data, records, or other information (including documents, records, or other information in electronic form) that relate in any manner to the performance of obligations under the Consent Decree, including any underlying research and analytical data, will be retained as required by the Consent Decree.

The Contractor or Consultant agrees to defend, indemnify, and hold harmless the City, its officers, agents, or employees from and against any claims, including penalties, costs and fees as provided in the Consent Decree, relating to or arising out of the Contractor's or Consultant's failure to comply with the Consent Decree.

Contractor or Consultant: Bio Resource Development, LLC
By:  aka: BRD Three, LLC
Its: Manager
Date: 7/26/16

Return signed copy to:

Denise Ihrig P.E.
Environmental Engineer
City Hall - Engineering Department
50 W. 13th Street
Dubuque, IA 52001