

**AGREEMENT WITH UNISON SOLUTIONS, INC.
FOR MAINTENANCE SERVICES
FOR
COMPRESSED NATURAL GAS CONDITIONING SYSTEM**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and **UNISON SOLUTIONS, INC.**, a corporation ("CONTRACTOR"), whose address is 5451 Chavenelle Road, Dubuque, IA 52002.

RECITALS:

A. CITY desires certain maintenance services hereinafter described.

B. CITY desires to engage CONTRACTOR to provide these maintenance services by reason of its qualifications and experience for performing such services and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONTRACTOR under this Agreement is as described in Exhibit A to this Agreement, which is attached and incorporated by reference.

SECTION 2 - DUTIES OF CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONTRACTOR under this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONTRACTOR represents that it is qualified to furnish the services described under this Agreement.

CONTRACTOR shall be responsible for employing or engaging all persons necessary to perform the services of CONTRACTOR.

CONTRACTOR and his subcontractors shall comply with State's Prevailing Wage Laws.

CONTRACTOR or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. For the work performed for the City, the CONTRACTOR and his subcontractors shall pay the workers at the prevailing wage rate as determined by the California Department of Industrial Relations, for this locality. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project. CITY shall examine documents submitted by CONTRACTOR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONTRACTOR'S work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on September 23, 2020 and be completed on or about September 22, 2023.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONTRACTOR a not to exceed amount of \$304,804, also described in Exhibit A.

SECTION 6 – TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement upon receipt of said written notice.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONTRACTOR in the performance of this Agreement are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONTRACTOR in connection with the performance of this Agreement are confidential until released by CITY to the public. CONTRACTOR shall not make any such documents or information available to any individual or organization not employed by CONTRACTOR or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONTRACTOR

CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONTRACTOR'S STATUS

It is expressly agreed that in the performance of the services required under this Agreement, CONTRACTOR shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONTRACTOR an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONTRACTOR agrees to hold harmless and indemnify City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONTRACTOR's performance of this Agreement, except for those claims arising out of CITY's sole negligence or willful misconduct. CONTRACTOR agrees to defend City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, and agents against any such claims.

SECTION 12 - INSURANCE

Contractor shall procure and maintain for the duration of the contract the insurance specified in Exhibit B to this Agreement.

SECTION 13 - NONASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONTRACTOR and cannot be transferred, assigned, or subcontracted by CONTRACTOR without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON SKILL OF CONTRACTOR

It is mutually understood and agreed by and between the parties hereto that CONTRACTOR is skilled in the performance of the work agreed to be done under this Agreement and that CITY relies upon the skill of CONTRACTOR to do and perform the work in the most skillful manner, and CONTRACTOR agrees to thus perform the work. The acceptance of CONTRACTOR's work by CITY does not operate as a release of CONTRACTOR from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 17 - NON-DISCRIMINATION

CONTRACTOR warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONTRACTOR nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 18 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 19 - LITIGATION

CONTRACTOR shall testify at CITY'S request if litigation is brought against CITY in connection with CONTRACTOR'S services under this Agreement. Unless the action is brought by CONTRACTOR, or is based upon CONTRACTOR'S wrongdoing, CITY shall compensate CONTRACTOR for preparation for testimony, testimony, and travel at CONTRACTOR'S standard hourly rates at the time of actual testimony.

SECTION 20 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: Steve Wu, Project Manager
City of San Mateo
330 W 20th Avenue
San Mateo, CA 94403

To CONTRACTOR: Unison Solutions, Inc.
Attn: Jan M. Scott
5451 Chavenelle Road
Dubuque, IA 52002

SECTION 21 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONTRACTOR.

SECTION 22 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and UNISON SOLUTIONS, INC. have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONTRACTOR

Brad B. Underwood
Public Works Director

Jan M. Scott
Its Authorized Agent
President

If a Corporation, can be either 1) President or 2) Vice President plus an additional corporate officer (i.e., Secretary, Treasurer) who shall sign below.

APPROVED AS TO FORM

ADDITIONAL CORPORATE OFFICER
(if necessary per the above)

Gabrielle Whelan
Assistant City Attorney

Attachments:

Exhibit A: Scope of Services

Exhibit B: Insurance Requirements

Exhibit A

A. Schedule of Values

ANNUAL PREVENTATIVE MAINTENANCE		PRICE
<input checked="" type="checkbox"/> Year 4 Maintenance Service Agreement (includes Gas Testing)		
Gas Testing		\$24,750.00
HVAC Subcontractor		\$7,290.00
Service Consumables		\$13,560.00
Technician Labor & Expenses		\$18,590.00
California & Administrative Fees		\$4,860.00
TOTAL:		\$69,050.00
<input checked="" type="checkbox"/> Year 5 Maintenance Service Agreement (includes Gas Testing)		
Gas Testing		\$25,740.00
HVAC Subcontractor		\$7,582.00
Service Consumables		\$14,103.00
Technician Labor & Expenses		\$19,334.00
California & Administrative Fees		\$5,055.00
TOTAL:		\$71,814.00
<input checked="" type="checkbox"/> Year 6 Maintenance Service Agreement (includes Gas Testing)		
Gas Testing		\$26,770.00
HVAC Subcontractor		\$7,866.00
Service Consumables		\$14,668.00
Technician Labor & Expenses		\$20,108.00
California & Administrative Fees		\$5,258.00
TOTAL:		\$74,690.00
- PAYMENT TERMS: 100% due upon completion of task(s) – Net 30 days		
MEDIA CHANGE OUT SERVICES & SPARE PARTS		PRICE
<input type="checkbox"/> Spare Parts		N/A
<input checked="" type="checkbox"/> H2S Media Removal & Replacement (cost is per each change out)*†		\$67,600.00 ea
<input checked="" type="checkbox"/> Siloxane Media Removal & Replacement (cost is per each change out)*†		\$21,650.00 ea
*Removal of spent media, disposal and †testing – See Section D, additional terms apply		
- PAYMENT TERMS: 100% due upon completion of task(s) – Net 30 days		

TIME & MATERIAL RATES (2020)	PRICE
Engineering/Programming	\$180/hr *
Service Technician [†]	\$175/hr *
Tech Support (Phone)	\$175/hr *
Materials	+ 30%
Expenses	Cost
* Overtime will be billed at 1½ time the labor rate after 8 hours. Weekends and/or Holidays may be subject to additional fees. Rates subject to yearly increase.	
- Technician wages meet the prevailing wage rates of Millwright	
- PAYMENT TERMS: 100% upon completion – Net 30 days	
Additional Terms	PRICE
- Unison reserves the right to add a fuel surcharge fee in the event that gasoline prices exceed \$4.00 per gallon on any service visit	
- Unison may adjust pricing for the services provided herein upon written notice to Purchaser should the total Consumer Price Index (CPI) exceed 3% in any given year	
- Media Escalation: Media Pricing is directly influenced by US tariffs. Unison may adjust pricing for the media provided should there be future tariffs assigned to this product.	

B. Description of Service Agreement

GAS TREATMENT SYSTEM ANNUAL PREVENTATIVE MAINTENANCE
<ul style="list-style-type: none"> - Verify pressure differential on moisture/particulate filters and clean as necessary - Inspect lids on conduit fitting for corrosion and clean and re-grease as necessary - Perform system control panel checks and service as described in O&M Manual - Check flexible hose for wear - Check and clean all strainers as necessary - Clean Glycol Chiller Condenser, Check Chiller Control panel for proper operation - Check freeze point of glycol solution, and for leaks, correct as necessary - Grease bearings on each end of the compressor motor - Complete oil change including separator element (FLT 231) and oil filter (FLT 232) - Clean fins of fan cooler (HX-231) as necessary, change oil filter (FLT 232) - Visually inspect oil piping for leaks and correct as necessary - Check compressor coupling for wear, make recommendations as necessary - Laser alignment of compressor motor - Zero calibrate CO2 Meter - Rebuild Back Pressure Regulator(s) - Change Pressure Relief Valves (at 3 years of operation) - Rebuild Condensate Pump - Inspect CH4/CO2 membrane, make recommendations as necessary - Inspect Glycol Chiller & top of refrigerant as necessary - Restart System and verify a full set of data prior to departure - Provide a detailed service report

OPERATIONAL MAINTENANCE
<ul style="list-style-type: none"> - All annual services included will be provided by a factory service technician or factory service representative/subcontractor for all Unison supplied equipment. The technician will perform preventive annual maintenance as required and described above. All work not specified in the Service Proposal as Annual Preventative Maintenance will be considered unscheduled maintenance and be performed at Unison's standard T&M Service rates. The City of San Mateo shall be responsible for all Quarterly and unscheduled maintenance as described in the O&M Manual. - Unison is not responsible for site specific procedures unless notified in advance. Any additional cost caused by site specific requirements will be the responsibility of the City.
RECOMMENDED SPARE PARTS
<ul style="list-style-type: none"> - Scheduled H2S and Siloxane Removal - Media is considered a consumable, all media needed to maintain gas/fuel quality shall be the responsibility of the End User and is excluded from the Maintenance Service Agreement Pricing as outlined in the current Maintenance Schedule.
MAINTENANCE LABOR
<ul style="list-style-type: none"> - Includes scheduled Annual Preventative Maintenance (PM) labor - H2S & Siloxane media changes are on as needed basis and not included in PM base pricing - Operational & Emergency Maintenance Labor – NOT INCLUDED, Standard T&M Service Rates Apply
ADDITIONAL SERVICES
<ul style="list-style-type: none"> - Access Unison's Technical Support. - System software upgrades as released by Unison. - Installation of system software upgrades (VPN necessary)
BY OTHERS
<ul style="list-style-type: none"> - Odorant, as necessary - VPN Access to Unison Solutions PLC & HMI - Disposal of Spent Media - Water hydrant & water supply for removal of H2S Media - Disposal of used oil & filters - Additional requirements as defined in Paragraph D – Media Change out services

C. Gas Testing Services

- It will be the responsibility of End User to take the following gas samples and ship the samples to the 3rd party laboratory designated by Unison Solutions. Unison Solutions will provide all materials to take and ship the gas sample(s). Our personnel will work directly with the lab to facilitate the testing required and address any issues that may arise with the biogas samples. Lab analysis and results will be provided, along with a summary of all testing done to date and any anomalies in the results. No online meter is commercially available for real-time siloxane testing. Additional testing is available at Unison Solutions standard rates.

BIOGAS SAMPLING MATERIALS: GENERAL DESCRIPTION

Unison will provide the Gas Testing Kit:

- Instructions
 - Tedlar Bag (1 per sample port)
 - Plastic Barb Fitting
 - Flexible Tubing
 - Chain of Custody Form
 - Shipping Kit (UN approved metal can, packing material, box, labels)
- The End User will be responsible providing personnel to take the gas sample(s).
 - Gas sampling instructions will be included in each kit. We ask that the gas sample be taken Monday-Thursday, and shipped FedEx-Ground to the address included with the sample kit. Shipping is the responsibility of the End User.

(9/23/20 – 9/23/21)	Major Components	Siloxanes	H2S Only	VOC	Test Kit
Raw gas	1	2	1	2	2
After Siloxane Vessels		4		4	4
After H2S vessel			4		4
Product – After CNG Dryer	1	4		4	4
(9/23/21 – 9/23/22)	Major Components	Siloxanes	H2S Only	VOC	Test Kit
Raw gas	1	2	1	2	2
After Siloxane Vessels		4		4	4
After H2S vessel			4		4
Product – After CNG Dryer	1	4		4	4
(9/23/22 – 9/23/23)	Major Components	Siloxanes	H2S Only	VOC	Test Kit
Raw gas	1	2	1	2	2
After Siloxane Vessels		4		4	4
After H2S vessel			4		4
Product – After CNG Dryer	1	4		4	4

D. Media Change Out Services

MEDIA CHANGE OUT SERVICES

All media replacement change out periods are estimated from the following gas test information

Gas Testing			
Lab:		Report Date:	
Sample Date		Type:	Raw Gas
Report #:			
Operation:	Assumed operation of 24 hours/7 days a week @ 100scfm of raw gas		

H2S/VOC Media Replacement	
Media:	5,500 lbs - UNI-CH2S
Loading:	3,300 lbs - UNI-CVOC
Raw H2S:	
Estimated days to Change Out:	<i>Raw gas test needed</i>

Siloxane Media Replacement	
Media:	385 lbs - UNI-CC5V
Loading:	660 lbs - UNI-CL3E
Raw Gas VOCs:	
Estimated days to Change Out:	<i>Raw gas test needed</i>

H2S Media Change Out Services	
Shipping new media to the site	
Removal of Spent Media	
Install New Foam Pad	
Load of New Media	
Deposit Media in roll off dumpsters	
Responsibility of the City:	
<i>Roll off dumpsters* (by the City)</i>	
<i>Spent Media Classification Test (by the City)</i>	
<i>Disposal of spent Foam Pad* (by the City)</i>	
<i>Disposal of spent media* (by the City)</i>	

Siloxane Media Change Out Services	
Shipping new media to the site	
Removal & Disposal of Spent Media	
Load of New Media	
Industrial Grade Nitrogen Purge	
Deposit Media in roll off dumpsters	
Replace filter cartridge	
Responsibility of the City:	
<i>Spent Media Classification Test (TCLP)†</i>	
<i>*Disposal of spent media if considered Hazardous (by the City)</i>	

* Removal of spent media can only be done with close access to the vessels. Pricing does not include the use of a crane. If a crane is required due to poor access, additional charges will be invoiced accordingly. The H2S & Siloxane Media Removal is generally classified as nonhazardous. However media classification is unknown until the time of disposal. Testing protocol will be specified by the landfill at the time of disposal. The End User shall be responsible for any and all fees associated with the disposal of the spent media.

† Media Life is estimated. If future gas testing indicated that the media is viable for longer than stated number of days media change out interval will be adjusted accordingly. Additionally different media may be used for removal; base cost will be adjusted at time of invoice.

‡ Sampling for the Media Classification testing will be the responsibility of the End User, and based on the requirements of the solid waste facility; along with any permits required by the county or state.

E. Service Conditions

1. Sites must be clean, free of debris and any other obstructions, well lit, and operating in an environment that will not cause excessive usage, or need for replacement, of consumables and filters outside the parameters of Unison's standard service intervals.
2. Sites must be installed in accordance with all Unison installation requirements, written acknowledgment of which to be provided by the End User after inspection by Unison Solutions.
3. Sites must be commissioned in accordance with Unison Solutions specifications and Unison must have an approved Commissioning Report on file, written acknowledgment of which to be provided by Unison to the End User after inspection by Unison.
4. Site must have a VPN connection for remote monitoring

F. Excluded Services

The following are specifically excluded from the Agreement:

1. Changes to the original design and configuration (alterations from "as commissioned").
2. Expenses with the operation of the Unison Biogas Conditioning System
3. Equipment outside of Unison's standard operating guidelines defined in the Unison O&M Manual.
4. City, state, and/or federal permits, rebates, or incentive applications or filings.
5. Any services requested by Purchaser which are determined, in Unison's sole discretion, to be outside the scope of this Agreement.
6. Balance of plant equipment: Unison will provide Services for the Equipment listed in the Scope of Supply only, as may be amended by the parties from time to time in writing.
7. Maintenance Services for ANGI or Fuel Master equipment
8. Internet connection, service, maintenance, or hardware related fees.
9. Procurement, initial fill, and refilling of BioCNG odorant, if necessary.
10. 24/7 Emergency Assistance or Unscheduled Maintenance
11. Spare Parts
12. 14 Day Warranty Repair/Liquidated Damages
13. Performance Guarantee
14. Specialized tools not listed above
15. Roll of Dumpster(s) & Disposal of H2S media
16. Labor for gas test sampling
17. Cranes if required for media removal
18. Spent media classification testing

G. Term of Agreement

1. **Start of Services:** The Service Agreement shall commence ☐ Upon the Date of Commissioning, or ☒ (09/23/2020).
2. **End of Services:** The Service Agreement shall expire ☐ 1 year(s) from Start of Services; or ☒ Other (09/23/2023).

H. Payment Terms

1. Payment for the Service Agreement will be made in annual installments. See "Schedule of Values" for breakdown. Installments are due prior to the first day of service.
2. Unison reserves the right to add a fuel surcharge fee in the event that gasoline prices exceed \$4.00 per gallon on any service visit.
3. Unless otherwise provided for in the payment descriptions above, payments for Services are due 30 calendar days from date of invoicing, are stated in U.S. dollars and include any fees, licenses and permits required for the performance of the Services, and exclude sales and other taxes.

4. Overdue payments shall be subject to a late charge, calculated from the date of invoice to the date of payment, equal to the lesser of 1.5% per month or the highest applicable rate allowed by law. The foregoing shall in no way limit any other remedy that may be available to Unison.
5. Purchaser's obligations to Unison to pay in full all amounts owed to Unison as of the termination or expiration of this Agreement shall survive the termination for any reason or expiration of this Agreement.
6. Unison may adjust pricing for the services provided hereunder upon written notice to Purchaser should the total Consumer Price Index (CPI) exceed 3% in any given year.
7. Media Escalation: Media pricing is directly influenced by US imposed tariffs. Unison may adjust pricing for the media provided should there be future tariffs assigned to this product.