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The Lease Agreement (“Lease” or “Agreement”), entered into between Rasmussen Mechanical Services, an Iowa corporation (“Lessor” or “RMS”) and the **City of Grand Island**, identified as Lessee (“Lessee”) in the Fundamental Lease Provisions is subject to the following Terms and Conditions. The terms used below have the same meaning as set forth in the Fundamental Lease Provisions on the first two pages of the Lease Agreement.

1. Term, Rent and Payment. The Lease of and rent for all Equipment shall commence on the day it is loaded for delivery, and shall continue for the period specified as the Term in the Fundamental Lease Provisions. Rental on the Equipment shall be at the Rental Rate as shown in the Fundamental Lease Provisions and shall be payable in advance at the times set forth in the Fundamental Lease Provisions. Rent shall be paid to Lessor or as otherwise directed and shall not be prorated for any cause or reason except as herein specifically provided. Each month’s rent is billed in advance and due at the beginning of each rental period.

2. Deposit. Before delivery of each Unit, Lessee shall deposit with Lessor the Security Deposit specified in the Fundamental Lease Provisions as security to be applied by and at the option of Lessor to the payment and/or performance of any obligation of Lessee hereunder. Said deposit is not in lieu of the last rental payment due under this Agreement. Said deposit shall not excuse the performance at the time and in the manner prescribed herein of any obligation of Lessee or prevent default thereof. Any deposit not applied to an obligation of Lessee will be returned to the Lessee after the termination on this Lease.

3. Taxes. Lessee shall pay all taxes, fees and assessments, however designated, levied or based upon the rentals, or upon this Lease or the equipment, or the use or the operation thereof, or any service provided pursuant to this Agreement, any taxes, fees and assessments, or amounts in lieu thereof, paid or payable by the Lessor in respect of the foregoing, exclusive of franchise taxes and taxes measured by the net income of Lessor. Lessee shall promptly notify Lessor regarding any tax notices, tax reports, inquiries from taxing authorities concerning taxes, fees assessments and amounts in lieu thereof, referred to herein.

4. Maintenance. Lessee will pay for and provide all electric power and/or fuel consumed by and required for all Equipment as well as all repairs, parts and supplies necessary for the operation and maintenance of the Equipment. Lessee will, at its sole expense at all times during the Term hereof, maintain all Equipment in good operating order, repair and appearance, operate in accordance with the Instruction Book of Lessor and, when not in use, protect it against internal damage or corrosion by proper shut-down procedures. It is understood and agreed that such repairs, parts and supplies shall be paid for and procured at the expense of Lessee. Lessee will not, without the prior written consent of Lessor, affix or install any accessory, equipment or device to any Unit leased hereunder if such addition will impair the originally intended function or use of any such Unit. All repairs, parts, supplies, accessories, equipment and devices furnished or affixed to any Unit shall thereupon become the property of Lessor, except such as may be removed without in anyway affecting or impairing the originally intended function or use of any such Unit.

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5. No Warranty of Suitability. Lessee agrees that each Unit leased hereunder is of a size, design and capacity selected by Lessee and that Lessee is satisfied that the same is suitable for its purposes and that Lessor has made no representation or warranty with respect to the suitability or durability of any such Unit for the purposes and uses of Lessee, or any other representation or warranty, express or implied, with respect thereto. Lessor shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused, directly or indirectly, by any Unit leased hereunder, or the use or maintenance thereof, or the repairs, servicing or adjustments thereto, or by any delay or failure to provide any thereof, or by any interruption of service or loss of use thereby, or for any loss of business or damage whatsoever and howsoever caused.

6. Use. Lessee agrees that the Equipment shall be installed and used at its premises as shown in the Fundamental Lease Provisions, and shall not be removed therefrom without the prior written consent of Lessor. Lessee agrees not to loan, part with possession of, sublet, or otherwise dispose of, or encumber the leased equipment. Lessee will not use, maintain or store any Unit leased hereunder improperly, carelessly or in violation of this Agreement, the Instruction Book of Lessor, or of any applicable regulatory laws, ordinances, rules or codes, or use or operate any Unit in a manner other than for the use contemplated by the manufacturer thereof and customary for such Equipment. Lessee shall cause the Equipment to be installed and operated by capable, experienced and licensed engineers in accordance with rules and regulations of all local, city, state and federal laws governing said Equipment.

7. Liability. Lessee assumes all risk and liability for all Equipment leased hereunder and for the use, operation and storage thereof and damage for injuries or death to person or property howsoever arising therefrom or because of the daily use. Lessee will save and hold Lessor harmless from all claims and liens for storage, labor and materials incurred by Lessee and from all loss of and damages to each Unit and all Equipment leased hereunder and from all loss, damage, claims, penalties, liability and expense, including attorney's fees, howsoever arising or incurred because of any Equipment or the storage, maintenance, use or operation or alleged use of operation thereof. Without demand, Lessee will immediately notify the Lessor of each accident arising out of the alleged or apparent improper manufacturing, functioning or operation of any Equipment. Lessee shall indemnify and hold harmless RMS, and its agents and employees against any loss, liability or expense in connection with any accidents, injury to person (including death) and/or property damage at any-time arising out of or in connection with the services and/or equipment provided hereunder except such as may be the direct and proximate result of the RMS's acts. Lessor shall indemnify and hold harmless Lessee, and its agents and employees against any loss, liability or expense in connection with any accidents, injury to person including death, and / or property damage at any time arising out of or in connection with the installation, services and / or equipment provided hereunder. This provision survives the Term of the Agreement.

8. Limits on Liability. No Consequential Damages due to operation of said equipment. Notwithstanding any other provision of this contract, in no event shall RMS or its suppliers be liable, whether arising under contract, tort (including negligence), strict liability or otherwise, for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, service interruption, cost of purchased or replacement power, claims of customers, cost of money, loss of use of capital or revenue, or for any special, incidental or consequential loss or damage of any nature arising at "any-time" or from any cause due to daily use or maintenance of the equipment whatsoever. Consequential damages caused by daily use or maintenance of said equipment are not recoverable from Lessor under any circumstances.



9. Inspection. Lessor shall have the right at any reasonable time to inspect any Unit and Lessee shall on request furnish such supplemental information as may be reasonable to determine whether or not Lessee is performing the terms and conditions of this lease.

10. Loss. If any Equipment leased hereunder is lost, stolen, destroyed or damaged beyond repair, Lessee shall pay Lessor therefore within thirty (30) days after the happening of such event, the stipulated loss value in the amount shown in the Fundamental Lease Provisions. This value reflects the anticipated actual replacement cost to Lessor of the Unit at the time of the destruction so that Lessor may replace the Equipment with comparable Equipment sufficient to generate the same Rental Rate as that stated in the Fundamental Lease Provisions. If the stipulated loss value in the Fundamental Lease Provisions differs from the actual replacement cost of the Unit at the time of destruction by more than ten percent (10%) for any reason, the parties agree that the stipulated loss value will be adjusted to reflect the actual replacement cost of the Unit. Lessee further agrees that it will pay Lessor the Rental Rate set forth in the Fundamental Lease Provisions from the date of the destruction until the stipulated loss value is paid to the Lessor so that Lessor may remain whole under the terms of this Agreement. The provisions of this section do not constitute an agreement to sell, nor the basis for capture.

11. Damage. If the Unit leased is damaged in any way while in the possession of Lessee whether such damage is caused by Lessee or a third party, Lessee shall be liable for rent at the contract rate for each day that the Unit is undergoing repair and is unavailable for rental by Lessor for reason thereof plus the cost of all repairs necessary to restore the Unit to the same condition it was in at the time of delivery.

12. Shipment. Lessee shall pay all costs of loading and transporting the Unit and its auxiliaries and accessories from Lessor's premises or other location, to Lessee's premises as well as all costs of loading and transporting the Unit from Lessee's premises to Lessor's premises. Lessor shall designate the carrier unless otherwise agreed by the parties in writing.

13. Air and Operating Permits. Air and Operating Permits are not included and must be obtained by Lessee.

Paragraph intentionally omitted.

15. Field Service.

- a. Rates. Field Service is at the rate of \$120.00 per hour during normal working hours. There will be a four (4) hour minimum charge for normal service and eight (8) hours per day for any service requiring an overnight stay. Lease Agreement Terms & Conditions
Travel time is working time. Transportation and living expenses the responsibility of Lessee and will be billed to Lessee at Lessor's actual costs.
- b. Normal Working Hours. Eight hours per day 7:00 a.m. through 3:30 p.m. with half hour for lunch, Monday through Friday except observed holidays.
- c. Overtime. Time spent working and/or traveling in excess of our normal working hours (7:00 a.m. through 3:30 p.m.) during a normal day or Saturday (7:00 am through 7:30 pm) will be invoiced at one and one-half times the prevailing rate and any time spent working and/or traveling over 12 hours in one day shall be invoiced at two times the prevailing rate. Any time spent working or traveling on Sundays or Holidays, will be invoiced at two times the prevailing rate.



- d. Expenses. All expenses incurred during service work shall be reimbursable by the Lessee, including, but not limited to:
 - i. Actual plane, train, or rental automobile costs from RMS in Council Bluffs, IA service agency location to job site and return.
 - ii. Vehicle travel at the rate of \$1.25 per mile.
 - iii. Living expenses including actual expenses for lodging and incidental costs, and meals.
 - iv. Telephone calls
- e. The Service Engineer is authorized only to advise and consult with the customer and no representative of RMS is authorized or licensed to operate equipment. All operation of the Equipment shall be performed by the Customer. Although the Service Engineer shall cooperate with and assist personnel of the Customer, the Service Engineer shall at all times remain in the employment of and under the control of RMS.
- f. Service is performed only on the basis of a signed and accepted purchase order issued by the customer or his or its authorized representative, covering the specific service desired. Notwithstanding this provision, if service is performed for the benefit of Lessee without Lessor first receiving a purchase order, Lessee is responsible for all costs incurred in providing such service as are recoverable under the provisions of this Agreement. Lessor, at its option, however, may delay providing requested service until a purchase order is received.
- g. Purchaser shall provide and pay for any and all permits required for the performance of the work.
- h. RMS shall not be liable for any expense, loss or damage for failure to furnish the Service Engineer or for delay in completion of the work because of fire, flood, Acts of God, strikes, labor shortages, riots, thefts, accidents, transportation delays, acts or failure to act of Government, customer or any other cause whatsoever, whether similar or dissimilar to those enumerated above.

Paragraph intentionally omitted.

17. Acceptance. By accepting each unit, Lessee agrees that each Unit is in good operating order, repair and appearance and, at the expiration of the term or any extended term hereof or sooner termination of this Agreement, to return unencumbered each Unit to Lessor in the same operating condition, order, repair and appearance as when received (reasonable wear and tear excepted) and shall pay for any repairs necessary to restore the same to its original condition.

18. Default and Remedies.

- a. Each of the following shall be an event of default under the Agreement:
 - i. Failure to pay any sum due under any term of this Agreement;
 - ii. Failure to perform at the time and/or in the manner herein specified any term or covenant hereof, without curing such default within ten (10) days of receiving notice from Lessor of the default;
 - iii. Lessee becoming the subject of any proceeding under the Bankruptcy Act or becoming insolvent;
 - iv. Any attempt by Lessee to remove or sell or transfer or encumber or sublet or part with the possession of any Unit or part thereof; or
 - v. If Lessor deems itself insecure.
- b. In the event of any default under this Agreement, Lessor shall have the right to:
 - i. take immediate possession of all Equipment leased hereunder and damages occasioned by such taking of possession are hereby expressly waived by the Lessee; thereby terminating Lessee's right to the possession, although, notwithstanding the termination of Lessee's right to possession,



Lessee shall remain and be liable for the payment of all Rent due under this Agreement for the remainder of the Term; and

- ii. Lease the same or any portion of the Equipment for such rental period, and to such persons as Lessor shall elect and, after deducting all costs and expense incurred in connection with re-letting the Equipment, apply any rent received to the rent and obligations due from Lessee to Lessor hereunder by acceleration or otherwise.
- c. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other remedy herein or by law provided, but shall be cumulative and in addition to every other remedy available to Lessor under this Agreement or the law.
- e. Lessee shall pay interest at the rate of 18% per annum on any amounts due under this Agreement, including, but not limited to payments of the stipulated loss value and delinquent installments of rent.

19. Non-Waiver. Time is of the essence hereof and Lessor's failure at any time to require strict performance by Lessee of any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith or with any other provisions. Acceptance by Lessor of rental hereunder shall not be, or continue to be, a waiver of the breach of any covenants, conditions, or options in this Lease.

20. Right to Cure at Cost of Lessee. If Lessee fails to insure any Unit, or to pay and discharge all fees and taxes charged or assessed thereon, or for the use thereof, Lessor, without prejudice to any other right hereunder, may cause said property to be insured, or may pay and discharge such fees and taxes, and Lessee agrees to repay said sums to Lessor immediately upon demand.

21. Assignment. Lessee shall not assign this Lease nor shall this Lease or any rights hereunder or to the Equipment leased inure to the benefit of any trustee in bankruptcy, receiver, creditor, trustee or successor of Lessee or its property, whether by operation of law or otherwise, without the written consent of Lessor. Lessee shall not create or suffer or permit to be created by lien of any kind upon the Equipment and will forthwith remove and procure the release of any lien, voluntary or involuntary, attaching to said Equipment. Lessee will give Lessor immediate written notice of the seizure, by process of law, or otherwise, of any of said Equipment.

22. Title and Possession. This is a contract of lease only and nothing herein contained shall be construed as conveying to Lessee any right, title or interest in or to any Equipment leased hereunder except as a Lessee only. The Equipment shall at all times during the term of this lease or while in the possession of Lessee be and remain personal property, and title thereto shall remain in Lessor exclusively. Lessee agrees that the Equipment will be installed in a manner, which will permit their removal without material injury to the place of installation. Lessee shall be responsible for any damage done to any real estate, building or structure by the removal of any Unit. Lessee shall keep the Equipment free from any and all liens and claims, and shall do or permit no act or thing whereby Lessor's title or rights may be encumbered or impaired. Lessor covenants that Lessee, keeping and performing the covenants and agreements herein contained on the part of Lessee to be kept and performed, shall at all time during said term peaceably and quietly hold, possess and use said Equipment during said term without let or hindrance.

Paragraphs intentionally omitted.

26. Venue. This Agreement shall be construed in accordance with the laws of and shall be deemed to have been executed in the State of Nebraska. Any lawsuit or other proceeding brought to enforce any rights under this Agreement shall be brought in Nebraska.



27. Notices. All notices relating to this lease shall be mailed to Lessor or Lessee at their respective addresses as stated in the Fundamental Lease Provisions, or at any other address, which is designated in writing by the party whose address is changed.

28. Force Majeure. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of strikes, lockouts, war, Acts of God, fires, storms, accidents, governmental regulations or interference or other acts beyond its control.

29. Continuing Obligations. No obligations of Lessor hereunder shall survive the Term of the Lease of any Unit or sooner termination of this lease, and should Lessor permit the use of any Unit beyond the Term specified, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the term thereof nor as a waiver of any right or continuation of any obligations of Lessor hereunder, and Lessor may take possession of any such Unit at any time upon demand after ten (10) days' notice. The cancellation or other termination of this agreement or the lease of any Unit shall not release Lessee from any obligation to Lessor hereunder.

30. Instruction Book/Manual. Lessor will furnish one Instruction Book for the use of the Lessee and this shall be returned within 10 days, after the lease period. Lessee agrees to pay the loss value on instruction book specified in the Fundamental Lease Provisions if the book is lost or damaged.

31. Insurance. Lessee shall provide insurance coverage and/or proof of insurance for, but not limited to, Property Coverage for a minimum of the stipulated loss value of the Equipment and General Liability coverage for a minimum of \$1,000,000 general aggregate. Lessee shall provide proof of insurance coverage before delivery of any Equipment. For each policy, Lessee shall obtain a separate endorsement identifying Rasmussen Mechanical Services as an "Additional Insured" and "Loss Payee".

32. Hazardous Materials. Lessee hereby agrees that neither the Lessee nor any subcontractor for any part of the Lease shall use, deposit, install, and/or leave any hazardous materials in, on or around the leased equipment. This shall include but not limited to those materials or compounds considered being heavy metals or carcinogens. The Lessee shall burn only a clean fuel such as natural gas, propane, and/or No. 2 fuel oil. The Lessee shall not burn any waste, residual, No. 6 or tank bottom oils and/or gas. No waste stream shall be incinerated or burned in the leased equipment. The Lessee shall be responsible for all fees and costs relating to any clean up and disposal of any hazardous materials found during the Lease period or after inspection of the equipment at the Lessor's service facility.

Acknowledgement and Acceptance of the Terms and Conditions as outlined.

Authorized Signature of Lessee Jeremy L. Jensen

Printed Name Jeremy L. Jensen

Title Mayor

Date December 5, 2016