



Engineer - Install - Maintain

Maintenance Agreement

**Between Clarke Energy USA, Inc
and Town of Munster**

For Quick Reference Only

Commencement Date: TBD

Term: 8 Years or 59,999 Operating Hours per Generating Set

Generating Sets: 1 x JMC208 GS-LL D821

Operating Hours at Commencement:
Unit 1: 0

Agreement Ref: TMCSA-006

Quality Integrity Reliability Accountability

Index

1	Definitions & Interpretation	3
2	Term	4
3	Contractor's Obligations	4
4	Customer's Obligations	4
5	Health, Safety & Hazardous Material	5
6	Liability & Indemnity	6
7	Availability Guarantee	7
8	Indexation	7
9	Not Used	7
10	Billing & Payment	7
11	Termination or Suspension	8
12	Excusable Events	8
13	Assignment & Subcontracting	9
14	Entire Agreement	9
15	Waiver	9
16	Invalidity & Severability	9
17	Notices	9
18	Applicable Law	10
19	Arbitration	10
20	Confidentiality	10
21	Counterparts	11

Schedules

1st Schedule	The Service	12
2nd Schedule	Downtime for Overhauls	13
3rd Schedule	The Plant	14
4th Schedule	The Service Fee	16
5th Schedule	The Operating Profile	18
6th Schedule	Addresses and Contact Details	19

Appendices

Appendix 1	Fuel Gas Quality
Appendix 2	Monthly Report
Appendix 3	Accident and Incident Report
Appendix 4	Gas Composition

This Agreement is made the 9th day of June, 2024

Between:

1. **Town of Munster**, with its registered office at 1005 Ridge Rd, Munster, IN 46321 ("the Customer").
2. **Clarke Energy USA, Inc**, a Wisconsin corporation with its registered office at 2100 Pewaukee Road, Waukesha, Wisconsin 53188 ("the Contractor").

1. On or before the date of this Agreement the Customer entered into a purchase agreement under the terms of which the Customer purchased the Plant from the Contractor.
2. The Contractor has agreed to provide to the Customer maintenance services in respect of the Plant in accordance with the terms and conditions of this Agreement.

Whereas:

It is Agreed as follows:

1 Definitions & Interpretation

"Agreement"	means this Agreement including the Schedules and Appendices
"Base Date"	means the date of the most recent formal maintenance offer July 9 th , 2024
"Catastrophic Failure"	means a crankshaft failure, irreparable damage to the crankcase, a generator rotor or stator failure, or irreparable damage to the gearbox, a gear or a gearbox shaft
"Commencement Date"	means the first day following the date of the grid synchronisation test
"Excusable Event", "Excusable Delay"	are defined in clause 12
"Extra Work"	means work beyond Contractor's scope under this Agreement performed against a purchase order from the Customer
"Gas Specification"	means the specification detailed in Technical Instruction 1000-0300, Appendix 1
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a competent skilled and experienced contractor providing services of a similar nature, value and complexity
"Month" and "Year"	means a calendar month and a calendar year
"Operating Hours"	means the hours run according to the operating hour counter located in the engine control panel
"Operating Profile"	means Customer's annual profile of Operating Hours given in the Fifth Schedule
"Party", "Parties"	means the Customer or Contractor or both of them together as the case requires
"Plant"	means the plant and equipment detailed or described in the Third Schedule
"Remedial Work"	means additional work to maintain Plant performance or reduce emissions which is required as a result of gas not conforming to the Gas Specification, e.g. cleaning of the combustion chambers, cleaning of the exhaust gas heat exchanger
"Scheduled Maintenance"	means the planned Services carried out on the Plant in line with Good Industry Practice
"Services"	means the Scheduled Maintenance and Unscheduled Maintenance services described in the First Schedule
"Service Fee"	means the amounts specified in the Fourth Schedule paid by the Customer to the Contractor for the Services
"Supply Year"	means 12 consecutive Months from the Commencement Date or any anniversary of that date
"Term"	has the meaning ascribed to it in clause 2
"Unscheduled Maintenance"	means any maintenance of the Plant which is not included in the Scheduled Maintenance except Remedial Work

- 1.1 In this Agreement except where the context otherwise requires:
- Any gender includes any other gender and the singular includes the plural and vice versa;
 - References to clauses, paragraphs and Schedules are to clauses and paragraphs of and Schedules to this Agreement;
 - The headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement;
 - General words (such as "including", "for example" and "in particular") shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things.

2 Term

- 2.1 **Term of the Agreement**
This Agreement shall commence on the Commencement Date and unless terminated in accordance with clause 11 hereof shall remain in full force and effect for eight (8) Supply Years ("the Term") or 59,999 Operating Hours whichever comes first.
- 2.2 **Arrangement of Expiry**
At least twelve Months prior to the expiry of the Term the Parties shall meet to discuss the future maintenance requirements of the Plant.

3 Contractor's Obligations

- 3.1 The Contractor shall on the Commencement Date take and agree with the Customer the reading from the operating hour counter located in the engine control panel. If the Customer does not have a representative on site on the Commencement Date to verify the reading the Customer shall accept the Contractor's reading which shall be binding on the Parties save in the case of manifest error.
- 3.2 From the Commencement Date, the Contractor shall:
- carry out the Services detailed in the First Schedule;
 - provide competent qualified and trained staff to provide the Services;
 - perform the Services at the times agreed in advance between the Parties as far as is reasonably practical;
 - select and supply the lubricating oil.
- 3.3 The Contractor shall not be responsible:
- for the consequences of intervention by the Customer, except where required under clause 4.

- for the consequences of intervention by any third party except where employed by the Contractor.
- for the consequences of connections or modifications made to the Plant without the prior written approval of the Contractor, including any made before the commencement of this Agreement.
- for cleaning and painting other than that which is consistent with good engineering practice arising during provision of the Services, also for cutting grass, weeding and the like.
- for repair necessary because of damages due to any kind of force, water, fire, corrosion or contamination.
- for the operation, maintenance or repair of steam generation plant.
- for the operation, maintenance or repair of transformers.
- for the repair of damages which are covered by the Customer's or third parties' insurance policies for which the Customer is obliged to waive recourse in favour of the Contractor.
- for Catastrophic Failure unless caused by its negligence.

3.4 Reporting;

- The Contractor shall provide to the Customer monthly an electronic report on the Plant's performance in the form set out in Appendix 2.
- The Contractor shall provide to the Customer a report in writing in the form set out in Appendix 3 providing details of any incident, accident or malfunction occurring in relation to the Plant which involves or results in injury to a person, and the Contractor shall provide such report to the Customer as soon as reasonably possible.

4 Customer's Obligations

- 4.1 The Customer shall operate the Plant in accordance with the manufacturer's manual and shall make a daily check on the Plant and keep a daily operational log and shall advise the Contractor immediately of any operational difficulties or abnormalities observed and confirm the same in writing within 24 hours.
- 4.2 The Customer shall supply urea if it is required for operation of the Plant.
- 4.3 The Customer shall not deliberately stop/start the Plant more than one time per day. Should the Plant starts exceed more than one start per day for a period of more than seven (7) consecutive days then the Contractor reserves the right to recover the reasonable demonstrable additional costs

from the Customer for the additional parts and labor costs incurred as a result of premature failure of or underperformance of the Plant or parts thereof reasonably attributable to the additional stop starts. For the avoidance of doubt restarts due to Plant trips caused by failure of the Plant or part thereof, restarts requested by the Contractor and/or failed start attempts shall not be considered as stop/starts for the purpose of this limit.

- 4.4 The Customer shall provide the Contractor with full and safe access at all times to the site/premises and the Plant for the purpose of performing the Services.
- 4.5 The Customer shall be responsible for maintaining security at the Plant.
- 4.6 The Customer shall use its reasonable endeavours to ensure that the Gas Specification is at all times complied with.
- 4.7 The Customer shall provide the Contractor with an analysis of the fuel gas on or immediately before the Commencement Date. The analysis shall be carried out by a suitably accredited laboratory. The Contractor is not liable for damage to the Plant resulting from gas that does not comply with the standards set out in Appendix 1.
- 4.8 If during the carrying out of the Services evidence is found or information is gathered by the Contractor which reasonably suggests that the fuel gas is not meeting the Gas Specification then, upon sharing said evidence or information with the Customer, the Contractor shall have the right to request a fuel gas sample to be taken and an analysis of the same to be undertaken by the Customer's suitably accredited laboratory at the Customer's cost. The Contractor is not liable for damage to the Plant resulting from gas that does not comply with the standards set out in Appendix 1.
- 4.9 The Customer shall install two analogue telephone lines to the Plant, with one telephone line being a broadband enabled line. Both the telephone lines shall be available uninterruptedly. The costs for these shall be borne by the Customer.
- 4.10 The Customer shall provide parking space for two vehicles close to the Plant inside the site.
- 4.11 If requested the Customer shall provide space for the Contractor to install a service parts container within the site. The container

and its contents shall remain the property of the Contractor.

- 4.12 The Customer shall be responsible for the provision of scaffolding and lifting equipment except for craneage when overhauls are being performed in the event that there are changes to the layout or access to the Plant or to the site after the execution of this Agreement.
- 4.13 The Customer shall be responsible for any structural reinforcement that may be required if the Contractor has to move/remove any part of the Plant for repair or overhaul which it is not practical or possible to perform in situ.
- 4.14 The Customer shall be responsible for obtaining any permits which may be required if the Contractor has to remove any part of the Plant for repair or overhaul.
- 4.15 The Customer shall if requested by the Contractor remove/reinstate any item of plant or building or any site constraint in order to provide the Contractor clear unrestricted access to remove any part of the Plant for repair or overhaul which it is not practical or possible to perform in situ.
- 4.16 For the purposes of allowing the Plant and fuel supply to stabilise following commissioning an initial 'availability holiday' of thirty (30) days shall be permitted by the Customer.

5 Health, Safety & Hazardous Material

- 5.1 The Customer shall take necessary precautions for the safety of Contractor's personnel at the site. This includes, but is not limited to, provision for review by Contractor of, and instruction by Customer on, Customer's safety practices, including energization / de-energization of all power systems (electrical, mechanical and hydraulic) using a safe and effective lock-out tag procedure, and protection of Contractor's personnel from exposure to hazardous substances.
- 5.2 The Contractor shall comply with reasonable health and safety requirements established from time to time by the Customer at the site, provided, however, that if the Customer imposes unusual or new requirements, or requirements that materially impact the Contractor's costs or performance, the Parties shall negotiate appropriate amendments to this Agreement to address such impact, including an equitable adjustment in price.

- 5.3 If Contractor personnel require medical attention, local facilities shall be made available to Contractor personnel for the duration of such needs.
- 5.4 If, in the Contractor's opinion, the safe execution of Services at the Site is, or is likely to be, imperilled by local conditions, the Contractor may evacuate some or all of its personnel from the site and the Customer shall assist in said evacuation, any of which shall be considered to be an Excusable Delay.

6 Liability & Indemnity

- 6.1 Without prejudice to the other rights and remedies available to the Customer, the Contractor shall at all times indemnify the Customer against legal liability under this agreement in respect of loss or damage to the property of the Customer and the property of its employees and agent and the property of any third party this being limited to the sum of \$3,000,000 in aggregate in each Supply Year arising as a result of:
- any breach of the Contractor's obligations under this agreement; and/or
 - the act, neglect or default of the Contractor whether arising out of contract, negligence, nuisance, tort (including negligence and/or breach of statutory duty) or otherwise howsoever and whatever the cause.
- 6.2 Without prejudice to its liability to indemnify the Customer under clause 6.1 the Contractor shall for the duration of the agreement maintain such insurances as are necessary to cover any liability arising under clause 6.1. Such insurance cover shall be not less than \$3,000,000 in aggregate in each Supply Year.
- 6.3 The Contractor shall within 14 working days of a request from the Customer supply copies of the insurance policy or policies.
- 6.4 Without prejudice to the other rights and remedies available to the Contractor the Customer shall at all times indemnify the Contractor against legal liability under this agreement in respect of loss or damage to the property of the Contractor and the property of its employees and agents this being limited to the sum of \$3,000,000 in aggregate in each Supply Year arising as a result of:
- any breach of the Customer's obligations under this agreement and/or
 - the act, neglect or default of the Customer.
- 6.5 Without prejudice to its liability to indemnify the Contractor under clause 6.4 the Customer shall for the duration of the agreement maintain such insurances as are necessary to cover any liability arising under clause 6.4. Such insurance cover shall be not less than \$3,000,000 in aggregate in each Supply Year.
- 6.6 Except where the provisions of clauses 6.1 or 6.9 or 6.11 apply, which shall for the avoidance of doubt take precedence over this clause 6.6, the Contractor's aggregate liability whether related to performance or non-performance of the Agreement in respect of all causes of action under, arising out of or in connection with this Agreement whether for breach of contract, including breach of duty, in tort (including but not limited to negligence), by way of indemnity, warranty or otherwise, including (but not limited to) liability for defects and liquidated damages for Delay and/or performance shall be limited to a sum not exceeding 50% (fifty percent) of the total sums paid by the Customer in that Supply Year.
- 6.7 Neither the Customer nor the Contractor shall have any liability under, arising out of or in connection with this Agreement, whether by way of breach of contract, breach of duty, tort (including but not limited to negligence), indemnity or otherwise, for:
- any loss of profit, loss of goodwill, injury to reputation, loss of income, loss of use, loss of revenue, loss of contracts, loss of product, loss of production, loss of business opportunity, loss of savings or anticipated savings, third party losses, loss of use of capital, business interruption, interest or increased financing charges, rental charges or other like risks and in each case whether direct or indirect or
 - any indirect, special or consequential loss or damage whether or not foreseeable at the date of execution of this Agreement or at any time.
- 6.8 No proceedings shall be brought by either Party against the other for indemnification after the expiry of 6 years from expiry of this Agreement or upon termination if earlier.
- 6.9 Nothing in this clause 6 shall exclude or limit any liability which is prohibited by law from being excluded or limited.
- 6.10 The limitations and exclusions of liability contained in this clause shall survive termination of this Agreement and shall, in the event of any conflict or inconsistency with other parts of this Agreement, have precedence.

6.11 Nothing in this clause 6 shall exclude or limit any liability which arises as a result of any fraudulent act by either Party including but not limited to fraudulent misrepresentation or exclude or limit the liability of either Party for death or personal injury resulting from the negligence of that Party.

6.12 For the avoidance of doubt it shall be the Customer's responsibility to insure the Plant against damage to the Plant resulting from fire howsoever caused and the Contractor shall not be liable for any such fire damage, but this shall not in any way reduce the Contractor's obligations to deliver the Services or to act diligently to prevent fire from occurring or to maintain the Plant to a good standard.

7 Not Used

7.1 Not Used

8 Indexation

8.1 The hourly charge shall be indexed annually on 1st January of each Year to take into account labor, parts and oil (the "Base Costs") cost movements. For the avoidance of doubt such indexation adjustment shall be made in the case that 1st January falls inbetween the Base Date and the Commencement Date.

The formula is:

$$HC=HC_0 ((0.15 L_1/L_0) + (0.66 P_1/P_0) + (0.19 O_1/O_0))$$

Where,

HC: Hourly charge for the next year

HC₀: Hourly charge for the last year

L₁ : Average labor index value for the Month of November immediately preceding the Month in which the indexation takes place.

L₀ : Average labor index value for the Month of November immediately preceding the Base Date or the average labor index value for the Month twelve (12) Months prior to that used as L₁, as appropriate .

P₁ : Average parts index value for the Month of November immediately preceding the Month in which the indexation takes place.

P₀ : Average parts index value for the Month of November immediately preceding the Base Date or the average parts index value for the Month twelve (12) Months prior to that used as P₁, as appropriate.

O₁ : Average oil index value for the Month of November immediately preceding the Month in which the indexation takes place.

O₀ : Average oil index value for the Month prior to the Base Date or the average oil

index value for the Month twelve (12) Months prior to that used as O₁, as appropriate.

8.2 Labor indexation is by Consumer Prices Index – All Urban Consumers, Midwest published by the U.S. Department of Labor Statistics and available at www.bls.gov, parts indexation is by the German industrial product index GP09-2811 relating to parts for turbines and reciprocating engines, oil indexation is by ICISLOR Base Oils Group SN150 FOB USG Assessment Spot 2-6 Weeks Close-weighted Range (Mid) index.

8.3 The hourly charge shall be the greater of HC and HC₀.

8.4 If overhauls are not included in the hourly charge the prices for overhauls shall be indexed at the time of occurrence according to the following.

$$C= C_0 ((0.12 L_1 /L_0) + (0.88 P_1/P_0))$$

Where,

C: Updated price.

C₀: Price at Base Date.

L₁ : Average labor index value for the Month of November immediately preceding the Month in which the indexation takes place.

L₀ : Average labor index value for the Month of November immediately preceding the Base Date.

P₁ : Average parts index value for the Month of November immediately preceding the Month in which the indexation takes place.

P₀ : Average parts index value for the Month of November immediately preceding the Base Date.

8.5 The price shall be the greater of C and C₀.

8.6 The parts indexation ratio P₁/P₀ in clause 8.1 and 8.4 shall not be less than unity.

9 Not Used

9.1 Not used.

10 Billing & Payment

10.1 The Contractor shall invoice the Customer the Service Fee specified in the Fourth Schedule monthly in arrears and the Customer shall pay the Contractor within 30 days of the date of the invoice without deduction or set off.

10.2 If overhauls are to be paid for separately the Customer shall provide the Contractor with a purchase order for each overhaul and the terms of payment applicable shall be 60%

with order, 30% on completion of overhaul or readiness to ship if the overhaul has been performed at Contractor's premises, 10% on re-commissioning.

10.3 If an invoice is not paid on the due date the same shall bear interest at the rate of 5% per annum above the base rate of the US Federal Reserve accruing on a daily basis from the due date for payment until payment is made. Such interest shall accrue on a daily basis and be compounded quarterly.

10.4 Sales Taxes

a. Any and all transfer, sales, use, purchase, value added, excise, personal property or other similar taxes ("Taxes") due and payable on the provision of the Services are exclusive of the charges stated hereunder and shall be paid by the Customer.

11 Termination or Suspension

11.1 Either the Customer or the Contractor shall have the right to terminate this agreement in the following circumstances:

- a. Failure by the other Party to pay any sum properly due, in terms of the agreement, within 28 days of a written notice requiring payment.
- b. Failure by the other to remedy within 28 days any material breach of the Agreement, which has been specified by the other Party by written notice and such termination shall take effect at the expiration of 28 days after the date of issue by the terminating Party of its intention to terminate.

11.2 Without prejudice to clause 11.1 either Party shall be entitled to terminate this Agreement immediately in the following circumstances:

- a. any meeting of creditors of the Contractor or the Customer being held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined Chapter 11 of the Bankruptcy Code) being proposed or entered into by or in relation to the Contractor or the Customer; or
- b. a supervisor, receiver, administrator, administrative receiver, liquidator or other encumbrance taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within 7 days) upon the whole or any substantial part of the assets of the Contractor or the Customer; or
- c. the Contractor or the Customer becoming unable to pay its debts within the meaning

of the Bankruptcy Code and / or associated case law; or

- d. a petition being presented or a meeting being convened for the purpose of considering a resolution for the making of an administration order, the winding up, or dissolution of the Contractor or the Customer; or
- e. any event analogous to any of the foregoing occurring in any jurisdiction.

11.3 If the Customer fails to fulfil any of the payment conditions in this Agreement, becomes generally unable to pay its debts when they become due, or sustains a material deterioration of its financial condition, the Contractor may suspend performance and delivery and/or thereafter require full or partial payment in advance. The Contractor shall not invoice the Customer for any Operating Hours accrued during such a period of suspension. Any cost incurred by the Contractor in accordance with such suspension, including, but not limited to, a loss of accrued sums towards major services and overhauls as a result of Operating Hours not invoiced, shall be payable by the Customer.

11.4 Continuation

a. Notwithstanding any breach, default or omission by a Party hereto the other Party may elect to continue to treat this Agreement as in full force and effect and to enforce its rights hereunder and failure of either Party to exercise any right hereunder including the right to termination shall not be deemed a waiver of such right for any continuing or subsequent default.

11.5 The Contractor may renegotiate or terminate this Agreement in the event that the Customer engages a third party to carry out any work on the Plant without the Contractor's prior written consent. For the avoidance of doubt this includes any work carried out during any period of suspension in accordance with clause 11.3.

11.6 Non Prejudice to Claims

a. Any termination of this Agreement shall be without prejudice to any claim that either Party may have against the other arising out of this Agreement prior to such termination.

12 Excusable Events

12.1 Neither Customer nor Contractor shall have any liability or be considered to be in breach or default of its obligations under this Agreement to the extent that performance of such obligations is delayed or prevented

(such delay or prevention defined as "Excusable Delay"), directly or indirectly, due to:

- a. causes beyond its reasonable control; or
- b. acts of god, act (or failure to act) of governmental authorities or third parties not engaged by the Party claiming Excusable Delay, fires (howsoever caused), severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riot, acts of terrorism; or
- c. acts (or omissions) of the other Party including failure to promptly perform its obligations under this Agreement ("Excusable Events") or
- d. inability on account of causes beyond its reasonable control to obtain necessary materials, components or services.

The Party claiming Excusable Delay shall notify the other Party in writing of any such delay. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, provided that the Term of this Agreement shall not be extended due to any Excusable Event, unless mutually agreed upon in writing by the Parties. If the Contractor is delayed by acts or omissions of the Customer, or by the prerequisite work of the Customer's other contractors or suppliers, the Contractor shall also be entitled to any equitable price adjustment. The occurrence of an Excusable Event shall not excuse any delay or failure of the Customer to make any payment to be paid to the Contractor pursuant to this Agreement unless the Excusable Event directly delays or prevents the transmission of the payment, itself.

- 12.2 If delay excused by Section 12.1 extends for more than one hundred eighty (180) days and the Parties have not agreed upon a revised basis for continuing the work at the end of the delay, including the equitable price adjustment, then either Party (except where delay is caused by acts or omissions of a Party, in which event only the Party not committing the acts or omissions), upon thirty (30) days written notice, may terminate this Agreement.

13 Assignment & Subcontracting

13.1 Assignment

- a. This Agreement is personal between the Customer and the Contractor. Neither Party may give, assign or transfer all or any of its rights or obligations under this Agreement except with the prior written consent of the other Party.

13.2 Subcontracting

- a. The Contractor may sub-contract or delegate the performance of any of its obligations or duties but this shall not relieve the Contractor from liability for its performance under the terms of this Agreement.

14 Entire Agreement

- 14.1 This Agreement constitutes the entire agreement between the Parties and supersedes all prior written or oral agreements, understandings or arrangements between the Parties relating to the subject matter of this Agreement. Neither Party shall be entitled to rely on other prior agreements, understandings, or arrangements, which are not expressly contained in this Agreement. No alteration of the terms of this Agreement shall be effective unless agreed by both Parties in writing and signed by both of them. The Parties shall consult each other and make all reasonable efforts to reach an amended agreement that takes into account the changed conditions particularly if such modifications are necessary due to amendments of the Law.

15 Waiver

- 15.1 No failure or delay by either Party to exercise any right or remedy under the Agreement shall be construed as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either Party of any breach of the Agreement shall be considered as a waiver of a preceding or subsequent breach.

16 Invalidity & Severability

- 16.1 If any term of the Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, to the extent it is severable from the remaining terms, be deemed omitted from the Agreement and shall not affect the legality, validity or enforceability of the remaining terms. The Customer and the Contractor shall try to agree on a suitable clause to replace the one which is deemed omitted. The new clause should, as far as possible, achieve the same economic, legal and commercial aims of the omitted one.

17 Notices

- 17.1 Any notice to be given by either Party to the other shall be sent by post to the address of the other Party as detailed in the Sixth Schedule or such other address as such

Party may from time to time have been communicated in writing to the other in accordance with this clause and if so sent shall be deemed to be served 2 days following the date of posting. In proving service it shall be sufficient to show that the letter containing the notice was properly addressed, stamped and posted by first class mail.

18 Applicable Law

- 18.1 This Agreement shall be governed in all respects by the laws of the state of Indiana and any disputes or difference shall be subject to the exclusive jurisdiction of the Courts of Lake County, Indiana.

19 Arbitration

- 19.1 All conflicts relating to this Agreement that cannot be settled amicably by the Parties may upon agreement by both Parties be referred to arbitration.

20 Confidentiality

- 20.1 Neither Party may disclose any of the information or portion thereof contained in this Agreement or any information regarding the business of the other Party to any third party nor shall it disclose any information to employees or agents of either Party who have no need to know such information for the proper furtherance of the obligations of the Party in question.
- 20.2 Neither Party shall make or disclose copies of documents or copies of documents containing information relative to this Agreement without prior agreement of the other Party.

21 Counterparts

21.1 This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts each of which when executed and delivered shall constitute one and the same instrument.

Signed
(for and on behalf of the Customer)

Dated

Print Name

Signed

Dated

Brendan Stokes

First Schedule: The Services

The Contractor shall:

- a. Carry out Scheduled Maintenance on the Plant in accordance with Good Industry Practice, in a safe and efficient manner.
- b. Carry out oil changes according to the results of oil sampling performed by the Contractor.
- c. Maintain a clean and safe working environment during maintenance operations.
- d. Remove and dispose of in accordance with all relevant legislation and guidance any waste materials including spent oil and other lubricants.
- e. Remotely monitor the operation of the Plant.
- f. Use its reasonable endeavours to minimise the incidence and duration of outages.
- g. Perform any Remedial Work.
- h. Remotely start the Plant after a non-critical trip.

Second Schedule: Downtime For Overhauls

The downtime periods for overhauls are

For Type 2, 3 and 4 biogas/landfill gas engines			
Operating overhaul (hours)	20,000 Minor Overhaul	40,000 Minor Overhaul	60,000 Major Overhaul
Downtime (days)	5	5	NA

These times;

- a. assume Plant removal will be straightforward and unrestricted. Any time required dealing with the circumstances addressed in clauses 4.12 and 4.14 shall be in addition.
- b. do not constitute a guarantee.

Third Schedule: The Plant

a. The Plant comprises

Description	Clarke Energy	Excluded
CHP Scope of Supply		
<u>1.1 CHP Supply</u>		
Gas Engine Generator Set	X	
Spark ignition gas engine	X	
Self-excited self-regulated three-phase generator	X	
Flexible coupling, bell housing, base frame	X	
Cooling system	X	
Automatic lube oil replenishing system	X	
NFPA 37 fuel gas train	X	
Starting batteries	X	
Electric jacket water preheating	X	
40-foot container	X	
Acoustically lined for 65dBA at 32' (10m) in free field conditions	X	
Separate control room with interconnecting cabling	X	
Forced air ventilation system, c/w weather louvers, intake filtration, motorized dampers, attenuators, temperature sensors, and inverter for fan speed control	X	
Roof mounted exhaust silencer and dump radiator	X	
LV synchronizing switchgear installed in container control room	X	
Gas and smoke sensors inside engine and control rooms	X	
Mechanical completion of lubricating oil, high temperature, and low temperature piping, internal to container	X	
Roof mounted exhaust gas heat exchanger	X	
Pre-fabricated piping for connection to roof mounted equipment	X	
Electrical completion of power and control wiring, internal to container	X	
Insulation of roof top components (silencer, oxi-cat, stack up to 8')	X	
<u>1.2 CHP Control System</u>		
Genset/Module control panel (GCP/MCP) (Dia.ne XT4) including motor starters and controls for engine auxiliaries	X	
Modbus card	X	
Island mode software		X
Black start software		X
Export control software	X	
Gas and smoke detection, alarm, and shutdown system	X	
Synchronizing device, automatic	X	
<u>1.3 Lubricating Oil System Supply</u>		
Fresh oil day tank, internal to container	X	

Commented [TC1]: Edit as necessary

Description	Clarke Energy	Excluded
Sump extension tank, internal to container	X	
Fresh oil bulk storage tank – 500G		X
Waste oil bulk storage tank – 500G		X
Lubricating oil pumps and control panel		X

b. The boundary limits of the Plant are in accordance with the scope of supply below

Demarcation Point	Description
Fuel Gas	<ul style="list-style-type: none"> Inlet flange on gas isolation valve at inlet to containerized set
Heat Recovery System	<ul style="list-style-type: none"> Flanges on secondary side of interface plate heat exchanger Inlet and outlet water flanges on exhaust gas heat exchanger
Heat Rejection System	<ul style="list-style-type: none"> Complete system to dump radiators
Lubricating Oil	<ul style="list-style-type: none"> Fill and drain connection on container set
Ventilation	<ul style="list-style-type: none"> Complete system to weather louvers at plant room external face
Exhaust	<ul style="list-style-type: none"> Complete system from engine to outlet of stack
Generated Power	<ul style="list-style-type: none"> 480V outgoing terminals on generator circuit breaker
Auxiliaries Supply	<ul style="list-style-type: none"> Complete system to engine control panels
Remote Monitoring	<ul style="list-style-type: none"> Terminal for connection of broadband enabled telephone line at generator control panel

Any required energy system isolation on equipment outside of the boundary limits or the responsibility of the Contractor shall be provided free of charge upon request to the Contractor by the Customer. Such consent shall not be unreasonably withheld or delayed.

Fourth Schedule: The Service Fee

The Service Fee comprises:

- 1 An hourly charge of \$6.09 established at the Base Date indexed according to clause (8). This rate is based on the Operating Profile. If the Operating Profile changes the Contractor reserves the right to increase the hourly charge.

Should the number of Operating Hours during any year be less than 40% of the operating hours in the Operating Profile then the Contractor shall bill as if 40%. The adjustment shall be made on the anniversary of the Commencement Date.

- 2 The prices for overhauls not included in the hourly charge established at the base date which shall be invoiced at the time of occurrence are;

Operating Hours (nominal)	Cost (\$)
20,000	\$109,715.00
40,000	\$119,448.00

If the Customer does not agree to have an overhaul carried out when according to the manufacturer's schedule it is due, the Contractor shall not be responsible for any failures which may be attributable to the overhaul not having been done.

The Contractor shall make additional charge if;

- a. the Customer requests Extra Work be done. Acceptance of purchase order by Contractor for Extra Work shall be subject to the Contractor's offer at the time Extra Work is required.
- b. any Remedial Work is performed.
- c. oil changes are required more frequently than 1,500 Operating Hours.
- d. cleaning of the heat rejection radiators is required.
- e. repair or replacement of a heat rejection radiator is required after 5 Supply Years.
- f. it incurs costs related to the circumstances addressed in clauses 4.12 and 4.14.
- g. the manufacturer increases the maintenance required in its published schedules.
- h. statutory and/or mandatory requirements become more onerous.
- i. there are exceptional increases in the Base Costs, or any individual one thereof, whereby the increase in costs can be reasonably demonstrated to have been more than five percent (5%) greater than the increase in the relevant index. For the avoidance of doubt this 5% shall be

assessed on a relative basis not as an absolute value.

Where any additional charge becomes payable under this agreement, the Customer requests any additional work, or corrective repairs are required, it shall be calculated on the following basis:

Schedule of Rates

Standard rate (weekdays 7:00am – 5:00pm)	\$148.50 per hour
Overtime rate (weekdays 5:00pm – 7:00am and Saturdays)	\$222.75 per hour
Sundays and Holidays	\$297.00 per hour
Travel mileage	\$ 2.70 per mile

The above rates are:

- a. Exclusive of any non-vehicular travel costs and subsistence which shall be charged at invoiced cost plus a margin of 15%.
- b. Applicable to travel time and all hours worked.
- c. Exclusive of sales tax.
- d. Valid to December 31st, 2024.
- e. Shall be adjusted on January 1st, 2025 and at the beginning of each subsequent Year in accordance with the movement in Consumer Prices Index – All Urban Consumers, Midwest evaluated using the average labor index value from the month of November immediately preceding the adjustment date and the value from November immediately preceding the Base Date or the average labor index value for the Month twelve (12) Months prior to the month of November immediately preceding the adjustment date.

Subcontracts

Should any additional subcontracted work be required, it will be charged at invoiced cost plus a margin of 15%.

Materials

Should procurement of any additional non-Jenbacher material (I.E. Balance of Plant planned

parts, unplanned parts, consumables, etc) be required, it will be charged at invoiced cost plus a margin of 20%.

Should procurement of any additional Jenbacher parts be required for customer stock, Customer requested additional works, or corrective repairs, it will be charged at the then-current list price less a 5% discount.

Plant Hire

Should the hiring of any additional plant, tooling or machinery be required, it will be charged at invoiced cost plus a margin of 15%

If the Customer intends to place the Plant, or part of the Plant, out of service for an extended period of time the Parties shall agree in advance a fee to maintain the Plant in good condition.

Fifth Schedule: The Operating Profile

The Operating Profile is 8,000 Operating Hours

The Parties shall carry out a review of the Operating Profile within one Month of the completion each Contract Year. In the event that the Parties agree that the Operating Profile as above is no longer representative of the actual operating regime, then the Parties shall meet to agree an equitable adjustment to the Service Fee.

Sixth Schedule:
Addresses and Contact Details

Site address:

10121 Calumet Ave
Munster, IN 46321

Telephone number: (219) 836-6928
Contact person: Kevin Dark
Mobile number: (219) 746-0083
E-mail address: kdark@munster.org

Customer's correspondence address:

Telephone number: (219) 836-7275
Contact person: Mark Heintz
E-mail address: mheintz@munster.org

Customer's invoicing address:

Telephone number: (219) 836-6945
Contact person: Wendy Mis, Clerk-Treasurer
E-mail address: accountspayable@munster.org
Mailing address:

1005 Ridge Road,
Munster IN 46321

Contractor's address:

1237 Arrowhead Court
Crown Point, IN 46307

Telephone number: 262-565-5020
Contact person: Brendan Stokes
E-mail address: brendan.stokes@clarke-energy.com

Contractor's Area Manager:

Contact person: Dave Varichak
Mobile number: 262-444-7716
E-mail address: dave.varichak@clarke-energy.com

Appendices

Appendix 1

Jenbacher Technical Instruction 1000-0300
(or 1000-0302 for syngas), Fuel Gas Quality



1000-0300_en.pdf

Appendix 2

Clarke Energy Monthly Report (example)



Monthly CSA
Report (Example).pd

Appendix 3

Clarke Energy Accident and Incident Report



CESF_112.00
Accident (Incident) |

Appendix 4

Gas Composition