

**ELECTRIC SERVICE AGREEMENT
FOR PURCHASE OF
BACKUP GENERATION SERVICE**

THIS AGREEMENT is made and entered into as of the date of final signature below (the "Effective Date"), by and between Madison Gas and Electric Company, hereinafter referred to as "the Company," and The City of Madison, Wisconsin, on behalf of the Madison Water Utility, hereinafter referred to as "the Customer."

NOW, THEREFORE, in consideration of the agreements and the mutual covenants herein contained, the parties agree as follows:

1. Agreement; Price. The Company agrees to sell electric energy to the Customer for the price and pursuant to the terms and conditions set forth in this Agreement and in the Company's Commercial and Industrial Lighting and Time-of-Use Service (Schedule Cg-2) and Backup Generation Service tariff (BGS), as may be amended from time to time by order or approval of the Public Service Commission of Wisconsin (PSCW). This Agreement and the attached Schedules Cg-2 and BGS (collectively, the "Rate Schedules"), as amended, which are incorporated herein and made part of this Agreement, are to be considered as one integrated document and shall be binding on the parties.
2. When amendments to the Rate Schedules are made, the Company will provide the Customer with a copy of amended Rate Schedules Cg-2 and/or BGS as soon as possible after such amended tariffs become effective. All such amendments shall be incorporated herein and made part of this Agreement.
3. The Customer warrants it meets and shall continue throughout the life of this Agreement to meet, the requirements of the "Backup Generation Service," as set forth in the Rate Schedules.
4. The Company will supply a diesel-fueled generator(s) to the Customer at **102 Dempsey Road, Madison, Wisconsin 53714**. It is expressly understood by the parties that at all times during the life of this Agreement, the generator(s) shall be owned by the Company, and the Customer expressly disclaims that it has any right, title, or interest in the generator, and if requested by the Company, the Customer will obtain a fixture disclaimer from any lenders with a security interest in the Customer's real estate and/or execute a Uniform Commercial Code financing statement giving public notice that the Customer has no right, title, or interest in the generator. The Company will determine the appropriate size of the generator so that the generator will be large enough to meet the Customer's entire load (Customer maximum 15 minute demand) at the service point where the generator is connected, as such load exists at the time of this Agreement. For purposes of the preceding sentence, the Customer's maximum 15-minute demand for the location is not expected to exceed 600 KW. The Company reserves the right over the term of this Agreement, in its discretion and at its expense, to review the Customer's load and adjust the generator sizing to better match the Customer's load.

5. Once the generator is connected and operational, the Customer agrees to pay an additional charge of \$.09863 per KW per day to be applied to the Customer maximum 15-minute demand, as defined in the Rate Schedules. This rate will remain in effect for the entire initial Agreement term regardless of changes ordered or approved by the PSCW. At the end of the initial term, the charge will be changed to the authorized rate in effect at that time.
6. Authorized representatives of the Company shall, at any time upon notification to the Customer, have the right to inspect the Customer's premises for the purpose of testing, maintenance, and replacement of the equipment. Authorized representatives of the Company shall also have the right to access the equipment at any time, without prior notification, for fueling purposes and emergency repairs. The Company will be responsible for testing the generator at least once a year to ensure the equipment is in proper working order and as otherwise required by applicable laws. The Customer shall not at any time or in any way make any alterations, additions, subtractions, modifications, or improvements to the equipment without the express written consent of an authorized representative of the Company.
7. In the event the Customer cannot fulfill its obligations in this Agreement, the Customer will be required to pay for all costs incurred by the Company necessary to remove its generator and equipment and to return the Customer to normal service for the remainder of the Agreement term. The Customer will receive no credit for contributions made toward installation and will pay the Company for the total cost of removal of the Company facilities including labor and undepreciated value of investment less salvage.
8. If the Company is required to cancel this Agreement at any time and for any reason in the Company's sole discretion, there will be no recalculation and rebilling for the cost of prior service nor billing for removal of facilities unless the cancellation is due to the Customer's breach of the Agreement provided, however, that the Customer shall remain responsible to pay for all service rendered prior to the date of cancellation.
9. Term. This Agreement shall have an initial term of five (5) years from the Effective Date to be automatically renewed on an annual basis unless written notice from either party is delivered to the other party no later than 180 days prior to the end of the initial term or any subsequent renewal thereof.
10. The Company shall indemnify, save harmless, and defend the Customer, including its officers, officials, agents, and employees from any and all suits, claims, damages, and losses arising out of, in connection with, caused by, or resulting from the use of the premises at the address listed in Section 4 (hereafter, the "Premises") or improvements located thereon, by the Company or the Company's officials, officers, agents, employees, assigns, guests, invitees, or licensees, including but not limited to bodily injury or death of any person, or damage to or destruction of any property including loss of use thereof, which may at any time be situated within the limits of the Premises, except to the extent that such claim, loss, or damage arises from the negligent or willful act(s) of the Customer, its officers, officials, agents, or employees.

Company shall procure and maintain during the life of this Agreement, liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk

Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Company's coverage shall be primary and list the City of Madison, its officers, officials, agents, and employees as additional insureds. Company shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents, and employees as additional insureds.

The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

The Company and/or Insurer shall give the City thirty (30) days' advance written notice of cancellation, non-renewal, or material changes to any of the above-required policies during the term of this Agreement.

11. No failure or delay in performance, whether in whole or in part, by either the Company or the Customer shall be deemed to be a breach hereof when such failure or delay is occasioned by or due to an act of God; strike; lockout or other labor disturbance; act of a public enemy; war; insurrection; riot; epidemic; landslide; lightning; earthquake; flood; storm; fire; washout; explosion; breakage or accident to the generator or related equipment whether changed, altered, or modified at any time during this Agreement; the act of any court or government authority; or any other cause, including any act or failure to act by any third party that prevents the Company or the Customer from satisfying its obligations under the Agreement, whether of the kind enumerated or otherwise, not reasonably within the control of the party claiming suspension, provided that no cause or contingency shall relieve the Customer from its obligation to make payment for services delivered pursuant to this Agreement.
12. THE COMPANY MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE GENERATOR OR ANY CHANGES, ALTERATIONS, OR MODIFICATIONS MADE THERETO. THE COMPANY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE EQUIPMENT, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND NONINFRINGEMENT.
13. The Company and the Customer acknowledge that the validity and enforcement of this Agreement are subject to the jurisdiction of the PSCW and any determinations made with respect thereto by the PSCW or other governmental regulatory agencies with jurisdiction over this Agreement or the Customer and the Company. In the event the PSCW or any other governmental body or a court of law determines that one or more terms of this Agreement shall be modified or is invalid, then the term(s) in question shall be modified or deemed severed from the Agreement, as the case may be, and the remainder of the Agreement shall be enforced, as so amended.

Sections 12 and 13 of this Agreement shall survive the termination of this Agreement.

14. This Agreement shall be binding upon the personal representatives, successors, and assigns of the parties. Notwithstanding the preceding sentence, the Customer may not assign part or all of its interest in this Agreement without the prior written consent of the Company which shall not be unreasonably withheld.

15. This Agreement constitutes the entire agreement between the Company and the Customer and supersedes any representations, warranties, or agreements (whether written or oral) heretofore made or entered into between the parties relating to this Agreement. This Agreement shall be governed by the laws of the State of Wisconsin. The parties agree that in the event of any dispute under this Agreement that requires litigation, the exclusive venue for such litigation shall be the state and federal courts located in Madison, Wisconsin, with jurisdiction over the subject matter of such litigation.

16. Any notices required or permitted under this Agreement shall be directed to the parties as follows:

To the Company: Madison Gas and Electric Company
 133 South Blair Street
 Post Office Box 1231
 Madison, Wisconsin 53701-1231
 Attention: Jesse J. Shields

To the Customer: Madison Water Utility
 119 East Olin Avenue
 Madison, Wisconsin 53713
 Attention: Water Utility General Manager

17. Nondiscrimination. In the performance of the services under this Agreement, the Company agrees not to engage in any unlawful discrimination because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Company further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity, or national origin.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above.

**CITY OF MADISON, WISCONSIN
a municipal corporation, on behalf of the
Madison Water Utility**

By: _____
Satya Rhodes-Conway, Mayor

Date: _____

Approved

David Schmiedicke, Finance Director

Date: _____

By: _____
Maribeth Witzel-Behl, City Clerk

Date: _____

**MADISON GAS AND ELECTRIC
COMPANY**

DocuSigned by:
By: Jillian Page
Jillian Page

Title: Manager Business Customer Relations

Date: August 31, 2023