

EQUIPMENT UTILIZATION AND SERVICE AGREEMENT

This Equipment Utilization and Service Agreement (the “**Equipment Agreement**”) is made effective as of March __, 2018 (the “**Effective Date**”), by and between Ensyn Renewable Fuels Canada Inc., a Canadian corporation (“**ERFC**”), and the City of Duluth on behalf of its district energy system commonly known as Duluth Energy Systems, organized and existing under the laws of the State of Minnesota (“**DES**”). ERFC and DES are each referred to herein as a “**Party**,” and are referred to herein collectively as the “**Parties**.”

ERFC and DES are parties to the Supply Agreement (“**Supply Agreement**”) to be executed contemporaneously with this Agreement pursuant to which EF has agreed to sell and deliver to DES, and DES has agreed to purchase and take delivery from ERFC, RFO product on the terms set forth in the Supply Agreement. In order for each Party to perform its respective obligations under the Supply Agreement and for DES to make use of RFO product for its DES Facility, and in order for the parties to fulfill other related agreements pertaining to the DES Facility, the equipment described in Schedule A (collectively, the “**Equipment**”) will be installed at the DES Facility in the manner described in this Equipment Agreement. The Equipment shall consist of the Equipment listed on Schedule A under the heading of Part I Equipment, hereinafter referred to as the “I Equipment” and the Equipment listed on Schedule A under the heading of Part II, hereinafter referred to as the “II Equipment”. The Parties are entering into this Equipment Agreement to establish each Party’s rights and obligations with respect to the Equipment. This Equipment Agreement is a part of the Supply Agreement, and accordingly the Supply Agreement applies to this Equipment Agreement without the requirement of further reference. Capitalized terms used and not defined herein shall have the same meaning as in the Supply Agreement.

The Parties agree as follows:

1. PROCUREMENT AND INSTALLATION OF THE EQUIPMENT: Upon execution and delivery of this Equipment Agreement, ERFC shall furnish to DES a complete listing all of the Equipment by manufacturer, model and ancillary attachments or variants along with all specification information related thereto and complete working drawings and specifications for its installation on the DES Facility, in conformance with Schedule B, for DES’s approval. DES shall review said information in a commercially reasonable manner and time frame and shall either approve of the equipment and plans as proposed or shall provide written objection thereto. DES’s approval shall not be unreasonably withheld or delayed. In the event that DES does not approve of any of the Equipment or of the working drawings or specifications, ERFC shall furnish replacement documents which reasonably address the reasons for disapproval by DES. Upon final approval of the Equipment and the drawings and specifications, ERFC, at ERFC’s sole cost and expense, will procure the Equipment and, in coordination with DES, cause the Equipment to be installed in accordance with the approved working drawings and specifications and made available at the DES Facility in accordance with the scope of work set forth in Schedule B (the “**Scope of Work**”). DES shall make ready the DES Facility in accordance with the work shown on the approved drawings and specifications as “by DES: and shall cooperate in all reasonable respects with ERFC’s performance of the Scope of Work. Upon the completion of the installation of the

Equipment, ERFC will provide a bill of sale in the form set forth in Schedule C to DES pursuant to which title to the Equipment will pass to DES.

2. TERM: The term of this Equipment Agreement will commence on the Effective Date and will terminate upon the expiration or termination of the Supply Agreement for any reason (“**Term**”). In the event of termination of this Equipment Agreement, the Supply Agreement shall terminate automatically at the same time.

3. WARRANTIES: ERFC warrants to DES that ERFC will cause the Equipment to be installed in a good and workmanlike manner, in material conformity with the Scope of Work, provided that ERFC may deviate from the Scope of Work as is determined to be necessary by ERFC’s engineers or installers, as reasonably acceptable by DES, to complete the installation work in a safe and efficient manner, and in accordance with applicable laws and regulations. Except as expressly provided in this section, ERFC MAKES NO EXPRESS OR IMPLIED WARRANTIES REGARDING THE EQUIPMENT OR ERFC’S OR ITS AGENT’S INSTALLATION WORK, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. OPTION; END OF TERM: DES hereby grants ERFC the option to purchase the portion of the Equipment consisting of the I Equipment listed on Schedule A from DES for a purchase price of One Dollar (\$1.00) upon expiration of the Term, exercisable during the 10-day period beginning on the expiration of the Term by written notice thereof to DES (the “**Option**”). In the event that ERFC exercises the Option, ERFC will remove the I Equipment from the DES Facility in a good and workmanlike manner at ERFC’s sole cost and expense and without damage to DES Facility or unreasonable disruption of DES business and will contemporaneously leave DES’s modified boiler in a condition equal to its condition prior to installation of the Equipment, with the exception of normal wear and tear, all as coordinated in advance with DES and within thirty (30) days after the exercise of the Option. In the event that ERFC does not timely exercise the Option, title to all of the Equipment shall remain with DES. For clarity, the new burner and control system installed in the DES boiler and other incidental infrastructure for the boiler (including new foundations, piping supports and other permanent facility improvements) will remain at DES, and ERFC shall have no Option or obligation with respect thereto.

5. LIENS; TAX BENEFITS.

a. DES shall keep the Equipment free and clear of all levies, liens and encumbrances.

b. DES is solely entitled to all tax benefits associated with ownership of the Equipment, including, without limitation, accelerated cost recovery deductions determined in accordance with Section 168(b)(3) of the Internal Revenue Code of 1986, as amended (or any substitute provision).

6. MAINTENANCE AND REPAIRS: DES shall maintain and repair the Equipment during the term of this Equipment Agreement on an as-needed basis. All maintenance and repair work on the Equipment during the term of this Equipment Agreement will be performed at DES’s expense except to the extent attributable to ERFC’s negligence or misconduct or that of its officers, agents, servants or employees or out of the breach of this Equipment Agreement or the Supply

Agreement, in which case ERFC shall be responsible for all costs of such maintenance and repair to the extent attributable to such negligence, misconduct or breach. In addition, ERFC shall be responsible in the event that the RFO furnished by ERFC causes any damage to or destruction of the Equipment.

7. USE; ALTERATIONS: DES shall not make or permit to be made any alterations, additions or improvements (other than as may be required for normal maintenance and repair) to the Equipment without ERFC's prior written approval, which approval will not be unreasonably withheld or delayed.

8. RISK OF LOSS OR DAMAGE: DES will bear the risk of loss of, damage to or destruction of the Equipment during the Term once the installation of the Equipment is complete and accepted by DES.

9. EMINENT DOMAIN: In the event of any eminent domain proceeding affecting the portions of the DES Facility on which the Equipment is being maintained, prior to the transfer of ownership to the Equipment under such proceeding, ERFC may exercise the Option, take possession of the Equipment and terminate this Equipment Agreement with no further obligation hereunder notwithstanding any other provision of this Equipment Agreement. In the event ERFC takes possession of the Equipment under this provision, ERFC shall do so in a good and workmanlike manner at ERFC's sole cost and expense and without damage to the DES Facility or to the II Equipment or reasonable disruption of DES's business and will contemporaneously leave DES's modified boiler in a condition equal its condition prior to installation of the Equipment, with the exception of normal wear and tear; provided that in any such event, ERFC shall leave the II Equipment in first class working condition subject to reasonable wear and tear.

10. OWNERSHIP OF THE EQUIPMENT: DES will, at DES's cost, protect and defend its ownership rights in the Equipment against all claims, liens or legal processes of DES's creditors or other third parties, and will keep the Equipment free and clear from all such claims, liens and processes.

11. FINANCING STATEMENTS; REGISTRY FILINGS: ERFC consents to and shall cooperate with DES as reasonably necessary with respect to the filing of UCC statements, registry notices and other evidence of DES's ownership of the Equipment. Any such filings made by DES with respect to the Equipment are for precautionary purposes only and will not constitute any acknowledgement by DES or ERFC inconsistent with the express terms of this Equipment Agreement.

12. NO TRANSFERS OF EQUIPMENT: Absent ERFC's prior written consent or as otherwise provided in this Equipment Agreement, DES shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of the I Equipment or any interest in this Equipment Agreement, or (b) sublease or loan the I Equipment, or permit the I Equipment to be used by any person or entity other than DES, or use or permit the use of the Equipment for any purpose other than the provision of DES's energy needs at the DES Facility in accordance with applicable law. Any assignment, transfer, pledge, hypothecation, disposition, sublease or loan of the I Equipment in contravention of this section will be void.

13. DEFAULT AND REMEDIES:

a. DES will be in default of its obligations under this Equipment Agreement in the event (i) DES fails to make payment in accordance with the terms of the Supply Agreement, or (ii) DES fails to timely cure any material breach of DES's obligations under the Supply Agreement in accordance with the terms of the Supply Agreement.

b. If DES breaches any provision of this Equipment Agreement, ERFC will give DES prompt written notice specifying the breach. If DES fails to cure such breach within thirty (30) days after receipt of written notice from ERFC (an "**Uncured Default**"), ERFC may, without prejudice to any other right or remedy of ERFC under this Equipment Agreement: (i) exercise the Option, (ii) terminate this Equipment Agreement on ten (10) day's prior written notice to DES, (iii) enforce performance of this Equipment Agreement or recover damages for breach of this Equipment Agreement and/or, (iv) pursue any other remedy available at law or in equity, including, without limitation, seeking damages or specific performance and/or obtaining injunctions.

c. If ERFC breaches any provision of this Equipment Agreement, DES will give ERFC prompt written notice specifying the breach. If ERFC fails to cure such breach within thirty (30) days after receipt of written notice from DES, DES may, without prejudice to any other right or remedy of DES under this Equipment Agreement, (i) terminate this Equipment Agreement on ten (10) day's prior written notice to ERFC, (ii) enforce performance of this Equipment Agreement or recover damages for breach of this Equipment Agreement and/or, (iv) pursue any other remedy available at law or in equity, including, without limitation, seeking damages or specific performance and/or obtaining injunctions.

14. EXPENSES OF ENFORCEMENT: Subject to Section 3.6 of the Supply Agreement, in the event that a Party is successful in a final determination of any action (or successive actions) to enforce any provision of this Equipment Agreement against the other Party, either through legal proceedings, collection or accounting efforts or otherwise, such other Party will, on demand, reimburse such Party for such Party's reasonable attorneys' fees and all other costs and expenses incurred by such Party with respect to such Party's action, including such Party's attorneys' fees and costs reasonably incurred with respect to any bankruptcy, insolvency, reorganization or other debtor-relief proceeding of or relating to such other Party.

15. ACCESS RIGHTS: ERFC may access the DES Facility upon reasonable advance notice to DES, during normal business hours unless otherwise consented to by DES, and in coordination with DES in order to perform its obligations (including performance of the Scope of Work) or enforce its rights under this Equipment Agreement, provided that ERFC shall not cause any unreasonable disruption to DES business during such access.

16. COUNTERPARTS: This Equipment Agreement may be executed in one or more counterparts, with each of which constituting an original of this Equipment Agreement and all of which, when taken together, constituting one and the same agreement. The exchange of executed

signature pages of this Equipment Agreement by facsimile or email transmission will constitute effective execution and delivery of this Equipment Agreement.

The Parties have executed this Equipment Agreement by their duly authorized representatives to be effective as of the Effective Date.

Ensyn Renewable Fuels Canada Inc.

***CITY OF DULUTH on behalf of Duluth
Energy Systems***

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Schedule A
DESCRIPTION/LIST OF EQUIPMENT

The Part I Equipment consists of the following:

- RFO product storage tankage and appurtenances;
- RFO product pumping and heating equipment;
- RFO product burning equipment with capacity consistent with the design steam output of the boilers, including the RFO burner and the RFO burner controls;
- Utility systems to support the RFO pumping, heating and burning equipment including air compressor, hot water supply system, and motor control center;
- Associated modifications to the existing boilers #1 and #4 and their ancillary equipment to accommodate the RFO burner; and
- All other equipment, instrumentation and controls valves and piping provided by ERFC in connection with this Equipment Agreement and the Scope of Work, a complete and accurate list of which shall be provided by ERFC to DES within thirty (30) days following the Effective Date of this Agreement.

The Part II Equipment consists of the following:

- Natural gas burners and associated equipment on existing boilers #1 and #4 with capacity consistent with that of other boilers.

Schedule B
SCOPE OF WORK

ERFC is responsible for performing (or causing to be performed) at ERFC's sole cost and expense all work necessary to procure, install and make available the Equipment at the DES Facility, including all permitting subject to Section 2.7 of the Supply Agreement, engineering, and installation work. ERFC will provide DES with reasonably detailed construction plans and drawings prior to the commencement of the work for acceptance by DES. DES acknowledges that the above scope of work is subject to the satisfaction of the provisions and DES Obligations under the Supply Agreement.

**Schedule C
BILL OF SALE**

This BILL OF SALE dated the ____ day of _____, 2018, is delivered to the CITY OF DULUTH on behalf of its district energy system commonly known as Duluth Energy Systems, organized and existing under the laws of the State of *Minnesota* (hereinafter called the “Grantee”) by ENSYN RENEWABLE FUELS CANADA INC., a Canadian corporation (hereinafter called the “Grantor”).

WHEREAS, Grantee and Grantor are the parties to a certain Equipment Utilization and Service Agreement executed by and among the parties hereto dated the ____ day of _____, 201_ (the “Equipment Agreement”), pursuant to which Grantor shall sell, transfer, convey, assign and deliver to Grantee the Equipment (as defined in the Equipment Agreement) subject to the terms and conditions set forth in the Equipment Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in the Equipment Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to more fully evidence the conveyance of title to the Equipment from Grantor to Grantee, Grantor hereby irrevocably sells, transfers, conveys, assigns and delivers to Grantee, free and clear of all security interests, Grantor’s rights, title and interest in, to and under the Equipment; and

TO HAVE AND TO HOLD the same unto Grantee, its successors and assigns, forever.

At any time or from time to time after the date hereof, at Grantee’s request and without further consideration, Grantor shall execute and deliver to Grantee such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as Grantee may reasonably deem necessary or desirable in order more effectively to transfer, convey, and assign to Grantee, and to confirm Grantee’s title to, all of the Equipment, and to the fullest extent permitted by law, to put Grantee in actual possession and operating control of the Equipment and to assist Grantee in exercising all rights with respect thereto, free and clear of all security interests.

This Bill of Sale is being delivered subject to and pursuant to the terms and conditions of the Equipment Agreement. The respective rights and obligations of Grantor and Grantee set forth in the representations, warranties, covenants and agreements and any other terms of the Equipment Agreement shall be neither limited, altered or impaired, nor enhanced or enlarged by performance hereunder.

This Bill of Sale shall be governed by and construed in accordance with the internal laws of the State of Minnesota.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound hereby, the undersigned has executed and delivered this Bill of Sale as an instrument under seal as of the day and year first above written.

Grantor:

ENSYN RENEWABLE FUELS CANADA INC.

By: _____

Name:

Title: