

1 **BILL NO. S-20-04-09**

2 SPECIAL ORDINANCE NO. S-_____

3 AN ORDINANCE approving FORT WAYNE CITY
4 UTILITIES EXCLUSIVE BIOMASS SUPPLY
5 AGREEMENT - \$190,000.00 between QUASAR
ENGINEERING GROUP and the City of Fort Wayne,
Indiana, in connection with the Board of Public Works.

6 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON**
7 **COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

8 **SECTION 1.** That the FORT WAYNE CITY UTILITIES EXCLUSIVE
9 BIOMASS SUPPLY AGREEMENT - \$190,000.00 by and between QUASAR
10 ENGINEERING GROUP and the City of Fort Wayne, Indiana, in connection with
11 the Board of Public Works, is hereby ratified, and affirmed and approved in all
12 respects, respectfully for:

13
14 All labor, insurance, material, equipment, tools, power,
15 transportation, miscellaneous equipment, etc., necessary for
16 marketing, sourcing and supplying biomass to the anaerobic
digesters at the Water Pollution Control Plant.

17 involving a total cost of ONE HUNDRED NINETY THOUSAND AND 00/100
18 DOLLARS - (\$190,000.00). A copy of said Contract is on file with the Office of the
19 City Clerk and made available for public inspection, according to law.
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SECTION 2. That this Ordinance shall be in full force and effect from
and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Interoffice Memo

Date: April 16, 2020
To: Common Council Members
From: Zach Schortgen, Facilities Engineering Manager, City Utilities Engineering
RE: Fort Wayne City Utilities, Exclusive Biomass Supply Agreement

Council District # N/A

Fort Wayne City Utilities through its Board of Public Works, is in need of an exclusive biomass provider to manage, coordinate, and provide logistics support for organic high strength wastes (biomass) acceptance. This Agreement with Quasar Engineering Group (QEG) is for marketing, sourcing and supplying biomass to the anaerobic digesters at the Water Pollution Control Plant. Local and regional demand for economical and environmentally conscious disposal options is steadily increasing and Fort Wayne's anaerobic digester facilities have existing capacity available to provide certain liquid biomass disposal services.

Implications of not being approved: Quasar Engineering Group (QEG) possesses logistics, sourcing, and supply expertise in this market. Their experience and knowledge in trucking logistics, testing and approval of biomass, tracking & recordkeeping, marketing, regulatory compliance, sourcing, contracting, and market analysis are necessary to offer this local and regional service at a competitive market rate.

If Prior Approval is being Requested, Justify: N/A

This Biomass Supply Agreement was procured through an Expression of Interest Request and subsequent Request for Sealed Proposals. 2 Firms submitted qualifications and proposals. Interviews were conducted and QEG was selected based upon company background, references, relevant experience, technical approach, understanding, and financial revenue sharing framework.

The cost of the initial Market Study and Start Up Services are funded from Sewer Revenue.

Council Introduction Date: 4/28/2020

CC: Matthew Wirtz
Diane Brown
File

EXCLUSIVE BIOMASS SUPPLY AGREEMENT

On April 7th, 2020 ("Effective Date"), this Exclusive Biomass Supply Agreement ("Agreement") is entered into by and between quasar energy group, llc, an Ohio limited liability company ("Supplier") and the City of Fort Wayne, an Indiana municipal corporation, acting by and through its Board of Public Works ("Owner"). Supplier and Owner are hereafter sometimes collectively referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Owner, through FWCU, operates a WPCP which includes a Headworks, HSW receiving station and anaerobic digestion system located at the Facility;

WHEREAS, Supplier is engaged in the business of sourcing materials, including but not limited to, Biomass from Providers, but not including materials listed in Exhibit A attached hereto and incorporated herein;

WHEREAS, Owner desires to procure exclusively from Supplier a supply of Biomass of suitable quantity and quality to generate additional revenue and biogas, and Supplier represents that it has the ability to supply such Biomass; and

WHEREAS, Owner would like to engage Supplier to perform Phase 1;

WHEREAS, immediately following the completion of Phase 1, the Owner and Supplier desire to enter into Phase 2.

AGREEMENT

NOW, THEREFORE, for and in consideration of the Recitals above which are incorporated herein by reference, and mutual covenants, conditions, and provisions set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. Supplier's Phase 1 Scope of Services. Supplier shall perform the following Phase 1 Scope of Services during the Initial Term:
 - 1.1. Market Feasibility Analysis. Supplier shall perform the Market Feasibility Scope of Services on behalf of Owner as set forth in Exhibit B attached hereto and incorporated herein.
 - 1.2. Initial Start Up. Supplier shall perform the Initial Start-Up Scope of Services on behalf of Owner as set forth in Exhibit C attached hereto and incorporated herein. Collectively, the product of this Initial Start Up will populate additional Exhibits, not yet incorporated herein which will be added to this Agreement as a mutually executed written addendum within thirty (30) days of expiration of the Initial Term.

- 1.3. Biomass Testing. Supplier will perform the Lab Testing Services set forth in Exhibit D attached hereto and incorporated herein on proposed Biomass, at Supplier's sole expense, for up to eighteen (18) samples from potential Providers identified during the Market Feasibility Analysis. The Lab Testing Services will be performed to reasonably confirm to Owner that particular Biomass will not interfere with the Digester Health Guidelines as set forth in Exhibit AE attached hereto and incorporated herein.
- 1.4. Early Biomass Sourcing.
 - 1.4.1. New Providers. During the Initial Term, Supplier may source new Providers to supply the Facility so long as Supplier receives Owner's written approval in accordance with Section 6.2. Supplier and Owner shall collaborate and mutually agree on establishing appropriate interim fees for new Providers.
 - 1.4.2. Existing Owner Providers Early Transition. Should Owner and Supplier mutually agree that any Existing Owner Providers are ready to be transitioned and be managed by Supplier, Supplier may transition the Existing Owner Providers during Phase 1, provided that Owner provides written approval, which approval shall not be unreasonably withheld, delayed or conditioned, and all fees are maintained in accordance with Section 2.10.
 - 1.4.3. Revenue Share. During the Initial Term all revenue associated with New Providers and Existing Owner Providers transitioned to being managed by the Supplier will be shared in accordance with the Phase 2, Year 1 revenue share parameters defined in Exhibit K attached hereto and incorporated herein.
2. Supplier's Phase 2 Scope of Services. Supplier shall perform the following Phase 2 Scope of Services during the Term:
 - 2.1. Procuring Biomass. Supplier shall procure Biomass material from Providers to supply the Facility.
 - 2.2. Biomass Sourcing. Supplier shall be responsible for sourcing Biomass material from potential Providers to supply the Facility.
 - 2.3. Marketing. Supplier shall be responsible for all marketing and sales methods, efforts and costs to secure Providers and Biomass. Methods may include, but are not limited to, telephone solicitation, sales calls, tours and meetings at the Facility, web-based advertising and other forms of communication with potential Providers.

- 2.4. Biomass Tip Fee Pricing. Except as set forth in Section 2.10, Supplier shall be responsible for establishing all Tip Fees upon written consent of the Owner, which consent shall not be unreasonably withheld, delayed or conditioned. Owner written consent for all Tip Fees shall be in accordance with the Biomass Decision Tree Diagram set forth in Exhibit O attached hereto and incorporated herein. The establishment of Tip Fees for any new Providers, or any changes in Tip Fees during the Agreement shall be discussed and mutually agreed to by the Parties utilizing the Biomass Decision Tree Diagram.
- 2.5. Biomass Contracting. Supplier shall be responsible for negotiating all Biomass Contracts. Prior to entering into any Biomass Contract with a Provider, Supplier shall provide a copy to FWCU. Any Biomass Contract, which Owner's Facility is identified as the primary location of disposal, Supplier will provide to Owner alternative back-up disposal facilities and estimated transportation and Tip Fee costs prior to execution of the Biomass Contract. No Biomass Contract shall extend beyond the Term of this Agreement, without the written consent of Owner which consent shall not be unreasonably or untimely withheld or conditioned.
- 2.6. Biomass Testing. Supplier will perform the Lab Testing Services, at Supplier's sole expense, for any Providers not previously tested in the Market Feasibility Analysis. If the Parties mutually agree that the Biomass requires additional testing beyond the results that are obtained from the Lab Testing Services, Supplier shall use reasonable efforts to secure payment for such additional testing from the Provider of the Biomass. If Supplier is unable to secure payment for the additional testing from the Provider of the Biomass, then Owner shall reasonably decide if additional testing should be performed by Supplier or Owner, at Owner's sole cost.
- 2.7. Biomass Transportation. Supplier shall manage all logistical services related to the delivery of Biomass to the Facility from Providers under this Agreement. Services shall include, but are not limited to, scheduling Biomass deliveries to the Facility and determining the type and volume of Biomass to be delivered to the Facility. Supplier shall coordinate with Owner regarding all logistical tasks required for delivery of Biomass under this Agreement. Costs and expenses of any transportation of Biomass to the Facility shall be the sole responsibility of the Provider of the Biomass, and shall be excluded from any revenue sharing calculation (including but not limited to the Biomass Calculator) between Owner and Supplier. Supplier agrees that in the event Supplier incurs any costs and expenses regarding the transportation of Biomass from a Provider to the Facility, Supplier shall only charge and collect from the Provider the actual costs and expenses incurred by Supplier for said transportation services. Upon request by Owner, Supplier shall use reasonable efforts to secure and provide to Owner quotes from multiple transportation providers to ensure competitive market pricing is secured and promptly provide all reasonable documentation regarding transportation costs and expenses charged by Supplier to any Provider.

- 2.8. Remote Monitoring Services. Supplier shall provide remote consulting monitoring services to Owner as reasonably requested, including but not limited to, remotely monitoring tank levels, reviewing operational data provided by Owner, and making any recommendations on Facility operations Supplier believes are prudent. In the event Owner requests Supplier to provide monitoring services in person, beyond the remote monitoring services set forth herein, those services shall be charged to, and paid by, Owner as mutually agreed to by the Parties in advance.
- 2.9. Administration. Supplier shall be responsible for all administrative activities related to marketing, sourcing and transporting Biomass to the Facility. Administrative tasks include, but are not limited to, accounting and billing functions, and preparing of quarterly reporting and budget projections to Owner.
- 2.10. Existing Owner Providers Fees. Supplier shall, for at least one hundred and eighty (180) days from the Effective Date, continue the bulk waste fees charged by Owner to any Existing Owner Providers under § 51.073 of the Fort Wayne Code of Ordinances. For any initial increase in the bulk waste fees charged to any Existing Owner Providers, Supplier shall provide at least thirty (30) days advanced written notice to the Existing Owner Providers.
- 2.11. Biomass Reporting. On or before the 15th of each calendar month, Supplier shall provide Owner with, a written report identifying (a) the volume of Biomass delivered to the Facility in the preceding calendar month, (b) all reasonable supporting documentation regarding Tip Fees charged by Supplier to Providers and (c) all reasonable supporting documentation regarding transportation costs and expenses charged by Supplier to Providers.
- 2.12. Biomass Calculator. As a result of completing Phase 1, Supplier shall provide Owner with a Biomass Calculator. The results of the Biomass Calculator will be one of the methods used by Supplier in establishing Tip Fees for the Providers. An exemplar of the Biomass Calculator is set forth in Exhibit P attached hereto and incorporated herein.
- 2.13. FOG Services. Owner intends to establish the FOG Grease Cooperative to provide FOG Services exclusively within the FWCU Service Territory. Until the launch date of the FOG Grease Cooperative, Supplier may source FOG and provide FOG Services including within the FWCU Service Territory. Upon thirty (30) days prior written notice by Owner, Supplier shall cease providing any FOG Services within the FWCU Service Territory, or a designated portion of the FWCU Service Territory, as determined by the Owner. Should Owner implement the FOG Grease Cooperative within two (2) years for the entire FWCU Service Territory from the date the FOG Services are transitioned to the Supplier, the Parties shall negotiate a means to offset Supplier's lost revenue share, including but not limited to, the procedures described in Section 10. Supplier shall not be

precluded at any time during the Agreement from sourcing FOG originating outside of the FWCU Service Territory.

2.14. Continued Delivery of Existing Owner Providers. Supplier agrees to continue to deliver Existing Owner Providers' Biomass to the Facility and will only redirect loads to other facilities for disposal with Owner's approval, or if the Facility is unable or unwilling to accept Biomass.

2.15. Initial Budget, Quarterly Budgets.

2.15.1. Initial Budget. During the Initial Term, and within thirty (30) days of the Effective Date, Supplier will prepare and submit to Owner an initial budget for the first two (2) quarters of the Term for approval, which approval shall not be unreasonably or untimely withheld or conditioned.

2.15.2. Quarterly Budget. Within 30 days following completion of the Market Feasibility Study, Supplier will prepare and submit to Owner a quarterly budget projection for Biomass volumes and Tip Fees that will be mutually agreed upon with Owner. A new budget will be established on a rolling quarterly basis as set forth in Exhibit X attached hereto and incorporated herein.

3. Owner's Covenants and Obligations. Owner shall perform the following covenants and obligations during the Agreement:

3.1. Facility Operation. Owner shall, at its sole cost, lawfully operate and maintain the Facility, according to industry best practices and Supplier generated digester health guidance as developed during Phase 1. Owner shall maintain daily data relative to operations of the Facility and shall ensure that Supplier has uninterrupted access to such data regarding the Facility. Owner will enter all relevant daily data by 10 a.m. EST of the next day. Owner shall provide Supplier with no less than fourteen (14) days advanced notice of any scheduled maintenance or repair that will interfere with the ordinary and customary delivery of Biomass to the Facility. In the event of an emergency preventing the delivery of Biomass, Owner shall notify Supplier immediately.

3.2. Biomass Testing. Owner shall, at its sole cost, perform all laboratory testing required for ongoing characterization and verification of Provider material and digester contents as is prudent to maintain digester health in accordance with Exhibit AE attached hereto and incorporated herein.

3.3. Odor Control. Owner shall construct and maintain odor control equipment and establish and diligently practice odor control procedures to minimize nuisance odors associated with receiving Biomass material at the Facility.

3.4. Receiving of Biomass. Owner shall perform all reasonable actions necessary to facilitate the daily receiving of deliveries of Biomass from Supplier to the

Facility. Owner shall promptly coordinate with Supplier on scheduling deliveries in a manner that minimizes delays to Supplier and maximizes deliveries of Biomass. Owner shall receive deliveries of Biomass from Supplier from 7:00 a.m. to 5:00 p.m. EST Monday through Friday and 7 a.m. to 12 p.m. on Saturdays excluding Federal Holidays. Owner agrees to reasonably receive deliveries of Biomass beyond the hours of operation set forth herein on a case-by-case basis as reasonably requested by Supplier. The Parties may adjust the hours of operation upon mutual written agreement.

- 3.5. Biomass Tracking & Recordkeeping. As part of the daily operations, Owner shall record all Biomass deliveries via a delivery manifest provided to Owner by any Provider. Owner shall organize delivery manifests through a recordkeeping procedure as mutually agreed upon by the Parties. Owner will establish and provide access to Supplier with a file sharing database to which Owner shall enter all daily delivery manifests. Owner shall promptly enter manifests of deliveries to the Facility so that an accurate daily record of Biomass to the Facility is available by 10:00 a.m. EST of the next day.
- 3.6. Marketing. Owner shall make the Facility and its personnel reasonably available during hours of operation for marketing activities and tours coordinated by Supplier. Owner shall assist Supplier with any reasonable marketing activities conducted at the Facility to the extent reasonably practicable. As a condition precedent to Owner's obligations under this Section, Supplier shall provide notice to Owner at least three (3) Business Days in advance of any planned marketing activities and/or tours coordinated by Supplier.
- 3.7. Regulatory Compliance. Owner shall fully comply, at its sole expense, with all applicable laws, statutes, rules and regulations as are required with respect to the operation of the Facility.
- 3.8. Existing Owner Biomass Contracts. The Existing Owner Biomass Contracts are set forth in Exhibit G attached hereto and incorporated herein. Owner agrees not to amend or extend any Existing Owner Biomass Contracts, and agrees to use commercially reasonable efforts to promptly assign any Existing Owner Biomass Contracts to the Supplier to the extent legally permissible. If Owner is unable to assign any Existing Owner Biomass Contracts and Owner continues to receive payments from the Existing Owner Providers, the payments shall be shared in accordance with the Revenue Share Terms as set forth in Exhibit K attached hereto and incorporated herein, and Supplier shall receive a credit against funds due to the Owner equal to the revenue share associated with the Existing Owner Providers. Owner agrees to allow Supplier to negotiate directly with Existing Owner Providers for contracts following expiration of the current term.
- 3.9. Existing Owner Providers. Owner is currently receiving Biomass from Existing Owner Providers.

- 3.10. Municipal Laws. To meet the terms and conditions of this Agreement, Owner has changed its municipal code as set forth in Exhibit I attached hereto and incorporated herein. The changes were approved by the Common Council of the City of Fort Wayne on February 25, 2020.
- 3.11. Reimbursement Fund. On and after the third (3rd) anniversary of the commencement date of the Term, Owner shall create and maintain the Reimbursement Fund. The availability of funds through the Reimbursement Fund shall not limit Owner's liability, or Supplier's remedy, for Disposal Damages; provided, however, that any funds in the Reimbursement Fund shall be credited toward the total amount of Disposal Damages due and owing to Supplier as a result of an Owner breach or Termination for Convenience by Owner.
- 3.12. Decisions Regarding Receipt of Biomass. Owner shall make final decisions regarding receipt of Biomass to the Facility in accordance with Section 6.
4. Term.
- 4.1. Initial Term. The Agreement shall commence on the Initial Term provided the Parties may mutually agree to a different expiration in writing because of Supplier substantially completing the Scope of Services for Phase 1.
- 4.2. Term. Following the Initial Term, this Agreement shall continue for the Term, unless terminated sooner as expressly set forth herein.
- 4.3. Renewal Term. Following the Term, this Agreement shall continue for the Renewal Term, unless and until terminated sooner as expressly set forth herein.
- 4.4. Time of the Essence. The Parties acknowledge that time is of the essence for this Agreement.
5. Termination.
- 5.1. Notice of Termination. Either Party may provide the other Party with a Notice of Termination prior to the expiration of the Term or any Renewal Term provided the Notice of Termination is received by the non-terminating Party not less than one hundred twenty (120) days: (a) prior to the anniversary date of the commencement of the Term, or (b) prior to the commencement of any Renewal Term. Except as a result of Supplier's Default which is not timely cured, or as a result of the expiration of the Term or any Renewal Term, any Notice of Termination issued during the Term shall constitute a Termination for Convenience.
- 5.2. Termination for Default.
- 5.2.1. Termination Due to Supplier's Default. The Owner may terminate this Agreement: (a) in the event Supplier fails to achieve a minimum of 50%

of the quarterly budget projection on a rolling average, as defined by the actual revenue generated divided by the budgeted revenue generation, and fails to timely cure that failure by achieving 75% of the budget project on average, as defined by the actual revenue generated by the budgeted revenue over the subsequent three quarters; or (b) Supplier materially breaches this Agreement (excluding budgeting projections as set forth in (a) herein) and fails to timely cure the material breach within thirty (30) days following receipt of written notice by Owner reasonably describing the material breach.

5.2.2. Termination Due to Owner's Default. The Supplier may terminate this Agreement: (a) in the event Owner fails, for any reason, to accept Biomass to the Facility from Supplier for a period of time of ninety (90) consecutive days, or for a period of time totaling one hundred and twenty (120) days in any three hundred and sixty five (365) day period, except when such failure to accept Biomass is the proximate result of contaminated Biomass from Supplier or Providers or a Force Majeure Event; or (b) Owner materially breaches this Agreement and fails to timely cure the material breach within thirty (30) days following receipt of written notice by Supplier reasonably describing the material breach.

5.3. Termination by Mutual Consent. The Parties may, by mutual written consent, terminate this Agreement at any time.

6. Approval or Denial of Biomass

6.1. Approval of Biomass. During the Agreement, Supplier shall perform the Lab Testing Services on Biomass for all prospective Providers, except for Existing Owner Biomass Contracts or Existing Owner Providers, subject to the express terms of the Agreement regarding responsibility of each Party as to cost incurred for the testing. The Parties decision whether to accept or reject Biomass shall be in accordance with the Biomass Decision Tree Diagram, to mutually agree to during Phase 1. At its sole option and cost, Owner may perform any Lab Testing Services or other testing for Biomass through a third-party testing company previously approved by Supplier, with such approval not being unreasonably or untimely withheld or conditioned.

6.1.1 Acceptance of Biomass at Headworks. In accordance with the Biomass Decision Tree Diagram, Owner may determine that proposed Biomass material from Supplier is more suitable for processing at the Headworks rather than the Facility. If Supplier sourced material is accepted and processed at the Headworks, Tip Fees will be shared in accordance with the Revenue Share Terms in Exhibit K attached hereto and incorporated herein. Owner shall not be prohibited from processing the materials listed in Exhibit A at the Headworks of which the associated fees will not be shared with Supplier.

- 6.2. Interim Approval of Biomass: During Phase 1, and prior to Biomass Decision Tree Diagram being created by the Parties, Supplier will perform the Lab Testing Services on Biomass for all new prospective Providers, up to eighteen (18) tests, and deliver written results to Owner. Provided that Supplier states the Biomass is suitable for anaerobic digestion at the Facility and Owner states the material is appropriate to bring on site at the Facility, Owner shall have three (3) Business Days to provide written approval to Supplier that the Providers' material may be secured and delivered to the Facility.
- 6.3. Acceptance of Untested Biomass. The Parties acknowledge that there may be circumstances where an opportunity to receive Biomass becomes available without adequate time for Supplier to perform any Lab Testing Services or where testing is not necessary, including but not limited to, cases involving biosolids, food waste, and FOG. The Parties agree to confer in good faith to promptly and mutually agree on the terms regarding the acceptance of any untested Biomass to the Facility.
- 6.4. Denial of Biomass. Any previously approved Biomass from a Provider may be subsequently denied if any Party reasonably determines, in good faith, that acceptance of the Biomass into the Facility is substantially likely to interfere with the Facility's Digester Health Guidelines, including but not limited to, changes made by a Provider to its previously approved Biomass, or contamination of the Biomass.
7. Payments.
- 7.1. Phase 1 Owner Payments. Owner shall pay Supplier the payments set forth in Exhibit J attached hereto and incorporated herein on or before the due dates set forth therein.
- 7.2. Supplier Payments. Supplier shall pay Owner in accordance with the Revenue Share Terms in Exhibit K attached hereto and incorporated herein.
- 7.3. Supplier Payment Terms. Upon receipt of the final Biomass load manifest of each month, Supplier shall have forty-five (45) days to reconcile all necessary financials and be prepared to submit the revenue share payment to Owner for the corresponding month, to the extent of Supplier's receipt of payment from Providers. Should a Provider's payment terms exceed 45 days, revenue received from that account will be included in the payment to Owner for the month following their receipt. All payment terms will be disclosed to Owner upon securing new Providers. Notwithstanding the language above, payments shall be due on the sixth (6th) day of each calendar month. Owner will be permitted to audit Providers invoices monthly to ensure billing transparency. In the event of any non-paying Providers, all late payments received by Supplier will be processed expeditiously with Owner's revenue share portion paid to Owner within ten (10) days of receipt. Should Supplier receive any additional fees or interest payments from any Providers, Supplier will split such fees or interest payments

with Owner according to the appropriate revenue sharing tier and stated percentages.

8. Remedies.

- 8.1. Early Termination Fee. In the event of a Termination for Convenience or termination as a result of an Owner Default prior to expiration of the Term, Owner shall promptly pay to Supplier an early termination fee in the amount of Three Hundred Thousand Dollars (\$300,000), which the Parties acknowledge is fair and reasonable payment for Supplier's loss of revenue opportunity, training and operational expertise shared with Owner which is impossible for the Parties to accurately calculate the total loss and value. Except as set forth in Section 8.3, the early termination fee provided herein shall be Supplier's sole remedy in the event of a Termination for Convenience or Owner Default prior to expiration of the Term.
- 8.2. Non-Solicitation Restriction. In the event of a termination of this Agreement as a result of Termination of Convenience or Owner Default, Owner shall comply with the Non-Solicitation Restriction provision as set forth in Section 9.2.
- 8.3. Owner's Failure to Accept Biomass, Termination for Convenience, or Owner Default. If Owner fails to accept Contracted Biomass at the Facility for any reason during this Agreement for a period of time of at least ten (10) Business Days, except for Biomass that is rejected in accordance with Section 6.3, or for Facility equipment failures that are the result of the Facility's acceptance of Providers' Biomass that is not in accordance with Supplier's Standard Delivery Terms and Conditions, or in the event of a termination of this Agreement due to a Termination for Convenience, or an Owner Default, and Supplier experiences Disposal Damages, Owner shall promptly pay Supplier for all Disposal Damages, including but not limited to, funds in the Reimbursement Fund.
- 8.3.1. Avoidance of Disposal Damages. Supplier shall use reasonable efforts to limit any Disposal Damages, including but not limited to, the lawful termination of contracts. Owner shall use reasonable efforts to identify an alternative disposal facility for Supplier.
- 8.3.2. Alternative Disposal Fair Market Treatment. If Supplier has control over the operation of any alternative disposal facility, Supplier shall charge the fair market pricing for any Biomass disposal similar to what Supplier charges to other similar entities to minimize Disposal Damages.

9. Exclusivity & Non-Solicitation.

- 9.1. Exclusivity. Except as expressly provided for herein, during the Term of this Agreement (immediately commencing upon expiration of the Initial Term), Supplier shall be the exclusive supplier of Biomass to the Facility and Owner shall not accept any Biomass except from Supplier.

- 9.2. Non-Solicitation Restriction. During this Agreement, and for a period of one (1) year following the termination of this Agreement due to a Termination for Convenience, or an Owner Default, Owner may not, directly or indirectly, (a) solicit or accept any Biomass from Providers that supplied Biomass to the Facility during this Agreement except for those Providers identified in Exhibit H attached hereto and incorporated herein, or (b) accept Biomass to the Facility from any customer of Supplier. The Parties acknowledge and expressly agree that the extent of damages to Supplier in the event of a breach to this Section would be irreparable and monetary damages are impossible to ascertain; and thus, the Parties agree that Supplier is entitled to injunctive or other equitable relief ordered by a court of competent jurisdiction that the court deems appropriate and such equitable relief shall be without bond.

10. Future Agreement Negotiations

- 10.1. Future Agreements. Both Parties acknowledge that further mutual benefit and revenue generating opportunities may be achieved through Supplier investment in additional infrastructure at the Facility. The Parties agree to collaborate in good faith to identify additional revenue opportunities during the period set forth in this Section. Neither Party is obligated to take any action.
- 10.2. Investment Opportunity Memorandum. The Parties agree to periodically discuss additional revenue opportunities that will be agreed to through an Investment Opportunity Memorandum. The Investment Opportunity Memorandum shall not contemplate the expenditure of any additional out of pocket costs from the Owner.
- 10.3. Exclusivity. Should an Investment Opportunity Memorandum be entered into between the Parties, Supplier will have a ninety (90) day exclusive period to negotiate a term sheet with Owner, provided the term sheet includes a provision for private financing of the infrastructure investment. If a term sheet is not mutually accepted and executed within ninety (90) days, Owner shall have the right to solicit bids through a public procurement process. Owner and Supplier may extend the exclusive period by mutual written agreement.
- 10.4. Exclusivity Period. This Section 10 will expire on the fourth anniversary of the Effective Date.

11. Miscellaneous

- 11.1. Dispute Resolution. Any dispute arising under this Agreement shall be resolved as follows: (a) Owner's Director and Supplier's Chief Financial Officer, or their designees, shall meet and confer in good faith within fifteen (15) Business Days from the receipt of a written notice from one Party reasonably describing the dispute and requesting a meeting with the other Party; (b) if the meeting and conferring discussions of the Parties do not result in resolution of the dispute within thirty (30) Business Days; the Parties shall endeavor to resolve the dispute

by non-binding mediation through the current Mediation Rules of JAMS. The mediation shall be convened within thirty (30) Business Days from the date the Parties first met to confer and conclude no later than sixty (60) Business Days from the date the Parties first met to confer. A Party may conclude the mediation after the first session of mediation upon written notice to the other Party and the mediator. The mediation shall be conducted within the municipal limits of Fort Wayne, Indiana and all mediation costs shall be equally shared by the Parties; (c) if the matter is unresolved after the conclusion of mediation, either Party may pursue appropriate relief in a court of competent jurisdiction, as set forth in Section 11.3.

- 11.2. Mutual Indemnity. To the greatest extent permitted by Indiana law, each Party (the "Indemnitor") shall indemnify, defend (with counsel reasonably acceptable to the Indemnities), and hold harmless the other Party and its officers, directors, employees and affiliates ("Indemnitees") from and against all liability, loss, penalty, claim, regulatory decision, demand, fine, judgment, action, cost, and expense (including reasonable attorneys' fees and expenses), and proceedings of any nature whatsoever based upon or arising out of damage to property, injury to persons (including death) or violation of law, that is proximately caused, in whole or part, by the Indemnitor's, or its employees', agents', or subcontractors' (a) failure to perform any obligation under this Agreement, or (b) negligent, intentional, or wrongful acts or omissions relating to this Agreement. The parties' obligations under this Section shall survive termination of this Agreement.
- 11.3. Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to conflicts-of-law principles. All disputes arising under this Agreement shall be settled in a federal or state court of competent jurisdiction located in Allen County, Indiana. The Parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of any federal or state court located within Allen County with respect to any legal action or proceeding arising out of or relating to this Agreement. The Parties hereto hereby consent to be served by the other Party in any suit, action, or proceeding delivered by any nationally recognized overnight carrier service (e.g., FedEx) with delivery confirmation, to each Party at the addresses set forth in the section below regarding notices.
- 11.4. Attorney's Fees and Costs. In the event of any action at law or in equity between the Parties to enforce any of the provisions of this Agreement, the non-prevailing Party to such litigation shall pay to the prevailing Party all costs and expenses, including reasonable attorneys' fees (including costs and expenses incurred in connection with all appeals) incurred by the prevailing Party in the action, and these costs, expenses and attorneys' fees may be included in and as part of any judgment.
- 11.5. Headings; Interpretation. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision of this

Agreement. This Agreement has been reviewed and negotiated by the Parties and their respective legal counsel and it shall be given a fair and reasonable interpretation in accordance with the words contained in it without any weight being given to whether a provision was drafted by that Party or its legal counsel. All Exhibits incorporated into this Agreement shall be construed and interpreted as a whole and to harmonize and give effect to all of the provisions of such Exhibits. As used in this Agreement, "including" shall mean "including without limitation," and "shall" means mandatory and imperative.

- 11.6. Independent Contractor; No Partnership or Agency. Each Party hereto is and shall perform this Agreement as an independent contractor, and, as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither Party, nor any of its agents or employees, shall be, represent, act, purport to act, or be deemed to be the agent, representative, employee, partner, or servant of the other Party. Nothing in this Agreement shall be construed as constituting a joint venture or partnership between the Parties.
- 11.7. Notices. All notices, requests, demands, and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by email with computer generated confirmation receipt; or (c) sent to the Party at its respective address by nationally recognized overnight mail courier service, return receipt requested and postage prepaid. All such notices, demands, or requests shall be to the following addresses, or to such other address as either Party may designate, in writing, from time to time:

If to Supplier: quasar energy group, LLC
8600 East Pleasant Valley Road
Independence, Ohio 44131
Attention: Steven Smith
Email: ssmith@quasareg.com

If to Owner: City of Fort Wayne
200 E. Berry St., Ste. 270
Fort Wayne, IN 46802
Attention: Zachary Schortgen
Email: Zachary.Schortgen@cityoffortwayne.org

Notices shall be deemed given on the earlier of actual delivery or refusal of a Party to accept delivery thereof. Notices may be provided by counsel to any Party.

- 11.8. Non-Waiver. Any failure of either Party to enforce any of the provisions of this Agreement, or to require compliance with any of its terms, shall in no way affect the validity of this Agreement, or any part here of, and shall not be deemed a waiver of the right of such Party thereafter to enforce any part of this Agreement.
- 11.9. Confidentiality/Non-Disclosure. The Parties acknowledge and agree that certain information and documents of both Parties, as reasonably designated by the

disclosing Party, constitute trade secrets and/or confidential financial information about the Supplier's business; and thus, are governed by the mutual non-disclosure and solicitation agreement in Exhibit L attached hereto and incorporated herein, and exempt from disclosure under Indiana's Access to Public Records Act (Indiana Code 5-14-3), including but not limited to, Owner's operational data, Supplier's Biomass Calculator, Biomass pricing, and annual and quarterly budget information.

- 11.10. Assignment. This Agreement shall extend to, be binding upon, and inure to the benefit of the Parties' respective heirs, legal representatives, successors, and assigns; provided, however, that no assignments of this Agreement or any part of this Agreement shall be made by a Party without the prior written consent of the other Party.
- 11.11. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.
- 11.12. Entire Agreement; Amendment. This Agreement and the Exhibits attached hereto and incorporated by reference herein constitute the entire agreement between the Parties concerning the subject matter hereof and supersede any and all other communications, representations, proposals, understandings, or agreements, either written or oral, between the Parties with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a written agreement signed by the Parties.
- 11.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one and the same.
- 11.14. Municipal Approval Required. This Agreement is subject to the approval of the Fort Wayne Board of Public Works and the Common Council of the City of Fort Wayne, Indiana. Failure to obtain the necessary approval by either entity shall render this Agreement null and void, and the Agreement shall have no force or effect whatsoever.
- 11.15. Survival. Subject to the limitations and other provisions of this Agreement, Sections 11.2, 11.4, and 11.9 of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or termination of this Agreement for a period of five (5) years.
- 11.16. Definitions. Unless expressly defined otherwise in this Agreement, all capitalized words shall have the following meaning:

“Biomass” means commercial, residential and industrial source separated food-waste, biosolids, FOG, and other organic residuals that are beneficial to revenue and biogas generation.

“Biomass Calculator” means Supplier’s proprietary electronic calculator that allocates the revenue, expenses, and net profit for the Providers of Biomass as more fully set forth in the applicable Exhibit.

“Biomass Contracts” means all negotiations and contracting services performed and entered into by Supplier related to contracting with Providers to provide Biomass for the Facility, including but not limited to, negotiations, pricing, and commercial terms.

“Biomass Decision Tree Diagram” means the methodology and guidelines to establish the applicable approval and consent procedures for all supplied Biomass and Tip Fees agreed to by the Parties during Phase 1 to be implemented during the Agreement as more fully set forth in the applicable Exhibit.

“Business Days” shall mean all days excluding Saturday, Sunday, or any federal or state legal holiday.

“Contracted Biomass” means Biomass that Supplier supplies to the Facility under a contract with any Providers, whereby Supplier must dispose of the material at a fixed cost.

“Digester Health Guidelines” means the guidelines as more fully set forth in the applicable Exhibit.

“Disposal Damages” means the total actual costs incurred by Supplier to transport and dispose of any Contracted Biomass at an alternate facility in excess of revenue from Providers that Supplier would have otherwise received if the Biomass was transported and disposed of at the Facility under the Agreement plus five percent (5%) of the excess costs to reimburse Supplier for incidental administrative costs incurred.

“Existing Owner Providers” means Providers set forth in Exhibit H.

“Existing Owner Biomass Contracts” means Owner’s written Biomass agreements with Providers that were effective prior to the Effective Date of the Agreement as more fully set forth in the applicable Exhibit.

“Facility” means the HSW receiving station and anaerobic digestion system located at 2601 Dwenger Avenue, Fort Wayne, Indiana 46803, for the processing of wastewater, organic materials, production of biogas, and other beneficial uses

“FOG” means fats, oils, and grease.

“FOG Grease Cooperative” means a cooperative grease program established by Owner.

“FOG Services” means the administering cleaning/maintenance logistics, and billing activities for all commercial grease-trap collections of FOG.

“Force Majeure Event” means natural disasters like hurricanes, floods, earthquakes, fires, and other Acts of God, war, terrorism or threats of terrorism, civil disorder, labor strikes or disruptions, and disease or medical epidemics or outbreaks.

“FWCU” means City of Fort Wayne, Department of Utilities.

“FWCU Service Territory” means the geographical service area designated for the FOG Grease Cooperative to provide FOG Services as more fully described in the applicable Exhibit.

“Hauler” means any person or entity that transports Biomass.

“Headworks” means the inlet of the WPCP where wastewater is screened and initially processed.

“HSW” means high strength waste.

“Initial Term” means the period of time commencing on the Effective Date and continuing for an initial period of one hundred and eighty (180) consecutive days.

“Investment Opportunity Memorandum” written document mutually agreed to by the Parties creating additional revenue opportunities for the Parties that would supplement the terms and conditions of the Agreement which shall contain, including but not limited to, high level design concept, budgetary estimates for capital costs, operating costs, and revenue generating possibilities.

“Lab Testing Services” means the laboratory testing agreed to be performed by Supplier on proposed Biomass as set forth in the applicable Exhibit.

“Market Feasibility Analysis” means the scope of services expressly set forth in Exhibit B.

“Notice of Termination” means written notice from a Party setting forth the intention to terminate the Agreement.

“Owner” means City of Fort Wayne, Indiana, including but not limited to, its Board of Public Works.

“Owner Default” means the occurrence of any of the events set forth in Paragraph 5.2.2.

“Phase 1” means a market feasibility study and consultation regarding training and operational procedures regarding the receipt of Biomass at the Facility.

“Phase 2” means Supplier and Owner’s revenue sharing agreement for the exclusive sourcing and delivery of Biomass for the Facility for a period of not less than seven (7) years.

“POTW” means publicly owned treatment works, synonymous with WPCP.

“Providers means any person or entity that generates Biomass.

“Reimbursement Fund” a reimbursement fund created by Owner, in an amount of not less than Fifty Thousand Dollars (\$50,000.00) in funds which shall be used exclusively to reimburse Supplier for any Disposal Damages incurred by Supplier to dispose of Biomass at an alternative location as a result of the Facility’s failure, for any reason, to receive Biomass for ten (10) consecutive days, as a result of a Termination for Convenience, or Owner’s Default.

“Renewal Term” means the period of time immediately commencing on the expiration of the Term and continuing for a period of three (3) consecutive years thereafter and thereafter shall continue to renew for successive terms of three (3) years, (each three-year term constituting a “Renewal Term”).

“Revenue Share Terms” means the terms and conditions of calculating and payment of the revenue that is realized under the Agreement as set forth in the applicable Exhibit.

“Scope of Services” means the actions taken by the Parties in Phase 1 and Phase 2, as set forth in Sections 1 and 2, respectively, in the Agreement.

“Standard Delivery Terms and Conditions” means the terms and conditions the Providers and Haulers must comply with as more fully set forth in the applicable Exhibit.

“Supplier” means quasar energy group, llc.

“Supplier Default” means the occurrence of any of the events set forth in Paragraph 5.2.1.

“Term” means the period of time immediately commencing on the expiration of the Initial Term and continuing for a period of seven (7) consecutive years thereafter.

“Termination for Convenience” means the Agreement is terminated for the convenience and sole benefit of the Owner.

“Tip Fees” means the fee pricing charged to Providers to dispose of all Biomass at the Facility utilizing the Biomass Calculator as established by the Supplier and consented to by the Owner.

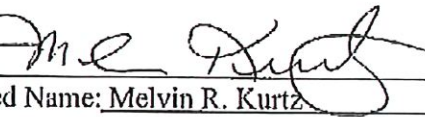
“WPCP” means the City of Fort Wayne, Water Pollution Control Plant.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[Signature Page To Follow]

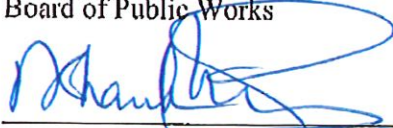
Supplier

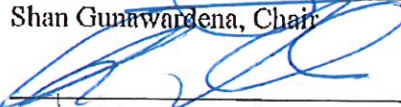
quasar energy group, llc,
an Ohio limited liability company

By: 
Printed Name: Melvin R. Kurtz
Its: Chief Executive Officer

Owner

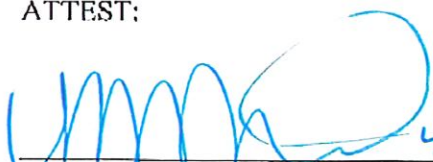
City of Fort Wayne, Indiana, by and through its
Board of Public Works


Shan Gunawardena, Chair


Kumar Menon, Member

ABSENT
Mike Avila, Member

ATTEST:


Michelle Fulk-Vondran, Clerk 4.7.2020

[Attachment of Fiscal Officer's Certificate]

Schedule of Exhibits

Fully incorporated into Agreement on Effective Date:

- A: Materials Excluded from Biomass Definition
- B: Market Feasibility Scope
- C: Initial Start-Up Scope
- D: Lab Testing Services
- E: FWCU Service Territory Map
- F: Budget Procedures & Budget Dispute Resolution
- G: Existing Owner Biomass Contracts
- H: Existing Owner Providers
- I: Proposed Municipal Code Change
- J: Phase 1 Payment Terms
- K: Phase 2 Revenue Share Payment Terms, Procedures & Illustration
- L: Mutual Non-Disclosure Terms
- M: Standard Delivery Terms and Conditions – All Providers

Not yet fully incorporated into Agreement, to be completed and incorporated via written addendum executed by both Parties with 30 days of expiration of Initial Term:

- N: Existing Owner Provider Database
- O: Biomass Decision Tree Diagram
- P: Biomass Calculator
- Q: FOG Pricing
- R: Billing and Payment Procedures
- S: Monthly Report Format
- T: Contract Template for Contracted Biomass
- U: Billing and Payment SOP
- V: Monthly Accounting Report Template
- W: Hauler & Provider Training Materials
- X: Quarterly Budget Template
- Z: Biomass Sampling and Lab Testing SOP
- Y: Biomass Load Volume Verification SOP
- AA: Biomass Load Quality Verification SOP
- AB: Biomass Delivery Manifest Form & LINKO SOP
- AC: Contamination Report Form
- AD: Emergency Spill Clean Up SOP & Form
- AE: Digester Health Requirements
- AF: Anaerobic Digester Daily Operating SOP & Data Transmission Format

Exhibit A

Materials Excluded from Biomass Definition

1. Human waste from residential septic systems or portable toilets
2. Primary clarifier scum
3. Material from FWCU sewer line cleanouts
4. Material from FWCU wet well clean outs
5. FWCU WPCP generated spill
6. Materials not suitable for anaerobic digestion for which FWCU is periodically requested to process, provided that Supplier provides written agreement that the material is not suitable for anaerobic digestion.

Exhibit B

Market Feasibility Scope

1. Project Kick-off & Site Information Gathering.

(a) Kick-off Meeting. Supplier and its local subcontractors will travel to Owner's offices and Facility for a project kick off meeting. This meeting will include a review of the Market Feasibility scope, goals, schedule, and final deliverables—and how they integrate with the broader Biomass Sourcing program. Prior to the meeting Supplier will issue a request for information from the Owner that will be reviewed during the meeting. This request for information will include, but is not limited to the following:

- (i) Updated historical YTD information on existing customer deliveries.
- (ii) LINKOS database procedures.
- (iii) Historical HSW and digester Lab results.
- (iv) As-built drawings.
- (v) HSW receiving and anaerobic digester operations manuals, standard operating procedures.
- (vi) Planned upgrade drawings.
- (vii) Capital improvement plans and timeline.
- (viii) Existing providers and hauler contact information.
- (ix) Solids handling costs.
- (x) Community relations information re: truck traffic, odors.

(b) Personnel Interviews. Following the meeting, Supplier will schedule on-site interviews with Owner staff to better understand the existing HSW program, its procedures, successes and challenges. Supplier will request interviews with personnel from the following divisions:

- (i) Engineering.
- (ii) Operations-WPCP O&M personnel.
- (iii) Operations-Lab personnel.

- (iv) Management.
- (v) Accounting/Finance.
- (vi) Public Information.
- (c) Deliverables.
 - (i) Meeting Minutes.
 - (ii) Interview Notes.

2. Biomass Market Research.

(a) Provider Identification and Availability. Within a 75-mile radius of the Facility, Supplier will use best efforts to identify Biomass Providers with material suitable for anaerobic digestion. For each Provider, Supplier will attempt to identify the organization name, location, type of waste stream, quantity of waste managed, estimated energy potential (based on industry averages), current waste disposal method and tip fee where available. Supplier will also assess the likelihood of securing the material given Facility's receiving and processing infrastructure, tip fee pricing, and transportation distance. Select Providers outside of the 75-mile radius may be included if they are potential viable Providers given limited alternative disposal options. This research will focus on the following types of Providers:

- (i) Food and beverage manufacturers.
- (ii) FOG haulers.
- (iii) Wastewater treatment plants.
- (iv) Grind2Energy potential sites (stadiums, grocers, food prep centers).
- (v) Food and beverage distribution centers.

The following Providers and types of materials will not be included in the research: manure, agricultural feedstocks, energy crops, individual FOG sources (i.e. restaurants), commercial and residential food scraps that are mixed with municipal solid waste (MSW).

(b) Competitor Facilities Identification. Within a 100-mile radius of the WPCP Facility, Supplier will use best efforts identify major alternative waste disposal operations that may serve as competition for organic feedstock. For each location Supplier will attempt to identify the organization name, type of waste accepted, quantity of waste managed, and average tip fees charged. This research will focus on the following competitor Facility types:

- (i) Landfills.
- (ii) Anaerobic digestion facilities.
- (iii) Composting facilities.
- (iv) Incinerators.
- (c) Deliverables.
 - (i) Biomass Provider Database.
 - (ii) Competitor Facility Database.
 - (iii) Map of Potential Biomass Providers.
 - (iv) Map of Competitor Facilities.

3. Lab Testing.

(a) Sample Collection. Supplier will work with Providers and Haulers to obtain samples of up to 18 of the most promising materials from Biomass Providers identified during Step 2. Supplier will work with Providers to ensure samples are representative and properly packaged for shipment to Supplier's lab in Wooster, Ohio.

(b) Sample Testing. Supplier's lab will test all of the parameters listed in Exhibit D for each of the samples.

- (c) Deliverables.
 - (i) Lab test reports.
 - (ii) Summary of opinion on biological suitability of material for digestion at Facility.

4. Residuals Management Impact.

(a) Residuals Modeling. Collaboration with Owner to model expected increase in residual solids and downstream liquids generated from increased loading to anaerobic digesters including evaluation of historical residual volumes, volatile destruction rates and expected volatile destruction of incoming materials.

(b) Solids Handling. Collaboration with Owner to document costs associated with processing incremental solids that are expected as a result of the modeling exercise. This task will include analysis of historical solids processing costs and offsetting revenue, analysis of incremental costs and future expected changes to cost and revenue structure associated with

solids handling. Supplier will also collaborate with Owner to determine if there is any upper limit to the amount of additional residual solids that the Facility can handle.

(c) Liquids Processing.

(i) Collaboration with Owner to document costs associated with processing incremental liquids that are expected as a result of the modeling exercise. This task will include analysis of historical liquids processing costs from the biosolids facility, analysis of incremental costs and future expected changes to cost structure associated with liquids processing. Supplier will also collaborate with Owner to determine if there is any upper limit to the amount of liquids or nutrient loading that the Facility can handle.

(d) Deliverables. Technical memo summarizing the following: (i) Expected volumes and characteristics of residuals; (ii) solids handling expenses on an incremental per unit basis to be added to Feedstock Calculator; (iii) liquids handling expenses on an incremental per unit basis to be added to Feedstock Calculator; and (iv) establishment of any upper limits of residual solids or liquids processing capacity to be added to operating procedures.

5. Facilities Review and Establishment of Alternative Recommendations.

(a) Existing Facilities Review. Supplier will conduct an on-site review of all existing HSW receiving and anaerobic digestion infrastructure.

(b) Future Facilities Review. Supplier will review all relevant plans for future HSW and anaerobic digestion infrastructure improvements, including completed designs that are under construction, completed designs out for bid, designs in progress and future planned capital improvement projects.

(c) Alternative Recommendations. Supplier will establish a set of recommendations to existing and planned infrastructure improvements that it believes will enhance the overall resource recovery process, with a particular focus on processing capacity for Biomass deliveries.

(d) Deliverables.

(i) Technical memo summarizing findings and recommendations.

6. Economic Modeling.

(a) Biomass Revenue Potential Modeling. Utilizing the information gathered in previous steps Supplier will collaborate with Owner to model long-term potential associated with the Biomass receiving program for a ten (10) year horizon. This model will be directional in nature and non-binding for performance budgeting purposes. It will include:

(i) Biomass overall revenue potential, utilizing information generated from Task 1.

(ii) Biomass revenue share expectations, utilizing Agreement terms.

(iii) Biomass energy potential value, utilizing existing findings from Owner research on biogas utilization options.

(iv) Biomass processing costs modeling.

(v) Net revenue projections.

(a) Deliverables.

(i) Excel model containing calculations to show ten (10) year net revenue potential.

7. Community Impact.

(a) Community Impact Potential Evaluation.

(i) Supplier will analyze expected increased number of trucks expected as a result of the Biomass Sourcing activities and probable truck routes.

(ii) Supplier will collaborate with Owner to determine most sensitive areas for odor surrounding the Facility.

(b) Community Impact Mitigate Strategy Development.

(i) Supplier will collaborate with Owner to develop strategies to mitigate community impact such as alternative truck routes, delivery hours, delivery receipt best practices and future odor control improvements.

(c) Deliverables:

(i) Brief technical memorandum summarizing the findings.

Exhibit C

Initial Start-Up Scope

In the Initial Start-Up Supplier will be responsible for:

1. Existing Customer Transition.

(a) Establish all Existing Providers. Collaborate with Owner to establish a database of all Existing Owner Providers and Haulers including historical delivery volumes, tip fee prices and all contact information.

(b) Make Contact with Existing Owner Providers. Establish conference calls or meetings where necessary and possible with Existing Owner Providers to discuss the following:

- (i) Relationship management change, new point of contact.
- (ii) Change in tip fee prices (where applicable).
- (iii) Billing procedures change.
- (iv) Updated delivery terms.
- (v) Effective date for all items listed above.

(c) Secure Required Documentation. Distribute and receive required documentation (i.e. W-9 forms, signed updated delivery terms and pricing) in order to begin receiving materials.

(d) Deliverables.

- (i) Existing Owner Provider Database (Exhibit N).

2. New Provider Approval Process.

(a) Biomass Decision Tree Diagram. Collaborate with Owner to generate a custom application of Supplier's Biomass Decision Tree Diagram pricing tool. This tool will outline the policies and procedures for gathering information, qualifying and approving a potential new Provider and associated timelines for each step. The diagram gaining approval from all necessary parties including:

- (i) Supplier Lab.
- (ii) WPCP Operations.
- (iii) FWCU Program Management.
- (iv) Supplier Biomass Management.

(b) Deliverables.

- (i) Biomass Decision Tree Diagram (Exhibit O).

3. Pricing Procedures.

(a) Biomass Calculator. Collaborate with Owner to generate a custom application of Supplier's Biomass pricing tool. This tool will be one of the guiding documents in establishing prices for existing and new Providers.

(b) FOG Pricing. Collaborate with Owner to establish a uniform price for disposal of commercial grease trap FOG within the FWCU service area during the interim period in which Supplier is managing all FOG Services.

(c) Deliverables.

- (i) Biomass Calculator (Exhibit P).

- (ii) FOG Pricing (Exhibit Q).

4. Delivery Terms and Conditions.

(a) Contract Template. Collaborate with Owner to establish a contract template to be used as a starting point in negotiations for any Contracted Biomass Providers.

(b) Deliverables.

- (i) Contract Template for Contracted Biomass (Exhibit T).

5. Establish Accounting, Billing and Payment Procedures.

(a) Billing and Payment Procedures.

(i) Collaborate with Owner to establish a written procedure for when Provider delivery manifests are provided to Supplier accounting department and frequency at which Providers are billed for deliveries.

(ii) Collaborate with Owner to establish a written procedure for processing payment to Owner for revenue share collected from Providers.

(b) Monthly Accounting Report Template. Collaborate with Owner to generate a monthly accounting report format to include the following:

- (i) Quantity of Biomass delivered.
- (ii) Tip Fees invoiced.
- (iii) Payment terms.
- (iv) Payment received.

- (v) Aging report including late payment status.
- (vi) Revenue share split.
- (vii) Supplier performance against budget.
- (viii) Supporting Invoices.
- (c) Deliverables.
 - (i) Billing and Payment SOP (Exhibit U).
 - (ii) Monthly Accounting Report Template (Exhibit V).

6. Hauler and Provider Training and Education.

(a) Hauler Driver Training. Collaborate FWCU to establish curriculum materials to be distributed to all Haulers for driver education on best practices, standard operating procedures, and emergency spill cleanup procedures for Biomass deliveries. Host an on-site training seminar at the WPCP Facility with all existing Haulers and prospective new Haulers.

(b) Provider Training. Collaborate FWCU to establish curriculum materials to be distributed to all Providers for facility operator education on contamination requirements, restricted materials, notification procedures for cleanouts, and MSDS disclosure requirements. Travel to facilities on-site where possible and conduct training.

- (c) Deliverables.
 - (i) Hauler & Provider Training Materials (Exhibit W).

7. Quarterly Budget.

(a) Budget Template. Supplier shall coordinate with Owner to develop a document format for quarterly budgets and tracking performance against established budgets.

- (b) Deliverables.
 - i. Quarterly Budget Template (Exhibit X).

8. Biomass Delivery Standard Operating Procedures.

(a) Biomass Sampling and Lab Testing Procedures. Collaborate with Owner to develop a written standard operating procedure for periodic sampling and in-house Owner testing of Biomass loads for quality verification.

(b) Biomass Load Volume Verification. Collaborate with Owner to develop a written standard operating procedure for verifying load volumes of incoming Biomass, to properly track volumes on the Delivery Manifest and properly bill Providers for material delivered.

(c) Biomass Load Quality Verification. Collaborate with Owner to develop a written standard operating procedure for verifying load quality of incoming Biomass, to mitigate risk of Providers and Haulers delivering contaminated or harmful loads to the Facility.

(d) Biomass Delivery Manifest & LINKO. Collaborate with Owner to develop a standard manifest form to be used daily by WPCP operators to track all incoming deliveries as well as a written standard operating procedure for uploading manifests to LINKO and providing access to Supplier.

(e) Contamination Reports. Collaborate with Owner to develop a standard contamination report form to be completed by WPCP operators for reporting any contamination and associated costs for damages for Supplier to assign to Haulers and Providers.

(f) Emergency Spill Clean Up. Collaborate with Owner to develop a written standard operating procedure for clean-up of emergency spills including roles and responsibilities of Haulers and Operators. Procedures shall also include details for documenting spill and associated clean-up costs or damage for Supplier to assign to Haulers and Providers.

(g) Deliverables.

- (i) Biomass Sampling and Lab Testing SOP (Exhibit Y).
- (ii) Biomass Load Volume Verification SOP (Exhibit Z).
- (iii) Biomass Load Quality Verification SOP (Exhibit AA).
- (iv) Biomass Delivery Manifest Form & LINKO SOP (Exhibit AB).
- (v) Contamination Report Form (Exhibit AC).
- (vi) Emergency Spill Clean Up SOP & Form (Exhibit AD).

9. Digester Health & Daily Monitoring.

(a) Digester Health Requirements. Collaborate with Owner to establish written requirements for anaerobic digestion hydraulic and biological loading.

(b) Anaerobic Digester Daily Operations. Collaborate with Owner to establish written requirements for anaerobic digestion daily operations with a focus on maintaining biological health. Standard operating procedure to include a list of parameters to be monitored and regularly tested to ensure biological health and ensure Supplier visibility into the data.

(c) Deliverables.

- (i) Digester Health Requirements (Exhibit AE).

- (ii) Anaerobic Digester Daily Operating SOP & Data Transmission Format (Exhibit AF).

Exhibit D

Lab Testing Services

Parameters to be tested for Providers

Acrylonitrile	Methylene chloride
Alcohol, allyl	Molybdenum
Alcohol, octyl	Nickel
Aluminum	Nitrogen
Arsenic	Oxidation Reduction Potential (ORP)
Benzidine	pH
Boron	Phenol
C/N Ratio	Phosphorus
Cadmium	Polychlorinated Biphenyls (PCBs)
Calcium	Potassium
Carbon tetrachloride	Selenium
Chemical Oxygen Demand (COD)	Sodium
Chloroform	Sulfate
Chromium, hexavalent	Sulfide
Chromium, trivalent	Sulfur
Copper	Total Solids
Cyanide	1,1,1-trichloroethane
Iron	Trichlorofluoromethane
Lead	Trichlorofluoromethane
Magnesium	Volatile Solids (on total solids basis)
Manganese	Zinc
Mercury	

Exhibit E

FWCU Service Territory

The FWCU Service Territory is defined as follows:

1. All customers whose properties are, at any time during the Term of this Agreement, physically connected to the FWCU sewer system.

Exhibit F

Budget Procedures & Budget Dispute Resolution

Budget Procedures: 30 days prior to the close of the current quarter, Supplier's Program Manager shall prepare and present to Owner's Program Manager the subsequent quarterly budget for mutual agreement and approval. Supplier shall develop the budget considering but not limited to, historical performance, knowledge of new customers in the pipeline, and Owner's plant operations and receiving capacity. Owner's Program Manager shall have up until 20 days prior to the close of the current quarter to review the proposed budget. In the event of no disagreements, Supplier and Owner will mutually sign off on the proposed budget which will take effect immediately following the close of the current quarterly budget cycle. Owner shall provide any disagreements or comments to Supplier in writing. Supplier shall have until ten (10) Business Days prior to the close of the current quarter to review and discuss Owner's written comments with Owner. At the close of this period, either the Parties shall reach mutual agreement on the original Supplier proposed budget, or Supplier shall submit a revised budget for Owner approval. Owner shall then have until 5 days prior to the close of the quarter to negotiate and either reach a mutually approved budget or declare in writing a Budget Dispute along with written comments and desired adjustments. In the event of a Budget Dispute, the current quarter's budget will stay in force for the start of the subsequent quarter and remain in force until the Budget Dispute is resolved with a new mutually agreed to budget pro-rated for the remainder of the quarter.

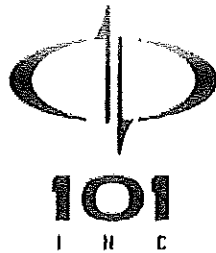
Budget Dispute: In the event of a Budget Dispute, the Parties shall resolve the dispute as follows:

- (a) Owner's Director and Supplier's Chief Financial Officer, or their designees, shall meet and confer in good faith within ten (10) days from the receipt of a written notice from one Party reasonably describing the dispute and requesting a meeting with the other Party;
- (b) if the meeting and conferring discussions of the Parties do not result in resolution of the dispute within 30 days, the Parties shall endeavor to resolve the dispute by non-binding mediation through the current Mediation Rules of JAMS. The mediation shall be convened within thirty (30) days from the date the Parties first met to confer and conclude within forty-five (45) days of the dispute being first discussed. A Party may conclude the mediation after the first session of mediation upon written notice to the other Party and the mediator. The mediation shall be conducted within the municipal limits of Fort

Wayne, Indiana and all mediation costs shall be equally shared by the Parties; (c) if the matter is unresolved after the conclusion of mediation, the Parties shall submit the matter to the binding dispute resolution of the current Construction Industry Rules of JAMS. The binding dispute resolution shall be conducted within the municipal limits of Indianapolis, Indiana and all costs of the binding dispute resolution charged by JAMS (including the arbitrator fees) shall be paid by the non-prevailing Party, but the Parties shall be responsible for their own costs and expenses, including their attorneys' fees.

Exhibit G

Existing Owner Biomass Contracts



CONTRACTUAL AGREEMENT

Parties:

City of Fort Wayne
200 East Berry Street
Fort Wayne, IN 46802

IOI Inc.
4791 W 900 S
Pendleton, IN 46064

This is an Agreement between the above parties. The effective date of this Agreement is September 27, 2016.

Expiration Date September 27, 2021.

Exhibit H

Existing Owner Providers

1. Nestle, Anderson, IN facility
2. BF Goodrich, Woodburn, IN facility
3. Ellison Bakery
4. Holsum Bakery, Fort Wayne, IN facility
5. FOG sources within FWCU service territory

Exhibit I

Proposed Municipal Code Change

51.073 BULK WASTE CHARGES (delete existing and replace)

(A) Bulk Industrial Waste Charge. All industrial waste suitable for disposal, which has been delivered by an approved waste hauler to City's plant. For purposes of computing charges hereunder, a **LOAD** is defined as 1,000 gallons of tank capacity or any fraction thereof.

	Unit of Measure	Effective 2020	Effective January 1, 2021	Effective January 1, 2022	Effective January 1, 2023	Effective January 1, 2024
Discharge	1,000 gallons	\$ 123.67	\$ 124.05	\$ 124.33	\$ 129.85	\$ 136.57
Billing Charge	Per bill	\$ 5.51	\$ 5.57	\$ 5.81	\$ 6.02	\$ 6.15

(B) Domestic. All domestic waste delivered to the city's plant by customer's truck or tank. For purposes of computing charges hereunder, a **LOAD** is defined as 1,000 gallons of tank capacity or any fraction thereof.

	Unit of Measure	Effective 2020	Effective January 1, 2021	Effective January 1, 2022	Effective January 1, 2023	Effective January 1, 2024
Discharge	1,000 gallons	\$ 64.52	\$ 64.72	\$ 64.87	\$ 67.74	\$ 71.25
Billing Charge	Per bill	\$ 5.51	\$ 5.57	\$ 5.81	\$ 6.02	\$ 6.15

(C) Contracted services. The city or its designated agent may enter into agreements with producers of bulk waste to deliver waste to the City's plant on terms and conditions that are mutually acceptable to the producer and the city or its designated agent. For purposes of this subsection, the city or its designated agent shall have the authority to negotiate the pricing for the delivery and acceptance of bulk waste from each producer, taking into consideration factors such as volume and quality of waste and any other factors determined to be appropriate by the city or its designated agent.

(D) Manifest. All bulk waste loads delivered to the Water Pollution Control Plant shall be accompanied by a "Waste Hauler Manifest," the form for which will be provided by the city or an agent working on the city's behalf.

(E) FOG Grease Cooperative. To improve the sustainability of the City's POTW and continue to explore the use of fats, oils, and grease as a renewable energy supply, the city may enter into agreements with waste haulers to provide maintenance and cleaning services for interceptors and traps used by food service establishments. The Board of Public Works is authorized to develop terms and conditions regarding participation in any such maintenance and cleaning program by food service establishments.

Exhibit J

Phase 1 Payment Terms

Payment #1: \$95,000 within 30 days from Effective Date for following scope items:

1. Preliminary market feasibility mobilization and existing information review
2. Potential Providers database development
3. Potential competitor facilities identification
4. Initial resource planning and transition start up activities

Payment #2: \$95,000 within 60 days from Effective Date for following scope items:

1. Potential provider contact and market feasibility research
2. Lab testing
3. Residuals management impact analysis
4. Facilities review
5. Initial development of new provider approval process
6. Initial development of pricing procedures
7. Initial development of program standard operating procedures (SOPs)

Exhibit K

Phase 2 Revenue Share Terms & Illustration

Tip Fee Revenue Share

Supplier shall pay Owner a share of Tip Fees from Providers in accordance with the tiered revenue sharing framework described below.

Tier 1 Revenue Share

The Tier 1 Revenue Share is equal to Supplier retaining 80% of Tip Fees, and paying 20% of Tip Fees to the Owner up to the following Thresholds:

	<u>Supplier Tier 1 Revenue Threshold</u>	<u>Total Tip Fees Tier 1 Revenue Threshold</u>
Phase 1 & Phase 2, Year 1	\$207,700	\$259,625
Phase 2, Year 2	\$80,000	\$100,000
Phase 2, Year 3	\$60,000	\$75,000
Phase 2, Year 4	\$40,000	\$50,000
Phase 2, Year 5	\$20,000	\$25,000
Phase 2, Year 6	\$20,000	\$25,000
Phase 2, Year 7	\$20,000	\$25,000

Once these Thresholds are met, the Tier 2 Revenue sharing portion will be in effect. Tier 1 Upper Revenue Thresholds are set on an annual cumulative basis.

Tier 2 Revenue Share

The Tier 2 Revenue Share is equal to Supplier retaining a predetermined yearly percentage of Tip Fees, and paying a predetermined yearly percentage of Tip Fees to the Owner. An upper threshold for Tier 2 will come into force beginning in Year 3 and be equal to 110% the Owner and Supplier mutually agreed to Quarterly Budgets. The Tier II Upper Revenue Threshold will be reset each quarter in accordance with the mutually agreed to Quarterly Budget. Once the Threshold is met, any revenue above 110% of the budget will be shared according to the Tier 3 Revenue Share.

	<u>Supplier Tier 2 Tip Fee Revenue Share</u>	<u>Owner Tier 2 Tip Fee Revenue Share</u>
Phase 1 & Phase 2, Year 1	60%	40%
Phase 2, Year 2	60%	40%
Phase 2, Year 3	45%	55%
Phase 2, Year 4	30%	70%
Phase 2, Year 5	30%	70%
Phase 2, Year 6	30%	70%
Phase 2, Year 7	30%	70%

Tier 3 Revenue Share

The Tier 3 Revenue Share is equal to Supplier retaining 15% of Tip Fees, and paying to Owner 85% of the tip fees.

Figures 1 and 2 below are illustrative only of revenue share terms and calculations and not binding or representative of any commitments to Quarterly Budgets or performance.

Figure 1: Year 3 Revenue Share Illustration-Yearly Summary

Year 3 Inputs					
Biomass Delivered (gallons)	8,890,811				
Biomass Average Tip Fee (\$)	\$ 0.08				
Biomass Total Revenue	\$ 740,000				
Q1 Quarterly Budget	\$ 160,000				
Q2 Quarterly Budget	\$ 160,000				
Q3 Quarterly Budget	\$ 165,000				
Q4 Quarterly Budget	\$ 175,000				
Sum of Quarterly Budgets	\$ 660,000				
	Tier I	Tier II	Tier III		
Upper Revenue Threshold (\$)	\$ 75,000	Varies Quarterly	No Limit		
Supplier Revenue Share (%)	80%	45%	15%		
Owner Revenue Share (%)	20%	55%	85%		
				Yearly Total	
Supplier Revenue Share (\$)	\$ 60,000	\$ 290,025	\$ 3,075	\$ 353,100	
Owner Revenue Share (\$)	\$ 15,000	\$ 354,475	\$ 17,425	\$ 386,900	
Biomass Total Revenue (\$)	\$ 75,000	\$ 644,500	\$ 20,500	\$ 740,000	

Figure 2: Year 3 Revenue Share Illustration-Monthly, Quarterly Detail

	Quarter 1				Quarter 2			
	Month 1	Month 2	Month 3	Q1 Total	Month 4	Month 5	Month 6	Q2 Total
Tier I Upper Revenue Threshold				\$ 75,000				Already Met
Tier II Upper Revenue Threshold				\$ 176,000				\$ 176,000
Tier I Revenue	\$ 55,000	\$ 20,000	\$ -	\$ 75,000	\$ -	\$ -	\$ -	\$ -
Tier II Revenue	\$ -	\$ 37,500	\$ 60,000	\$ 97,500	\$ 50,000	\$ 61,000	\$ 62,000	\$ 173,000
Tier III Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Biomass Total Revenue (\$)	\$ 55,000	\$ 57,500	\$ 60,000	\$ 172,500	\$ 50,000	\$ 61,000	\$ 62,000	\$ 173,000
Supplier Tier I Revenue Share	\$ 44,000	\$ 16,000	\$ -	\$ 60,000	\$ -	\$ -	\$ -	\$ -
Supplier Tier II Revenue Share	\$ -	\$ 16,875	\$ 27,000	\$ 43,875	\$ 22,500	\$ 27,450	\$ 27,900	\$ 77,850
Supplier Tier III Revenue Share	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Supplier Total Revenue Share (\$)	\$ 44,000	\$ 32,875	\$ 27,000	\$ 103,875	\$ 22,500	\$ 27,450	\$ 27,900	\$ 77,850
Owner Tier I Revenue Share	\$ 11,000	\$ 4,000	\$ -	\$ 15,000	\$ -	\$ -	\$ -	\$ -
Owner Tier II Revenue Share	\$ -	\$ 20,625	\$ 33,000	\$ 53,625	\$ 27,500	\$ 33,550	\$ 34,100	\$ 95,150
Owner Tier III Revenue Share	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Owner Total Revenue Share (\$)	\$ 11,000	\$ 24,625	\$ 33,000	\$ 68,625	\$ 27,500	\$ 33,550	\$ 34,100	\$ 95,150

	Quarter 3				Quarter 4				Yearly Totals
	Month 7	Month 8	Month 9	Q3 Total	Month 10	Month 11	Month 12	Q4 Total	
Tier I Upper Revenue Threshold				Already Met				Already Met	\$ 75,000
Tier II Upper Revenue Threshold				\$ 181,500				\$ 192,500	\$ 644,500
Tier I Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,500
Tier II Revenue	\$ 65,000	\$ 65,000	\$ 51,500	\$ 181,500	\$ 62,000	\$ 67,000	\$ 63,500	\$ 192,500	\$ 740,000
Tier III Revenue	\$ -	\$ -	\$ 14,500	\$ 14,500	\$ -	\$ -	\$ 6,000	\$ 6,000	\$ 60,000
Biomass Total Revenue (\$)	\$ 65,000	\$ 65,000	\$ 66,000	\$ 196,000	\$ 62,000	\$ 67,000	\$ 69,500	\$ 198,500	\$ 60,000
Supplier Tier I Revenue Share	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 290,025
Supplier Tier II Revenue Share	\$ 29,250	\$ 29,250	\$ 23,175	\$ 81,675	\$ 27,900	\$ 30,150	\$ 28,575	\$ 86,625	\$ 3,075
Supplier Tier III Revenue Share	\$ -	\$ -	\$ 2,175	\$ 2,175	\$ -	\$ -	\$ 900	\$ 900	\$ 353,100
Supplier Total Revenue Share (\$)	\$ 29,250	\$ 29,250	\$ 25,350	\$ 83,850	\$ 27,900	\$ 30,150	\$ 29,475	\$ 87,525	\$ 15,000
Owner Tier I Revenue Share	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 354,475
Owner Tier II Revenue Share	\$ 35,750	\$ 35,750	\$ 28,325	\$ 99,825	\$ 34,100	\$ 36,850	\$ 34,925	\$ 105,875	\$ 17,425
Owner Tier III Revenue Share	\$ -	\$ -	\$ 12,325	\$ 12,325	\$ -	\$ -	\$ 5,100	\$ 5,100	\$ 386,900
Owner Total Revenue Share (\$)	\$ 35,750	\$ 35,750	\$ 40,650	\$ 112,150	\$ 34,100	\$ 36,850	\$ 40,025	\$ 110,975	

Exhibit L

Mutual Confidentiality and Non-Disclosure Agreement

This Mutual Confidentiality and Non-Disclosure Agreement (the "Agreement") is entered into as of _____, 2020 (the "Effective Date"), by and between City of Fort Wayne, an Indiana municipal corporation, acting by and through its Board of Public Works with its principal place of business at _____ ("FWCU") and Supplier energy group, an Ohio limited liability company with its principal place of business at 8600 Pleasant Valley Road, Cleveland, Ohio 44131 ("Supplier"). FWCU and Supplier are herein sometimes individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, FWCU and Supplier have entered into an Exclusive Biomass Supply Agreement dated _____ (hereafter "**Business Purpose**"); and

WHEREAS, in consideration of such disclosures, each Party is willing to maintain the confidentiality of Confidential Information disclosed by (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), and to use such Confidential Information only in furtherance of the Business Purpose in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree with respect to such Confidential Information as follows:

1. Definition. As used herein, **Confidential Information** shall mean any and all data or information that is proprietary to the Disclosing Party, or of a third Party as to whom Disclosing Party has an obligation of confidentiality, whether disclosed before, on, or after the Effective Date and whether disclosed in writing, orally, by electronic delivery, by inspection of tangible objects or otherwise. Confidential Information includes, without limitation, trade secrets, ideas, processes, formulae, computer software (including source code), data, know-how, copyrightable material, improvements, inventions (whether or not patentable), patents, techniques, strategies, business plans, product development plans, timetables, forecasts, studies, findings, information concerning existing or potential customers, suppliers and partners, product and/or service designs, sketches, photographs, drawings, samples, specifications, product and/or service costs, product and/or service prices, product and/or service names, financial information, pricing information, employee information, marketing plans, business opportunities, research activities and results, market research activities and results, and development activities and results, and any other information that should reasonably be recognized as confidential information of the Disclosing Party.

2. Confidential Information Excluded. The restrictions on a Party's disclosure and use of the Confidential Information hereunder will not apply to the extent of any Confidential Information: (a) that was already known by Receiving Party prior to the Disclosure Period as evidenced by written documentation; (b) that becomes publicly known without breach of Receiving Party's obligations under this Agreement; (c) that is rightfully acquired by Receiving Party from a third Party which is not subject to any restriction or obligation (whether contractual, fiduciary, or otherwise) on disclosure or use; and (d) that is independently developed by Receiving Party without knowledge or reference to such Confidential Information, as evidenced by written documentation or other tangible evidence.

3. Compelled Disclosure. The Receiving Party agrees that if it receives a subpoena or other government process that purports to require the production of any Confidential Information of the Disclosing Party for use in an action or proceeding, the Receiving Party: (a) shall promptly inform the party or entity issuing such subpoena or other governmental process of the existence of this Agreement; (b) shall promptly provide Disclosing Party with notice and copies of such subpoena or other governmental process so that Disclosing Party may seek an appropriate protective order; and (c) shall not oppose any effort by Disclosing Party to quash any such subpoena or government process. If the Disclosing Party fails to intervene to quash said subpoena or other government process after being given notice and reasonable opportunity to do so, or if such motion is denied by a court of competent jurisdiction, or if Confidential Information is ordered produced in an action or proceeding, the Confidential Information shall not lose its confidential status through such use, and the Receiving Party shall take all reasonable and necessary steps to protect the confidentiality of the Confidential information during such use, to the extent possible.

4. Use of Confidential Information. The Receiving Party shall make use of the Confidential Information only in accordance with the provisions of this Agreement and for the Business Purpose set forth in this Agreement.

5. Standard of Care. Except as permitted by this Agreement, each Party hereby undertakes and agrees to retain in strict confidence, and to instruct its respective officers, directors, employees, consultants, professional representatives, agents and all persons acting for or on the Party's behalf (collectively, "Representatives") to retain in strict confidence, all Confidential Information of the other Party disclosed to or obtained by it, and neither Party nor such Party's Representatives shall use, disclose or disseminate, or permit the use, disclosure or dissemination of, any such Confidential Information obtained by it other than in connection with its investigation and evaluation of the Business Purpose without obtaining the prior written consent of the other Party. Each Party shall inform each and every Representative of such Party granted access to the Confidential Information of the confidential nature of the Confidential Information and the existence, terms and applicability of the confidentiality and nonuse obligations of this Agreement. Each Party shall be responsible for compliance herewith by its Representatives and liable to the other Party for any breach of the confidentiality and nonuse, and non-dissemination covenants hereof by its Representatives. The Receiving Party undertakes to promptly notify the Disclosing Party, in writing, of any unauthorized access, disclosure or use

of the Confidential Information or any other breach of this Agreement the Receiving Party becomes aware of and will cooperate with the Disclosing Party to regain possession of the Confidential Information and prevent its further unauthorized access, disclosure or use.

6. Return of Confidential Information. At any such time as the Disclosing Party may so request, the Receiving Party will, at the Disclosing Party's option, either return or destroy all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) provided, however, that Confidential Information may be retained as required by law or regulatory requirement. Such retained Confidential Information will remain subject to the terms of this Agreement. Upon written request, the Receiving Party shall certify in writing the destruction or return of such Confidential Information.

7. Intellectual Property Matters. No license to a Receiving Party under any Disclosing Party's patent, now issued or hereafter issuing, trademark, trade name, copyright, trade secret or any other intellectual property is granted or implied by the disclosure of any Confidential Information. As between the Parties, all right, title, and interest in, and right to possess, Confidential Information of the Disclosing Party shall remain with the Disclosing Party, subject only to the Receiving Party's limited use rights expressly set forth in this Agreement.

8. Injunctive Relief. Each Party acknowledges that disclosure or use of Confidential Information in violation of the Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or an inadequate remedy. In the case of such a breach or threatened breach, each Party agrees that the other Party will be entitled to equitable relief, including injunctive relief and specific performance, in addition to any other remedy available, without the necessity of posting a bond in obtaining the same. Except where otherwise explicitly specified, the rights and remedies granted to a Party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies that the Party may possess at law or in equity.

9. Prior Disclosures. Each Party hereby agrees and confirms that any Confidential Information disclosed to the other Party in connection with the discussions held between them prior to the execution of this Agreement relating to the Business Purpose shall be subject to the terms and conditions of this Agreement.

10. Term. The term of this Agreement shall commence on the Effective Date and continue in effect during the Business Purpose and for a period of ten (10) years upon the expiration or termination of the Business Purpose.

11. Survival. Any provision that, in order to give proper effect to its intent, shall survive the expiration or termination of this Agreement.

12. Non-Waiver. Any failure by either Party to enforce the other Party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

13. Compliance with Laws. Company shall comply with all federal, state and local laws, including, without limitation, all import and export laws, in providing or receiving any information or materials to or from Supplier.

14. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

15. Amendments. This Agreement may not be amended except in writing signed by a duly authorized representative of each Party.

16. Assignment. Neither Party may assign this Agreement or any rights or obligations hereunder without the other Party's express prior written consent.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without regard to conflicts-of-law principles. All disputes arising under this Agreement shall be settled in a federal or state court of competent jurisdiction located in Allen County, Indiana. The Parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of any federal or state court located within Allen County with respect to any legal action or proceeding arising out of or relating to this Agreement. The Parties hereto hereby consent to be served by the other Party in any suit, action, or proceeding delivered by any nationally recognized overnight carrier service (e.g., FedEx) with delivery confirmation, to each Party at the addresses set forth in the section below regarding notices.

18. Attorneys' Fees. In the event of any action at law or in equity between the Parties to enforce any of the provisions of this Agreement, the non-prevailing Party to such litigation shall pay to the prevailing Party all costs and expenses, including reasonable attorneys' fees (including costs and expenses incurred in connection with all appeals) incurred by the prevailing Party in the action, and these costs, expenses and attorneys' fees may be included in and as part of any judgment.

19. Counterparts; Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

20. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, statements, assurances or other communications, whether oral or written, with respect to its subject matter, and may be amended only in a writing signed by an authorized representative of each Party. This Agreement does not create any agency or partnership relationship.

21. Execution. This Agreement may be executed by facsimile signature in counterparts, both of which taken together shall constitute one in the same instrument. After execution by facsimile, originals of this Agreement shall be executed and provided to Company and Supplier.

EACH PERSON WHO SIGNS BELOW DOES HEREBY CERTIFY BY SO SIGNING THAT HE/SHE/IT IS DULY AUTHORIZED TO ENTER INTO THIS AGREEMENT AND DOES HEREBY AGREE TO THE TERMS AND CONDITIONS OF THE AGREEMENT ON BEHALF ANY ORGANIZATION WHICH HE/SHE IS AN AGENT.

FWCU

SUPPLIER

Signature: _____

Name: _____

Title: _____

Signature: Melvin Kurtz

Name: Melvin Kurtz

Title: President

Address for Notices:

Attn: _____

Address for Notices:

8600 Pleasant Valley Road

Cleveland, OH 44131

Attn: Legal Department

Exhibit M

Standard Delivery Terms and Conditions – All Providers

All Standard Delivery Terms and Conditions shall require that all Providers shall make reasonable efforts to ensure that the Biomass is free of contamination by foreign objects, including, but not limited to, metal, stone, plastic, and glass. Providers shall be subject to a contamination fee if the Facility incurs and costs or expenses that are the proximate result of the contamination.

CITY OF FORT WAYNE, INDIANA

QUASAR ENERGY GROUP, LLC
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. FINANCIAL INTERESTS;
2. POTENTIAL CONFLICTS OF INTEREST;
3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor (SEE ATTACHED SCHEDULE)

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☒ (X)

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) ☐

Name: MEL KURTZ

Name: JEFF SIDWELL

Address: 7616 RIVERVIEW ROAD
INDEPENDENCE, OH 44131

Address: 5240 WORTMAN ROAD
ZANESVILLE, OH 43701

- b. For each individual listed in Section 1a, show his/her type of equity ownership:

sole proprietorship ☐ stock ☐
partnership interest ☐ units (LLC) ☒ (X)
other (explain) _____

- c. For each individual listed in Section 1a, show the percentage of ownership interest in Vendor (or its parent): ownership interest:

Name: MEL KURTZ 35.82 %

Name: JEFF SIDWELL 23.67 %

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a, check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes _____ No X

N/A

- b. City employment of "Member of Immediate Family" (defined herein as: Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild)
Including contractual employment for services in the previous 3 years:
Yes _____ No X

N/A

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No X

N/A

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes _____ No X

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

N/A

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

N/A

c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes _____ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

N/A

Name / Position / Payment Terms:

N/A

Name / Position / Payment Terms:

N/A

d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: _____

Company / Name / Payment Terms: _____

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same

elements as the offense of bid-rigging or bid-rotating

- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

QUASAR ENERGY Group, LLC
(Name of Vendor)
8600 E. Pleasant Valley RD
Address INDEPENDENCE, OH 44131
(216) 986-9999 x 111
Telephone
SSMITH@QUASAREG.COM
E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) STEVEN SMITH Title CEO
Signature [Signature] Date 3-10-2020

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

Quasar Energy Group
(Vendor)

Section 1: Disclosure of Financial Interest in Vendor
Supplement

Name	Street	City / State	Zip	Type	Percentage
Mei Kurtz	7616 Riverview Road	Independence, Ohio	44131	LLC	35.82%
Jeff Sidwell	5240 Wortman Road	Zanesville, Ohio	43701	LLC	23.67
TAK Family Investment QEG, LLC	6345 Evergreen Drive	Independence, Ohio	44131	LLC	10.77%
Clemens Halene	1502 Beall Avenue	Wooster, Ohio	44691	LLC	6.05%

CITY OF FORT WAYNE, INDIANA

QUASAR ENERGY GROUP, LLC
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. **FINANCIAL INTERESTS;**
2. **POTENTIAL CONFLICTS OF INTEREST;**
3. **CURRENT AND PENDING CONTRACTS OR PROCUREMENTS**

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor (SEE ATTACHED SCHEDULE)

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

(i) Equity ownership exceeding 5% ☒ (X)

(ii) Distributable income share exceeding 5% ☐

(iii) Not Applicable (If N/A, go to Section 2) ☐

Name: MEL KURTZ

Name: JEFF SIDWELL

Address: 7616 RIVERVIEW ROAD
INDEPENDENCE, OH 44131

Address: 5240 WORTMAN ROAD
ZANESVILLE, OH 43701

- b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship ☐ stock ☐
partnership interest ☐ units (LLC) ☒ (X)
other (explain) _____

- c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent):
ownership interest:

Name: MEL KURTZ 35.82 %

Name: JEFF SIDWELL 23.67 %

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a, check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes _____ No X

N/A

- b. City employment of "Member of Immediate Family" (defined herein as: Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild)
Including contractual employment for services in the previous 3 years:

Yes _____ No X

N/A

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes _____ No X

N/A

Section 3: DISCLOSURE OF OTHER CONTRACT AND PROCUREMENT RELATED INFORMATION

- a. Does Vendor have current contracts (including leases) with the City? Yes _____ No X

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

N/A

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City? Yes _____ No X

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

N/A

- c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes _____ No X

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms:

N/A

Name / Position / Payment Terms:

N/A

Name / Position / Payment Terms:

N/A

- d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

Company / Name / Payment Terms: —

Company / Name / Payment Terms: —

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same

elements as the offense of bid-rigging or bid-rotating

- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

QUASAR ENERGY Group, LLC
(Name of Vendor)
8600 E. PLEASANT VALLEY RD
Address INDEPENDENCE, OH 44131
(216) 986-9999 x111
Telephone
SSMITH@QUASAREG.COM
E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) STEVEN SMITH Title CFO
Signature [Signature] Date 3-10-2020

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

Quasar Energy Group
(Vendor)

Section 1: Disclosure of Financial Interest in Vendor
Supplement

Name	Street	City / State	Zip	Type	Percentage
Mel Kurtz	7616 Riverview Road	Independence, Ohio	44131	LLC	35.82%
Jeff Sidwell	5240 Wortman Road	Zanesville, Ohio	43701	LLC	23.67
TAK Family Investment QEG, LLC	6345 Evergreen Drive	Independence, Ohio	44131	LLC	10.77%
Clemens Halene	1502 Beall Avenue	Wooster, Ohio	44691	LLC	6.05%