

AGREEMENT
between
THE CITY OF OAKBROOK TERRACE, ILLINOIS
and
LUMQUEST ENERGY SOLUTIONS, LTD.
for the furnishing of
PROFESSIONAL ENGINEERING SERVICES
for the
DESIGN OF RESIDENTIAL STREET LIGHTING

This agreement, hereinafter referred to as the “Agreement,” made and entered into by and between the City of Oakbrook Terrace, Illinois, an Illinois municipal corporation, hereinafter referred to as the “City,” and Lumquest Energy Solutions, Ltd., an Illinois corporation, Two TransAm Plaza, Suite 300, Oakbrook Terrace, Illinois 60181, hereinafter referred to as the “Engineer,” for professional engineering services for the design of residential street lighting, hereinafter referred to as the “Project,” in Oakbrook Terrace, Illinois.

In consideration of these premises and of the mutual covenants herein set forth, the Engineer agrees as follows:

- A. Scope of Services.** The Engineer shall perform the following services (hereinafter referred to as the “Services”):
1. The Engineer shall assess the City’s residential street lighting alternatives utilizing Light Emitting Diode (LED) roadway lighting, including the following options:
 - a. **Decorative Post-Mounted Light Emitting Diodes.** Installing decorative units along the residential streets and utilizing cobra head units at the intersections. The Engineer will provide photometric analysis comparing the installation of fixtures along both sides of the roadway versus installing fixtures on only one side of the roadway. The Engineer shall determine the minimum number of fixtures required to achieve the appropriate luminosity at street level.
 - b. **Standard Cobra Head Light Emitting Diode Roadway Lights.** The Engineer shall provide photometric comparisons using both decorative and cobra head light emitting diodes to light the roadway. The Engineer shall determine the required number, location, and type of fixtures required to achieve appropriate light levels. The Engineer shall also estimate the minimum required costs associated with extending underground cabling and the impact on current underground utilities.
 2. The Engineer shall provide a preliminary design including at a minimum:
 - a. The typical pole layouts and lighting controller locations for all design options.
 - b. Photometric layouts for all options highlighting a typical City residential intersection.

- c. An assessment of the use of a lighting control system to allow real time metering and monitoring of lighting system.
- 3. The Engineer shall prepare a preliminary turnkey construction budget to include cost of engineering, material, and installation. This estimate will be based on:
 - a. Approximately one hundred (100) light emitting diode units and associated poles.
 - b. An alternate option of a lighting control system.

Based on the Engineer’s experience and review of the anticipated scope of work, the overall infrastructure project cost should range between \$750,000, but shall not exceed \$950,000 (including optional lighting control system).

B. Commencement and Completion of Services.

- 1. **Commencement.** The Engineer shall be prepared and ready to commence the Services provided for in this Agreement at the direction of the City, within ten (10) calendar days after the execution of this Agreement. The Engineer shall convene a project commencement meeting to review project goals, staffing, project schedule, involved parties and their responsibilities and the progress of the assembly of all of the information to be provided by the City.
- 2. **Completion of Services.** Subject to reasonable allowances for delay in the Services due to causes beyond the control of the Engineer, the Engineer shall complete all Services to be performed under this Agreement within ninety (90) calendar days. Engineer acknowledges that time is of the essence of this Agreement and in the performance and completion of the Engineer’s Services.

C. Professional Fees. The City shall pay the Engineer for the performance of the Services a fee as follows:

Total Professional Fees	\$10,000.00
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If the Engineer is awarded the entire light emitting diode street light project, the Engineer’s total professional fees of \$10,000.00 will be credited by the Engineer toward the overall cost of the light emitting diode street light project.

D. Reimbursable Expenses. Reimbursable expenses, if any, are included in the Engineer’s Total Professional Fees.

E. Change Orders. The City shall have the authority by written change order to make additions and deletions to the Services. The Engineer’s compensation for additions and deletions to the Services shall be mutually agreed upon between the City and the Engineer, prior to commencement of the services.

F. Payments. Payments shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*)

- 1. **Progress Payments.** The Engineer may submit to the City invoices for services performed monthly in the proportion that the Services performed by the Engineer in the preceding month bears to the

total services to be performed under this Agreement. The invoices shall describe the invoice period, the services rendered, fees and expenses due, payment due date, billing history and other appropriate information. Invoices for fixed fees will describe the percentage of the services completed. Invoices for hourly fees will describe the tasks, hours and hourly rates for the services completed.

2. **Final Payment.** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the City to the Engineer thirty (30) days after completion of the Services and approval of the final statement for Engineer's Services.

G. Insurance Requirements. The Engineer shall procure and maintain for the duration of the Agreement insurance against claims for errors and omissions and for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services by the Engineer, its agents, representatives, employees or subcontractors.

1. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

- a. Insurance Services Office Commercial General Liability occurrence from CG 0001 (Ed. 11/85); and
- b. Insurance Services Office form number CA0001 (Ed. 1/87) covering Automobile Liability, symbol 01 "any auto" and endorsement CA0029 (Ed. 12/88) changes in Business Auto and Truckers coverage forms - Insured Contract; or ISO form number CA 0001 (Ed. 12/90); and
- c. Professional Liability policy; and
- d. Worker's Compensation as required by the Labor Code of the State of Illinois and Employers' Liability Insurance.

2. **Minimum Limits of Insurance.** Engineer shall maintain limits no less than:

- a. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. Minimum General Aggregate shall be no less than \$2,000,000 per person per aggregate;
- b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage;
- c. Professional Liability: \$2,000,000 single limit for errors and omissions, professional/malpractice liability;
- d. Worker's Compensation and Employers' Liability: Worker's Compensation limits as required by the Labor Code of the State of Illinois and Employers' Liability limits of \$500,000 per accident.

3. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or

eliminate such deductibles or self-insured retentions as respects the City, its officials, employees and volunteers; or the Engineer shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

3. Other Insurance Provisions. The policies are to contain, or be endorsed to contain the following provisions:

a. Commercial General Liability and Automobile Liability Coverages.

- (1) The City, its officials, employees and volunteers are to be covered as insureds as respects: liability arising out of Services performed by or on behalf of the Engineer as well as equipment procured, owned, leased, hired or borrowed by the Engineer. The coverage shall contain no special limits on the scope of the protection afforded to the City, its officials, employees or volunteers;
- (2) The Engineer's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of Engineer's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers;
- (4) Coverage shall state that the Engineer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits or the insurer's liability.

b. Worker's Compensation and Employers' Liability Coverage.

The insurer shall agree to waive all rights or subrogation against the City, its officials, employees or volunteers for losses arising from Services performed by the Engineer for the City.

c. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that the coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

d. Acceptability of Insurers.

- (1) The insurance carrier used by the Engineer shall have a minimum insurance rating of A:VII according to the AM Best Insurance Rating Schedule and licensed to do business in the State of Illinois;
- (2) The Engineer shall furnish the City with certificates of insurance naming the City, its officials, agents, employees and volunteers as additional insureds, and with original endorsements affecting coverage required by this clause. The certificates and

endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the City and are to be received and approved by the City before any Services commence. The City reserves the right to request full, certified copies of the insurance policies.

H. Confidentiality.

1. It is anticipated that the City will disclose to Engineer certain proprietary information which is identified as proprietary and confidential at the time of disclosure or which can reasonably be regarded as confidential (“Confidential Information”). The disclosure of Confidential Information shall not be construed to grant to Engineer any ownership or other proprietary interest in the Confidential Information. Engineer does not acquire any title, ownership, or other intellectual property right or license by virtue of such disclosure. Engineer shall employ diligent efforts to maintain the secrecy and confidentiality of all Confidential Information. Engineer will not at any time, either directly or indirectly, disclose, use or communicate or attempt to disclose, use or communicate to any person, firm, or corporation any Confidential Information or any other information concerning the business, services, finances or operations of the City except as expressly authorized by the City. Engineer shall treat such Confidential Information at all times as confidential, provided, however, that the Confidential Information may be disclosed only for purposes of the performance of the Services to employees of the City or Engineer with a need to know for purposes of the performance of the Services hereunder. Engineer acknowledges that each of the following can contain Confidential Information of the City and that the disclosure of any of the following by Engineer without the City’s express authorization would be harmful and damaging to the City’s interests:
 - a. Compilations of resident names and addresses, resident lists, resident payment histories, resident information reports, any other resident information, computer programs, computer software, printouts, backups, computer disks and diskettes, and computer databases which are not otherwise known to the public.
 - b. All information relating to the Services being performed by Engineer under this Agreement regardless of its type or form that is not known to the public.
 - c. All plans, drawings, specifications of any City facility.
 - d. Financial information, emergency response and homeland security information and law enforcement records that are not known to the public.
 - e. Law enforcement reports and records.
 - f. All information provided to the Engineer by the City pursuant to the terms of this Agreement.
2. This itemization of Confidential Information is not exclusive, as there may be other information that is included within this covenant of confidentiality. This information is confidential whether or not it is expressed on paper, disk, diskette, electronic memory, magnetic media, optical media, monitor, screen, or any other medium or form of expression. The phrase “directly or indirectly” includes, but

is not limited to, acting through the Engineer's wife, children, parents, brothers, sisters, or any other relatives, friends, partners, trustees, agents or associates.

3. All books, papers, records, lists, files, forms, reports, documents, manuals, handbooks, instructions, computer programs, computer software, computer disks and diskettes, printouts, backups, and computer databases relating in any manner to the City's business, services, programs, software or residents, whether prepared by Engineer or anyone else, are the exclusive property of the City. In addition, all papers, notes, data, reference material, documentation, programs, diskettes (demonstration or otherwise), magnetic media, optical media, printouts, backups, and all other media and forms of expression that in any way include, incorporate or reflect any Confidential Information of the City are the exclusive property of the City.
4. Engineer shall have no obligation to keep confidential any Confidential Information disclosed hereunder, which Engineer can demonstrate by clear and convincing evidence: (a) was rightfully in Engineer's possession before receipt from the City other than through prior disclosure by the City; or (b) is or becomes a matter of general public knowledge through no breach of this Agreement; or (c) is rightfully received by Engineer from a third party without an obligation of confidentiality; or (d) is independently developed by Engineer; or (e) is disclosed under operation of law, governmental regulation, or court order, provided Engineer first gives the City notice and a reasonable opportunity to secure confidential protection of such Confidential Information.
5. Upon termination of this Agreement or earlier at the City's request at any time, Engineer shall (a) immediately cease using the Confidential Information, and (b) promptly deliver to the City all tangible embodiments of the Confidential Information.
6. In the event of breach of the confidentiality provisions of this Agreement, it shall be conclusively presumed that irreparable injury would result to the City; and there would be no adequate remedy at law. The City shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this Agreement. The City is entitled to damages for any breach of the injunction, including, but not limited to, compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this Agreement survive the termination or performance of this Agreement.

I. Work Made for Hire.

1. All work product created or developed hereunder including, but not limited to, specifications, reports and any other documents prepared by Engineer in connection with any or all of the Services delivered to the City is for the use of and shall be the exclusive property of the City. All books, papers, notes, records, lists, data, files, forms, reports, accounts, documents, manuals, handbooks, instructions, computer programs, computer software, computer disks and diskettes, magnetic media, electronic files, printouts, backups, and computer databases created or modified by Engineer relating in any manner to the Services performed by Engineer or by anyone else and used by Engineer in performance of the Services shall be a "work made for hire" as defined by the laws of the United States regarding copyrights.
2. Engineer hereby irrevocably assigns and transfers to the City and its successors and assigns all of its right, title, interest and ownership in the Services including, but not limited to, copyrights,

trademarks, patents, trade secret rights, all intellectual property rights and the rights to secure any renewals, reissues, and extensions thereof. Engineer grants permission to the City to register the copyright and other rights in the Services in the City's name. Engineer shall give the City or any other person designated by the City all assistance reasonably necessary to perfect its rights under this Agreement and to sign such applications, documents, assignment forms and other papers as the City requests from time to time to further confirm this assignment. Engineer further grants to the City full, complete and exclusive ownership of the Services. Engineer shall not use the Services for the benefit of anyone other than the City, without the City's prior written permission. Upon completion of the Services or other termination of this Agreement, Engineer shall deliver to the City all copies of any and all materials relating or pertaining to this Agreement. Engineer irrevocably and unconditionally waives all rights in all such Services products. Engineer warrants that all work product of Engineer will be original, except as otherwise agreed in writing with the City.

3. In the event that the City provides Engineer with materials, equipment or property of any kind, all such materials, equipment and property shall remain the property of the City; and Engineer shall immediately deliver all such materials, equipment and property to the City at the conclusion of Services hereunder or at any earlier time upon demand by the City.

J. Record Retention. The Engineer shall maintain its records relating to the performance of the Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 *et seq.*) and the Freedom of Information Act (5 ILCS 140/1 *et seq.*) until written approval for the disposal of such records is obtained from the Local Records Commission. All books and records required to be maintained by the Engineer shall be available for review and audit by the City. The Engineer shall cooperate with the City (a) with any request for public records made pursuant to the Freedom of Information Act (5 ILCS 140/1 *et seq.*), (b) with any request for public records made pursuant to any audit, and (c) by providing full access to and copying of all relevant books and records within a time period which allows the City to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*). Failure by the Engineer to maintain the books, records and supporting documents required by this section or the failure by the Engineer to provide full access to and copying of all relevant books and records within a time period which allows the City to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*) shall establish a presumption in favor of the City for the recovery of any funds paid by the City under this Agreement or for the recovery for any penalties or attorney's fees imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*). The obligations imposed by this section shall survive final payment and the termination of the other obligations imposed by this Agreement.

K. Equal Employment Opportunity.

1. In the event of the Engineer's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights, the Engineer may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations; and this Agreement may be cancelled or voided in whole or in part, and other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Engineer agrees as follows:

- a. That the Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or

ancestry, citizenship status, age, physical or mental disability unrelated to ability, sexual orientation, military status or an unfavorable discharge from military service; and, further, that he or she will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any underutilization.

- b.** That, if the Engineer hires additional employees in order to perform this contract or any portion of this contract, it will determine the availability (in accordance with the Illinois Department of Human Rights Rules and Regulations) of minorities and women in the areas from which the Engineer may reasonably recruit; and the Engineer will hire for each job classification for which employees are hired in a way that minorities and women are not underutilized.
- c.** That, in all solicitations or advertisements for employees placed by the Engineer or on the Engineer's behalf, the Engineer will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, sexual orientation, military status or an unfavorable discharge from military service.
- d.** That the Engineer will send to each labor organization or representative of workers with which the Engineer has or is bound by a collective bargaining or other agreement or understanding, a notice advising the labor organization or representative of the Engineer's obligations under the Act and the Illinois Department of Human Rights Rules and Regulations. If any labor organization or representative fails or refuses to cooperate with the Engineer in the Engineer's efforts to comply with the Illinois Human Rights Act and Illinois Department of Human Rights Rules and Regulations, the Engineer will promptly notify the Illinois Department of Human Rights; and the City and will recruit employees from other sources when necessary to fulfill its obligations under the contract.
- e.** That the Engineer will submit reports as required by the Illinois Department of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Illinois Department of Human Rights' Rules and Regulations.
- f.** That the Engineer will permit access to all relevant books, records, accounts and work sites by personnel of the City and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Illinois Department of Human Rights' Rules and Regulations.
- g.** That the Engineer will include verbatim or by reference the provisions of this clause in every subcontract awarded under which any portion of the contract obligations are undertaken or assumed so that the provisions will be binding upon the subcontractor. In the same manner as with other provisions of this contract, the Engineer will be liable for compliance with applicable provisions of this clause by subcontractors; and further, it will promptly notify the City and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply with the provisions. In addition, the Engineer will not utilize any

subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

- L. Prohibition of Segregated Facilities.** The Engineer will not maintain or provide for its employees any segregated facilities at any of its establishments, and not permit its employees to perform their services at any location, under its control, where “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. the Engineer shall (except where it has obtained identical certifications from proposed subcontractors and material Engineers for specific time periods) obtain certifications in compliance with this subparagraph from proposed subcontractors or material Engineers prior to the award of a subcontract or the consummation of material supply agreements, exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity Clause, and that the Engineer will retain such certifications in its files.
- M. Sexual Harassment Policy.** The Engineer has and will have in place and will enforce a written sexual harassment policy in compliance with 775 ILCS 5/2-105(A)(4).
- N. Certifications.** The Engineer shall submit to the City a certification that the Engineer, its shareholders holding more than five (5%) percent of the outstanding shares of the corporation, its officers and directors are:
1. Not delinquent in the payment of taxes to the Illinois Department of Employment Security or the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1-1;
 2. Not barred from contracting as a result of a violation of either Section 33E-3 (bid-rigging) or 33E-4 (bid-totaling) of the Criminal Code of 1961 (720 ILCS 5/33E-3 and 5/33E-4);
 3. Not in default, as defined in 5ILCS 385/2, on an educational loan, as defined in 5ILCS 385/1;
 4. Not a City official, spouse or dependent child of a City official, agent on behalf of any City official or trust in which a City official, the spouse or dependent child of a City official in violation of the City Code, Title1, Chapter 17, Section 9-2.

Additionally, that:

1. The Engineer is not delinquent in any obligation to the Illinois Department of Employment Security.
2. The Engineer maintains and will maintain a drug-free workplace in accordance with the Drug Free Workplace Act (30 ILCS 580/1 *et seq.*);
3. No City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of any interest in the Supplier; or, if the Supplier’ stock is traded on a nationally recognized

securities market, that no City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of more than one percent (1%) of the Supplier, but if any City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of less than one percent (1%) of the Supplier, the Supplier has disclosed to the City in writing the name(s) of the holder of such interest.

4. No officer or employee of the City has solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Supplier in violation of Chapter 2, Article XIX of the Code of Ordinances, City, Illinois;
5. The Engineer has not given to any officer or employee of the City any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer in violation Chapter 2, Article XIX of the Code of Ordinances, City, Illinois;
6. The Engineer is not in violation of Title 1, Chapter 14, Section 2 of the City Code by an officer or employee of the City having solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Engineer.
7. The Engineer is not in violation of Title 1, Chapter 14, Section 2 or Title 1, Chapter 17, Section 9-3 of the City Code by the Engineer having given to any officer or employee of the City any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer.
8. Neither the Engineer nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person and that the Supplier and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.

If any certification made by the Engineer changes or any term or condition on which a certification is based changes, which then renders the certification to be no longer valid, the Engineer shall so notify the City in writing within seven (7) days.

- O. Assignment of Contract.** The Contract shall be deemed to be exclusive between City and Engineer. This Contract shall not be assigned by the Engineer without first obtaining permission in writing from the City. The City may refuse to accept any substitute Engineer for any reason.
- P. Appropriation.** This Agreement shall become effective only after an appropriation therefor has been made. The term of this Agreement shall be for one year following the effective date of the appropriation
- Q. Indemnification.** The Engineer shall defend, indemnify and hold harmless the City, its officials, employees and volunteers against all injuries, deaths, loss, damages, claims, suits, liabilities, judgments, reasonable costs and expenses, which may in anyway accrue against the City, its officials, employees and volunteers, arising in whole or in part in consequence of the negligent or willful misconduct in performance of these Services by the Engineer, its employees, or subcontractors, or which may in any way result therefor, except that arising out of the negligence or willful act of the City, its officials, employees and volunteers. The Engineer shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefor or incurred in connection therewith; and, if any judgment shall be rendered against the City, its officials, agents, employees and volunteers, in any such action, the Engineer shall, at its own expense, satisfy and discharge the same.

Notwithstanding any of the foregoing, nothing contained in this paragraph shall require the Engineer to indemnify the City, its officials, agents and employees for their own negligent acts or omissions.

In the event any such claim, lawsuit, or action is asserted, any such money due the Engineer under and by virtue of the contract as shall be deemed necessary by the City for the payment thereof may be retained by the City for said purpose.

No inspection by the City, its employees or agents shall be deemed a waiver by the City of full compliance with the requirements of this Agreement. This indemnification shall not be limited by the required minimum insurance coverages provided in this Agreement.

- R. Conflict of Interest.** The Engineer, during the period commencing upon the execution of this Agreement and concluding one year following the completion of the Project, shall not accept employment from any developer developing land within the City or any contractor, subcontractor or material supplier performing work or supplying material to the City without the express written consent of the City.
- S. Notices.** Written notices between City and Engineer shall be deemed sufficiently given after being placed in the United States mail, registered or certified, postage pre-paid or by overnight delivery service, addressed to the above parties as follows:

1. If to the City:

City of Oakbrook Terrace
17W275 Butterfield Road
Oakbrook Terrace, Illinois 60181
Attn: John Carpino, City Manager

2. If to Engineer:

Lumquest Energy Solutions, Ltd.
Two TransAm Plaza
Suite 300
Oakbrook Terrace, Illinois 60181
Attn: Veronica Kosch, President

3. Either party may change its mailing address by giving written notice to the other party as provided above. Whenever this contract requires one party to give the other notice, such notice shall be given only in the form and to the addresses described in this paragraph.

T. Entire Agreement. This agreement represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations or understandings, whether written or oral. This agreement may only be amended or a provision hereof waived by the parties by written instrument executed by authorized signatories of the City and Engineer. This Agreement is executed that day and year first written above.

U. Suspension of Services. The City may, at any time, by written notice to the Engineer (Suspension of Services Notice) require the Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such notice, the Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such notice. The City shall pay the Engineer for the services performed by the Engineer up to the date of receipt of the Suspension of Services Notice. The Engineer may suspend its services if the City fails to comply with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*) provided, however, that the Engineer notifies the City in writing, by certified mail, return receipt requested, fourteen (14) days prior to the proposed suspension date and provided further that the City shall have the right to cure any default within said notification period.

V. Termination of Agreement.

1. This Agreement may be terminated by the City by notifying the Engineer in writing, by certified mail, return receipt requested, seven (7) days prior to the proposed termination date. In such event, Engineer shall be paid for any and all services rendered to the date of receipt of the notice of termination, including all reimbursements due, based upon the services performed. This Agreement may be terminated by the Engineer if the City fails to comply with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*), provided, however, that the Engineer notifies the City in writing, by certified mail, return receipt requested, fourteen (14) days prior to the proposed termination date and provided further that the City shall have the right to cure any default within said notification period.
2. This Agreement additionally may be terminated by the City upon written notice to the Engineer, at its last known post office address, upon the occurrence of any one or more of the following events, without cause and without prejudice to any other right or remedy:
 - a. If the Engineer commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereinafter in effect, or if the Engineer takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to bankruptcy or insolvency;

- b. If a petition is filed against the Engineer under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the Engineer under any other federal or state law in effect at the time relating to bankruptcy or insolvency.
- c. If the Engineer makes a general assignment for the benefit of creditors;
- d. If a trustee, receiver, custodian or agent of the Engineer is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Engineer is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Engineer's creditors;
- e. If the Engineer admits in writing an inability to pay its debts generally as they become due.

Upon termination, the Engineer shall deliver to the City, copies of partially completed drawings, specifications, partial and completed estimates, reports and data, if any, from investigations and observations, with the understanding that all such material becomes the property of the City. In such case, the Engineer shall be paid for all services and any expense sustained, less all costs incurred by the City to have the services performed which were to have been performed by the Engineer.

- W. **Severability.** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or such other documents, or the applications of such term, covenant or condition, to persons or circumstances other than those as to which it held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement or such other document shall be valid and shall be enforced to the fullest extent permitted by law.
- X. **Compliance with Laws.** The Engineer will comply with all laws, codes, ordinances and regulations that are in effect as of the date of this Agreement.
- Y. **Professional Engineer.** The Engineer or the engineer employed by the Engineer to perform the Services shall be licensed as a professional engineer by the Department of Financial and Professional Regulation, State of Illinois.

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Z. Applicable State Law. This Agreement shall be construed under and governed by the laws of the State of Illinois, and all actions brought to enforce any item of this Agreement shall be so brought in the State of Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the dates below indicated.

Executed by the Engineer, this 17 day of April 2013.

Lumquest Energy Solutions, Ltd.

By Veronica Kosch
Veronica Kosch, President

ATTEST:

By [Signature]
Walter T. Boley, Secretary

Executed by the City, this 10th day of April 2013.

City of Oakbrook Terrace

By [Signature]
Anthony R. Ragucci, Mayor

ATTEST:

By Judith Leslie
Judith Leslie, City Clerk

Engineer's Certification

I, Veronica Kosch, hereby certify that I am the President of Lumquest Energy Solutions, Ltd. (the "Engineer") and as such hereby represent and warrant to the City of Oakbrook Terrace as a condition of any agreement with the City of Oakbrook Terrace, Illinois, that the Engineer, its shareholders holding more than five (5%) percent of the outstanding shares of the corporation, its officers and directors are:

1. Not delinquent in the payment of taxes to the Illinois Department of Employment Security or the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1-1;
2. Not barred from contracting as a result of a violation of either Section 33E-3 (bid-rigging) or 33E-4 (bid-totaling) of the Criminal Code of 1961 (720 ILCS 5/33E-3 and 5/33E-4);
3. Not in default, as defined in 5ILCS 385/2, on an educational loan, as defined in 5ILCS 385/1;
4. Not a City official, spouse or dependent child of a City official, agent on behalf of any City official or trust in which a City official, the spouse or dependent child of a City official in violation of the City Code, Title1, Chapter 17, Section 9-2.

In addition, the Engineer hereby represents and warrants to the City of Oakbrook Terrace, Illinois, as a condition of any agreement with the City of Oakbrook Terrace, Illinois, that the Engineer:

1. The Engineer is not delinquent in any obligation to the Illinois Department of Employment Security.
2. The Engineer maintains and will maintain a drug free workplace in accordance with the Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) by:
 - A. Publishing a statement:
 - (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance including cannabis, is prohibited in the Engineer's workplace;
 - (2) Specifying the actions that will be taken against employees for violations of such prohibition;
 - (3) Notifying the employee that, as a condition of employment on this Agreement, the employee will:
 - a. Abide by the terms of the statement;
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
 - B. Establishing a drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;

- (2) The Engineer's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance program; and
 - (4) The penalties that may be imposed upon employees for drug violations;
- C. Making it a requirement to give a copy of the statement required by Subsection A to each employee engaged in the performance of the Agreement, and to post the statement in a prominent place in the workplace;
 - D. Notifying the City within ten (10) days after receiving notice under Paragraph A.3(b) from an employee or otherwise receiving actual notice of such conviction;
 - E. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted, as required by 30 ILCS 580/5;
 - F. Assisting employees in selecting a course of action in the event drug counseling treatment and rehabilitation is required and indicating that a trained referral team is in place;
 - G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.
3. No City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of any interest in the Supplier; or, if the Supplier' stock is traded on a nationally recognized securities market, that no City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of more than one percent (1%) of the Supplier, but if any City officer, spouse or dependent child of a City officer, agent on behalf of any City officer or trust in which a City officer, the spouse or dependent child of a City officer or a beneficiary is a holder of less than one percent (1%) of the Supplier, the Supplier has disclosed to the City in writing the name(s) of the holder of such interest.
 4. No officer or employee of the City has solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Supplier in violation of Chapter 2, Article XIX of the Code of Ordinances, City, Illinois;
 5. The Engineer has not given to any officer or employee of the City any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer in violation Chapter 2, Article XIX of the Code of Ordinances, City, Illinois;

6. The Engineer is not in violation of Title 1, Chapter 14, Section 2 of the City Code by an officer or employee of the City having solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Engineer.
7. The Engineer is not in violation of Title 1, Chapter 14, Section 2 or Title 1, Chapter 17, Section 9-3 of the City Code by the Engineer having given to any officer or employee of the City any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer.
8. Neither the Engineer nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person and that the Supplier and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.

If any certification made by the Engineer changes or any term or condition on which a certification is based changes, which then renders the certification to be no longer valid, the Engineer shall so notify the City in writing within seven (7) days.

Dated: April 17, 2013

Engineer: Lumquest Energy Solutions, Ltd.

By: Veronica Kosch
Veronica Kosch, President

STATE OF ILLINOIS)
) ss.
COUNTY OF DuPAGE)

I, the undersigned, a notary public in and for the State and County aforesaid, hereby certify that Veronica Kosch, known to me to be the President of Lumquest Energy Solutions, Ltd. appeared before me this day in person and, being first duly sworn on oath, acknowledged that she executed the foregoing certification as her free act and deed and as the authorized free act and deed of Lumquest Energy Solutions, Ltd.

Dated: April 19, 2013

Nancy J. Hoblit
Notary Public

