

SOLE SOURCE AGREEMENT
between
CNG SOLUTIONS, LLC
And
THE CITY OF MIDWEST CITY

THIS SOLE SOURCE AGREEMENT (hereinafter referred to as “**Agreement**”) is entered into by and among The City of Midwest City, a municipal corporation (hereinafter referred to as “**City**”), and (CNG Solutions, LLC), (hereinafter referred to as “**Provider**”) (**City**, and **Provider** being collectively referred to herein as the “**Parties**”) and is effective upon the date of execution by the last party hereto.

WITNESSETH:

WHEREAS, City is in need of the following goods and purchase and installation of a second compressor skid, similar to the current compressor skid onsite, a Sauer 75 horsepower compressor block, with a Regenerative Dryer, six (6) CNG Hose Drops and five (5) CNG Hose Retractors; and

WHEREAS, Provider is in the business of goods and services that is needed by the **City**; and

WHEREAS, the City and the **Provider** have reached an agreement for the **Provider** to provide the **City** the requested good and services; and

WHEREAS, City hereby retains **Provider** to provide the goods and services as an independent contractor; and

WHEREAS, Provider, is the sole source and provider of the goods and services needed by the **City**, see the sole source letters, attached hereto as “**Attachment A**” and “**Attachment B**”; and

WHEREAS, Provider agrees to provide the **City** all goods and services, in accordance with the standards exercised by experts in the field, necessary to provide the **City** services, products, solutions and deliverables that meet all the purposes and functionality requested or described in the RFP and in this Agreement.

NOW, THEREFORE, for and in consideration of the above premises and mutual covenants as set forth herein, the **City**, and **Provider** hereby agree as follows:

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1. INDEPENDENT CONTRACTOR STATUS

Subject to the terms and conditions of this Agreement, the **City** retains the **Provider** as an independent contractor, to provide **City** all services, in accordance with the standards exercised by experts in the field, necessary to provide the City services, products, solutions, and deliverables (collectively referred to as “Deliverables”) that meet all the purposes and functionality requested or described in this Agreement. The **City** shall meet with **Provider** to identify service needs on a project by project basis. **Provider** will provide a written proposal for the identified services in accord with the terms and conditions of this **Agreement**. The **City** may issue a purchase order for the identified services accompanied by **Provider’s** written proposal. Upon issuance of the purchase order, the **Provider** shall be responsible for timely providing the services authorized by the purchase order (“Project”). Upon completion of each Project and provision to the **City** of all Deliverables for that Project and payment of the invoice for that Project to the **Provider**, the **City** shall own all rights and license for the Deliverables and other work products related to that Project.

a) This Agreement governs the Scope of Services including, but not limited to, all Deliverables to be provided by **Provider** to the **City**. The Attachments are incorporated into this **Agreement** by reference and, should there be a conflict in language, terms, conditions, or provisions, shall have the priority and precedential value as set forth in this **Agreement**.

b) The text of this **Agreement** together with the Attachments constitutes the entire **Agreement** and the only understanding and agreement between the **City** and the **Provider** with respect to the services, products, solutions and deliverables to be provided by the **Provider** hereunder. This **Agreement** may only be amended, modified or changed in writing when signed by all parties, or their respective specifically authorized representatives, as set forth in this **Agreement**.

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2. RETENTION OF PROVIDER AND SCOPE OF SERVICES

A. **Provider** is solely responsible for the actions, non-action, omissions, and performance of **Provider's** employees, agents, contractors, and subcontractors (herein collectively included in the term "Provider's Project Team") and to ensure the timely completion of the Project. The Project and time frame shall consist of:

Purchase and installation of:

- i. Sauer WP4351, 75 HP, 4 stage, 4-cylinder block, Complete Skid;
- ii. Control system for the Sauer WP4351 compressor;
- iii. Controls to tie the two compressors together where they will communicate; and
- iv. Dryer, Xebec Manual Regenerative Dryer, STR24NGX-3S-150A-480 Single Tower;
- v. Six (6) CNG Hose Drops, including Structural Attachments and Connections to the existing Slow Fill System; and
- vi. Five (5) CNG Hose Retractors, that replace the existing retractors.

B. **Provider** will be solely responsible to ensure the **Provider's Project Team** fully understands each Project, the Scope of Services, the Deliverables, the schedule for performance, and **City's** goals and purposes. **Provider** will be solely responsible to ensure the **Provider's Team**, specifically assigned to work on the Project for the City, is adequately trained, instructed, and managed so that **Provider** timely provides each Project task and satisfies the **Provider's** obligations under this Agreement. The **Provider** may not change the **Provider's Team**, for the services to be provided as set forth above ("**Provider's Team**") without the prior written consent of the **City**.

C. **Provider** shall comply with all applicable federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the performance or services provided under this **Agreement**. **Provider** shall obtain all patents, licenses and any other permission required to provide all Deliverables and for use of all Deliverables by the **City**.

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3. CONSIDERATION

A. The **City** shall pay the **Provider** the compensation after work is completed on each of the items listed in paragraph (2)(A) above. Total compensation for the Project shall be Four Hundred and Fifteen Thousand, Six Hundred and Fifty Six Dollars (\$415,656.00).

B. The **City** and the **Provider** acknowledge that the compensation to be paid the **Provider** pursuant to this **Agreement** has been established at an amount reasonable for the availability and services of the **Provider and the Provider's Team**.

C. **Provider** may bill the **City** monthly after work is completed on each of the items listed in paragraph (2)(A) above. **Provider** may issue an individual invoice upon completion of the work on each item. **Provider** shall only issue an invoice for work completed. **City** shall have thirty (30) days to pay the invoice. The total amount of invoices issued shall not exceed the total maximum compensation of Four Hundred and Fifteen Thousand, Six Hundred and Fifty Six Dollars (\$415,656.00).

4. INDEPENDENT CONTRACTOR STATUS

The parties hereby acknowledge and covenant that:

A. **Provider** is an independent contractor and will act exclusively as an independent contractor is not an agent or employee of the **City** in performing the duties in this Agreement.

1. The parties do not intend, and will not hold out that there exists, any corporation, joint venture, undertaking for a profit or other form of business venture or any employment relationship among the parties other than that of an independent contractor relationship.

2. All payments to **Provider** pursuant to this **Agreement** shall be due and payable in the State of Oklahoma, even if services of **Provider** are performed outside the State of Oklahoma.

B. The **CITY** shall not withhold any social security tax, workmen's compensation, Medicare tax, federal unemployment tax, federal income tax, or state income tax from any

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compensation paid to **Provider** as **Provider** is an independent contractor and the members of its **Provider's Team**, assigned to work on the Project for the **City** are not employees of the **City**. Any such taxes, if due, are the responsibilities of **Provider** and will not be charged to the **City**.

C. **Provider** acknowledges that as an independent contractor it and **Provider's Project Team**, assigned to work on the Project for the **City** are not eligible to participate in any health, welfare or retirement benefit programs provided by the **City** or its employees.

5. TERM, TERMINATION AND STOP WORK

A. This **Agreement** shall commence upon execution by the last party hereto and shall continue in effect for one-year from the date of execution, unless terminated by either party as provided for herein. This **Agreement** may be extended by mutual agreement of the **Parties** in one-year increments, until the Project is completed and accepted as provided herein.

B. The **City** issue notices of termination or suspension to the **Provider**. This **Agreement** may be terminated, with or without cause, upon written notice, at the option of **City**.

1. Upon receipt of a notice of termination for the *convenience* from the **City**, the **Provider** shall immediately discontinue all services and activities (unless the notice directs otherwise), and

2. Upon payment for products or services fully performed and accepted, **Provider** shall deliver to the **City** all licenses, work, products, deliverables, solutions, communication recommendations, plans, messaging strategies, style guides, design elements, internal and external messaging campaigns, documents, data analysis, reports, and other information and materials accumulated or created in performing this **Agreement**, whether same are complete or incomplete, unless the notice directs otherwise. Upon termination for the *convenience* by the **City**, the **City** shall pay **Provider** for completed Projects and Deliverables up to the time of the notice of termination for *convenience*, in accordance with the terms, limits and conditions of the **Agreement** and as further limited by the "not to exceed" amounts set out in this **Agreement**.

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3. Upon notice of termination for *cause* from the **City**, the **Provider** shall not be entitled to any prior or future payments, including, but not limited to, any services, performances, work, products, deliverables, solutions, costs, or expenses, and **Provider** shall release and waive any interest in any retainage. The **City** may hold any outstanding payments for prior completed Projects, Deliverables, Services or expenses and any retainage as security for payment of any costs, expenses, or damages incurred by the **City** by reason of **Provider's** breach or other cause. Provided, however, upon notice of termination for cause, the **Provider** shall deliver to the **City** services, products, solutions, and Deliverables including, but limited to, all communication recommendations, plans, messaging strategies, style guides, design elements, internal and external messaging campaigns, documents, data analysis, reports, and other information and materials accumulated or created in performing this **Agreement**, whether complete or incomplete, unless the notice directs otherwise.

4. The rights and remedies of the **City** provided in this paragraph are in addition to any other rights and remedies provided by law or under the **Agreement**. Termination herein shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **Provider** under this **Agreement**.

C. Upon notice to **Provider**, the **City** may issue a stop work order suspending any Projects, services, performances, work, products, Deliverables, or solutions under this **Agreement**. Any stop work order shall not terminate or suspend any warranty, indemnification, insurance, or confidentiality required to be provided by **Provider** under this **Agreement**. In the event the **City** issues a stop work order to **Provider**, the **City** will provide a copy of such stop work order to the **Provider**. Upon receipt of a stop work order issued from the **City**, the **Provider** shall suspend all work, services and activities except such work, services, and activities expressly directed by the **City** in the stop work order. Upon notice to the **Provider**, this **Agreement**, and any or all work, services, and activities thereunder, may be suspended up to thirty (30) calendar days by the **City**, without cause and without cost to the **City**; provided however, the

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Provider shall be entitled to an extension of all subsequent deadlines for a period equal to the suspension periods for those suspended work, services, and activities only.

D. Obligation upon Termination for *Convenience*.

1. In the event this **Agreement** is terminated for convenience hereunder, the **City** shall pay **Provider** for such properly documented invoices, if any, in accordance with the provisions of this **Agreement** above, through the date of termination for *convenience* and the period set forth in the notice, and thereafter the **City** shall have no further liability under this **Agreement** to **Provider** and **Provider** shall have no further obligations to the **City**.

2. Upon termination for *convenience* of the Project and the providing to the **City** of all Deliverables for the Project and payment of the invoice for the Project to **Provider**, the **City** shall own all rights and license for the Deliverables and other work products related to that Project.

6. WARRANTIES

A. **Provider** warrants that the Projects performed and Deliverables provided under this **Agreement** shall be performed consistent with generally prevailing professional standards and expertise. **Provider** shall maintain during the course of this **Agreement** said standard of care, expertise, skill, diligence and professional competency for any and all such services, products, solutions and deliverables. **Provider** agrees to require all members of the **Provider's Team**, also including FTEs assigned to work on the Project, to provide any and all services, products, solutions and Deliverables at said same standard of care, expertise, skill, diligence and professional competence required of **Provider**.

B. During the term of this **Agreement**, the **City's** initial remedy for any breach of the above warranty shall be to permit **Provider** one additional opportunity to perform the work, services, and activities or provide the Projects and Deliverables without additional cost to the **City**. If the **Services Provider** cannot perform the work, services, and activities or provide the products, solutions and deliverables according to the standards and requirements set forth in this

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Agreement within thirty (30) calendar days of the original performance date, the **City** shall be entitled to recover, should the **City** so determine to be in their best interest, any fees paid to the **Provider** for previous payments, including, but not limited to, work, services, activities services, Projects and Deliverables and **Provider** shall make reimbursement or repayment within thirty (30) calendar days of a demand by the **City**. Should the **Provider** fail to reimburse the **City** within thirty (30) calendar days of demand, the **City** shall also be entitled to interest at 1.5% percent per month on all outstanding reimbursement and repayment obligations.

C. The **Provider** also acknowledges and agrees to provide all express and implied, warrants required or provided for by Oklahoma statutory and case law. This warrant is in addition to other warranties provided in or applicable to this **Agreement** and may not be waived by any other provision, expressed or implied, in this **Agreement** or in any **Attachment** hereto.

7. INSURANCE

A. **Provider** must provide and maintain at all times throughout the term of this **Agreement**, and any renewal hereof, such *commercial general insurance with a limit of \$1,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate* protecting the **City** from claims for bodily injury (*including death*) and or property damage arising out of or resulting from the **Provider**, and its employees, use and occupancy of the premises and the activities conducted thereon . The insurance coverage required in this paragraph must include the **City** as additional insureds as their interest may appear under this **Agreement** under the policy or policies.

B. A certificate of insurance evidencing the coverage required herein shall be provided to the **City** within five (5) days of the execution of this **Agreement**.

C. **Provider** shall require any contractor or subcontractor to obtain and maintain substantially the same coverage as required of **Provider** including the **City** as an additional insured as their interest may appear under this **Agreement**.

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D. The insurance requirements set forth herein must not be deemed to limit, affect, waive, or define any obligations of the **Provider** in any other paragraph of this **Agreement** or any indemnification or insurance requirement in any other paragraph of this **Agreement**. This paragraph must continue in full force and affect for any act, omission, incident or occurrence occurring or commencing during the term of this **Agreement**. Further, the insurance coverage required by this paragraph will survive revocation, non-renewal, termination and expiration of this **Agreement** for any occurrence or event occurring, initiated, or commencing prior to such revocation, non-renewal, termination and expiration or during the period in which the **Provider** is services under the **Agreement**.

E. Provided, however, should the **Provider** or its officers, invitees, representatives, contractors, employees or agents carry any additional, different or other insurance or insurance coverage of any kind or nature, the provisions of this paragraph must not in any way limit, waive or inhibit the **City** from making a claim or recovering under such insurance or insurance coverage.

F. Notwithstanding any other provision to the contrary, upon termination or lapse of insurance coverage required hereunder, this **Agreement** may be terminated. Termination of this **Agreement** pursuant to this paragraph must take precedence and supersede any other paragraph establishing the term of this **Agreement**, establishing a procedure for revocation or termination, or requiring notice and/or providing an opportunity to cure a breach.

G. The insurance limits in this paragraph in no way act or will be deemed to define or limit the right of **City** to recover damages, expenses, losses or for personal injuries, death or property damage pursuant to applicable law or the indemnification provisions or under any other paragraph or provision in this **Agreement**.

8. INDEMNIFICATION

A. **Provider** agrees to indemnify, defend, and hold harmless the **City** from and against all liability for: (a) injuries or death to persons; (b) costs, losses, and expenses; (c) legal fees, legal expenses, and court costs; and (d) damages, loss to property, which are caused by the **Provider**,

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its officers, representatives, agents, contractors, and employees except to the extent such injuries, losses, damages and/or costs are caused by the negligence or willful misconduct of the indemnified party. The **Provider** must give the **City** prompt and timely notice of any claim or suit instituted which in any way, directly or indirectly, contingently or otherwise, affects or might affect the **City**, provided, however, such notice will not be a precondition to indemnification hereunder. The rights granted by this paragraph will not limit, restrict, or inhibit the rights of the **City** under any other paragraph, including but not limited to any insurance provision or requirement in this **Agreement**.

B. The provisions of this paragraph shall survive the expiration of this **Agreement**. It is understood that these indemnities and hold harmless provisions are not limited or defined by the insurance required under the insurance provisions of this **Agreement**.

9. CONFIDENTIALITY

Provider acknowledges that in the course of training and providing other services to the **City**, the **City** may provide **Provider** with access to valuable information of a confidential and proprietary nature including but not limited to information relating to the **City's** employees, customers, marketing strategies, business processes and strategies, security systems, data and technology. **Provider** agrees that during the time period this **Agreement** is in effect, and thereafter, neither **Provider** nor **Provider's Team**, without the prior written consent of the **City**, shall disclose to any person, other than to the **City**, any information obtained by **Provider**. **Provider** shall require and maintain adequate confidentiality agreements with its employees, agents, contractors, and subcontractors.

10. NOTICES

A. Notices and other communications to the **City** pursuant to the provisions hereof will be sufficient if sent by first class mail, postage prepaid, return receipt required, or by a nationally recognized courier service, addressed to:

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The City of Midwest City, City Clerk
100 N. Midwest Boulevard
Midwest City, OK 73110

respectively, and notices or other communications to the **Provider** pursuant to the provisions hereof will be sufficient if by first class mail, postage prepaid, return receipt required, or by a nationally recognized courier service, addressed to:

CNG Solutions, LLC
1309 Salem Ave.
Edmond, OK 73003

Any party hereto may change the address or addressee for the giving of notice to it by thirty (30) days prior written notice to the other parties hereto as provided herein. Unless otherwise specified in this **Agreement**, notice will be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to this paragraph.

11. ABIDES BY LAW

The **Provider** must abide by the conditions of this **Agreement**, the ordinances of the **City**, and all laws and regulations of the State of Oklahoma and the United States of America (“Laws”), applicable to **Provider’s** activities. **Provider** will be responsible for securing any license, permits and/or zoning which may be required prior to commencement of the Project.

12. ASSIGNMENT AND SUBLEASE

Provider may not assign or sublease its interest under this **Agreement** without the prior written consent of the **City**. Any assignment or sublease shall become effective upon receipt of a request signed by authorized and empowered officers/agents of the **Provider** and sublessee and provision by the sublessee of a certificate of insurance evidencing the insurance required by this **Agreement** and upon approval of such sublease by **City**. The **City** may, but not required, to execute a letter approving either the assignment or sublease as provided herein on behalf of **City**. Upon approval of such assignment or sublease, **Provider** will not be relieved of future performance, liabilities, and obligations under this **Agreement**. **City** shall be provided with a copy

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of each written sublease agreement, and all amendments thereto, entered into by **Provider** within forty-five (45) days after the entering into of same.

13. COMPLETE AGREEMENT AND AMENDMENT

This is the complete agreement between the parties and no additions, amendments, alterations, or changes in this **Agreement** shall be effective unless reduced to writing and signed by all parties hereto. Additionally, no statements, discussions, or negotiations shall be deemed or interpreted to be included in this **Agreement**, unless specifically and expressly provided herein.

14. TIME OF ESSENCE

For the purposes of this **Agreement**, time shall be deemed to be of the essence.

15. MULTIPLE ORIGINALS

This **Agreement** shall be executed in multiple counterparts, each of which shall be deemed an original.

16. ANTI-COLLUSION

Provider agrees that it has not been and shall not be a party to any collusion with any of their officials, trustees, or employees of the **City** as to the terms or conditions of this **Agreement**, and has not and will not exchange, give or donate money or other things of value for special consideration to any officials, trustees, or employees of the **City**, either directly or indirectly, in procuring and execution of this **Agreement**.

17. BREACH AND DEFAULT

A. A breach of any provision of this **Agreement** shall act as a breach of the entire **Agreement** unless said breach is expressly waived in writing by all other parties hereto. Failure to enforce or timely pursue any breach shall not be deemed a waiver of that breach or any subsequent breach. No waiver of any breach by any party hereto of any terms, covenants, or conditions herein

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contained shall be deemed a waiver of any subsequent breach of the same, similar, or different nature.

B. Further, except as otherwise specifically and expressly provided and any other paragraph hereto, should any party hereto fail to perform, keep or observe any of the terms, covenants, or conditions herein contained, this **Agreement** may be terminated by any party not in default thirty (30) days after receipt of written notice and opportunity to cure, less and except as such lesser time is provided in this **Lease**.

C. Should the **City** breach this **Agreement**, **Provider** may only recover that proportion of services provided prior to the breach. **Provider** may not collect or recover any other or additional damages, losses, or expenses.

18. THIRD PARTY BENEFICIARIES

All parties expressly agree that no third-party beneficiaries, expressly or implicitly, are intended to be or shall be created or acknowledged by this **Agreement**. This **Agreement** is solely for the benefit of the **Provider** and the **City**, and none of the provisions hereof are intended to benefit any third parties.

19. VENUE AND CHOICE OF LAW

All parties hereto expressly agree that the venue of any litigation relating to or involving this **Agreement** and/or the rights, obligations, duties and covenants therein shall be in the appropriate court (state or federal) located in Oklahoma County, Oklahoma. All parties agree that this **Agreement** shall be interpreted and enforced in accordance with Oklahoma law and all rights of the parties shall be determined in accordance with Oklahoma law.

20. VALIDITY

The invalidity or unenforceability of any provision of this **Agreement** shall not affect the validity or enforceability of any other provisions of this **Agreement**, which shall remain in full force and effect.

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21. NO WAIVER

The failure or neglect of either of the **Parties** hereto to insist, in any one or more instances, upon the strict performance of any of the terms or conditions of this **Agreement**, or waiver by any party of strict performance of any of the terms or conditions of this **Agreement**, shall not be construed as a waiver or relinquishment in the future of such term or condition, but such term or condition shall continue in full force and effect.

22. NO EXTRA WORK

No claims for extra work, product, services, solution, or deliverables of any kind or nature or character shall be recognized or paid by or be binding upon the **City** unless such services, work, product, solution, or deliverable is first requested and approved in writing by the **City** through a purchase order.

23. AMENDMENT

This **Agreement** may be amended by mutual agreement of the **Parties**, in writing and signed by both **Parties**. The **City** hereby delegates to the City Manager all amendments to this **Agreement** for approval and execution, unless the amendment would increase the contracted amount by more than ten percent (10%).

24. EFFECTIVE DATE

The Effective Date of this **Agreement** is the date approved by the **City** as the last party hereto.

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IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this **Agreement** on the dates set forth below.

Provider: CNG Solutions, LLC

By: _____

Name: Robert Campbell

Title: _____

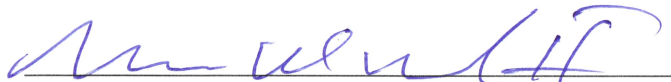
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APPROVED by the Council and **SIGNED** by the Mayor of The City of Midwest City this

22 day of February, 2021.


THE CITY OF MIDWEST CITY


MAYOR


SARA HANCOCK, CITY CLERK



REVIEWED for form and legality.


DONALD D. MAISCH, CITY ATTORNEY