

Maintain Your Savings™



**Tecogen, Inc.
TecoChill Factory
Extended Warranty Service Proposal**



Customer Name: Clearwater Gas

Site Address: 410 Maple Street, Clearwater, FL 33755

Agreement Number:

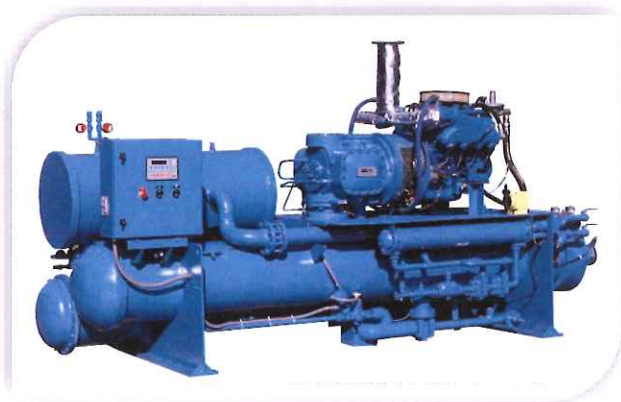
Date: 10/16/2017

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Executive Summary

Thank you for choosing Tecogen as your partner for your energy savings solution provider. We are committed to working with you to ensure that your investment will continue to deliver energy savings for years to come. The details of that commitment are in the following pages.

An Extended Warranty Service Agreement will cover both planned and unplanned service of your Tecochill System. The agreement assures that factory recommended preventative maintenance is executed according to the proper scheduled intervals, by **factory trained, supported and employed service technicians**. It also gives you the peace of mind knowing that as items wear out over time; they will be replaced allowing your Tecochill System to continue to save your facility energy for years to come! Our proposal is a customized maintenance strategy designed around the needs of your facility. Our approach features a combination of scheduled, predictive, and preventative maintenance services designed to optimize performance and uptime.



Additionally, with an Extended Warranty Service Agreement you can count on:

- ☑ **Priority Response-** with this agreement in place you will have service priority, putting you in line ahead of time and materials customers.
- ☑ **Standard Diagnostics-** Tecogen's proprietary applications and technologies equip our technicians with the tools they need to keep your investment running at optimum performance.
- ☑ **Tecogen OEM Parts Guarantee-** Assurance that all components will be replaced with guaranteed OEM parts just like the ones that were installed from the factory.
- ☑ **Dedicated Local Tecogen Service Team-** Factory employed service technician will provide service, all of whom will be familiar with your service requirements, your facility, and your territory.

Each Local service team works from a Tecogen service office. Each office is supported with stock piles of inventory ensuring prompt replacement.

- ☑ **Advanced Monitoring Diagnostics-** Tecogen's partnership with GE provides our customers with the most advanced remote monitoring system. Our Real-Time monitoring application permits internet and app based monitoring by Tecogen's factory dashboard, Tecogen's local service team and is available for you!
- ☑ **Added Value -** Proper maintenance can save an estimated 12-18%* of your budget compared to a run-to-fail approach. A Tecogen Extended Warranty Service Agreement is structured to help you capture those savings. In addition to financial value, when you partner with Tecogen you can expect:

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Research has shown that regular maintenance can:

Cut unexpected breakdowns by.....	70-75%*
Reduce downtime by.....	35-45%*
Lower equipment repairs and maintenance costs by.....	25-30%*
Reduce energy consumption by.....	5-20%*

*Source: FEMP C&M Guide- July 2004



Dependability and Consistency

Assigned Service Team - Your service team will consist of our professional Service Coordinator, Service Technicians, and Territory Manager, all with extensive product knowledge. Our technicians undergo extensive skills and safety training.

Automated Scheduling System - Tecogen utilizes a computerized scheduling program to ensure that all services included in the agreement are performed.

Remote Monitoring and Diagnostics - All Tecogen equipment that is covered with a Tecogen Extended Warranty Service Agreement is fully connected back to our factory where experts in troubleshooting can log in and view the equipment's real time operating parameters and assist the technicians on the ground.



Superior Service Delivery

Tecogen's OEM Service Delivery Process ensures consistent quality through:

- Uniform service delivery
- Pre-job parts planning
- Documented work procedures
- Efficient and economical delivery of services
- Emphasis on Safety and Environments



Automated fleet monitoring ensures our service technicians are constantly updated with the current status of all Tecogen equipment in their service territory.

Tecogen's unique service program is unequalled in the industry.

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Knowledge Transfer

Documentation - Work performed on your equipment will be documented by the technician and reviewed with you at the completion of each visit.

Operational System Optimization - Tecogen technicians will review operating sequences and practices for the equipment covered by the agreement and advise you of operational improvement opportunities.

Training for Facility Staff- Your Tecogen Technician will provide basic operating instructions for the equipment, such as start, stop, and checking alarms.



Health and Safety

Safety Management Program – Tecogen factory service technicians are required to carry an OSHA 10-hr certificate or equivalent with yearly retraining on all key occupational safety and health topics. A clean driving record is an absolute requirement for employment. We take our safety seriously and all service technicians are provided with up to date personal protective equipment (PPE), as well as training on its use and limitations.

Drug-Free Workplace – Tecogen maintains a Drug-Free Workplace, with a robust drug and alcohol testing program.



Environmental Management

Oil Disposal - Tecogen removes used oil from your machines and disposes of it in accordance with the applicable environmental regulations. Tecogen recycles used oil wherever allowed and properly disposes of used oil which does not meet the recycling requirements.



Refrigerant Policy - Tecogen follows strict practices and procedures that are compliant with all Federal and State laws and regulations concerning the proper handling, storage, and repair of leaks of refrigerants according to the Environmental Protection Agency regulation 40 CFR Part 82. All service technicians are EPA 608 Universal-certified and use only certified recovery equipment.

Refrigerant Management Program - Tecogen accurately documents and maintains all documents for any and all Refrigerant Activity for each site. The technician uses a special form to report all refrigerant activity that has occurred on each piece of equipment. The reports are sent to the cloud and are stored in a data base such that all refrigerant activity performed by Tecogen technicians throughout the year for each piece of equipment can be used to satisfy reporting requirements.

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Scope of Services- Standard Inclusions

Provided by your Extended Warranty Service Agreement:

Scheduled Service Only

A number of specific service events are performed during Tecogen normal business hours as outlined in the Tecogen Preventative Maintenance Section of this Agreement. All materials and supplies necessary for the normal performance of Scheduled Maintenance are covered by the fee.

Under Chiller Scheduled service Tecogen's factory certified technicians shall perform all preventive maintenance (PM) on the factory-supplied, skid-mounted chiller including engine, coupling, controls, evaporator, condenser, compressor, compressor oil and refrigerant system.

Under Engine Schedule service Tecogen's factory certified technicians shall perform all preventive maintenance (PM) on the factory-supplied engine.

These options allow customers the ability to pay on an as needed basis for other non-scheduled service should they chose.

Chiller Service Complete

Tecogen's superior Chiller Service Complete Agreement covers any and all material and/or labor required to expeditiously repair an unscheduled event no matter when the failure occurs as part of this agreement. With this policy you can rest assured all components and pieces of equipment covered in the agreement will be replaced at no additional expense. This means no surprise billing!

Like our superior, Chiller Service Complete coverage, our Engine Service, covers any and all material and/or labor required to expeditiously repair an unscheduled event on the **engine only** no matter when the failure occurs as part of this agreement

Annual Condenser and Dump HX Cleaning

This available annual service ensures your chiller is maintained optimizing efficiency and performance. On an annual basis Tecogen's technicians will mechanically brush and clean soft scale and algae as it forms on the tubes of the condenser and dump HX. Allowing this fouling to build up overtime drastically reduces the chiller's efficiency and performance.

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Optional System Coverage

The **Extended Warranty Service Agreement** can include additional services to better enhance your system's operation. Consult with your Tecogen sales agent to better understand these available options.

Available at your choice:

- ✓ Operator Training for Facility Staff
- ✓ 24/7 Emergency Service (on as needed basis)
- ✓ Refrigerant Warranty
- ✓ Complete Balance of Plant Maintenance
- ✓ Wireless Remote Monitoring System
- ✓ Advanced Monitoring and Diagnostic System
- ✓ System improvement financing
- ✓ Tube cleaning

See "Special Terms" in the Pricing and Acceptable for included items



Tecogen Laboratory Analysis

Tecogen performs routine analysis and trending of oils and coolant as required. This allows us to predict and identify when fluids need to be changed, preventing unnecessary waste, and system failures.

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Agreement

Customer Address:

Clearwater Gas

777 Maple St

Clearwater, FL 33755

Site Address:

Gas Administrative &
Operations Building "A"

777 Maple Street

Clearwater, FL 33755

Tecogen Service Agreement

This Service Agreement consists of the pages beginning with the title page entitled "Agreement," the consecutively numbered pages immediately following such title page, and includes and ends with the Tecogen Preventative Maintenance Schedule (collectively, the "Service Agreement" or "Agreement").

Tecogen agrees to inspect and maintain the Covered Equipment hereof according to the terms of this Service Agreement, including the "Terms and Conditions," and "Scope of Services" sections hereof. Tecogen agrees to give preferential service to Customer over non-contract customers.

Tecogen Equipment Description

Tecogen manufactured equipment covered under this agreement includes:

Tecogen Module(s). **3**

Model #(s): **RT-50**

Estimated Annual Run Hours: **6,000**

Start Date: **10/1/2020**

Serial #(s): TBD

Estimated Full Load Hours: **3,000**

End Date: **9/30/2029**

Service Coverage

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Chiller Service Complete | <input type="checkbox"/> Chiller Service Schedule Service Only | <input type="checkbox"/> on Call Service 24/7 |
| <input type="checkbox"/> Engine Service Complete | <input type="checkbox"/> Engine Service Complete Service | <input type="checkbox"/> on Call Service 24/ 5 |
| <input type="checkbox"/> Exclude Engine Overhauls | <input checked="" type="checkbox"/> Annual Condenser Cleaning | <input type="checkbox"/> Annual Dump HX Cleaning |
| | | <input type="checkbox"/> Emissions Engine |

Other Covered Equipment

Other equipment covered under this agreement includes:

Equipment	Equipment Tag	Manufacturer	Model #	Serial #	Coverage
None					

Service Fee

The maintenance service charge for the first 12-month period of the Maintenance Agreement shall be an amount equal to a flat rate of \$47,262.60 payable in monthly installments of \$3,938.55 per month.

Auto Renew

☒ If un-checked, contract shall not automatically renew following the expiration of the agreement.

Duration of Agreement:

Nine (9) Years

Effective Date:

~~Start Up~~ **10/1/2020**

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The Maintenance Agreement on the above equipment is further governed by the Term and Conditions of Maintenance for Tecogen Cogeneration Systems which forms an internal part of this agreement.

This Agreement is subject to Customer's acceptance of the attached Tecogen Terms and Conditions.

Special Terms

- ~~1. This contract's price was agreed upon prior to construction of the chilled water plant. The seller has reviewed the construction documents dated _____ and confirms service clearances are acceptable. If deviations from the drawing are made which impact service access this price is subject to change or contract be voided.~~
- ~~2. At the end of the first year of operation, the Buyer and the Seller shall review the operating history of the past year to ensure the estimated run time and loading of the chiller are consistent with the anticipated operating schedule. If anticipated operating schedule has changed the price is subject to change or the contract will be voided.~~

Tecogen

Joseph E. Gehret

Printed Name

Signature

Director of Field Operations

Title

Date

Countersigned:

CITY OF CLEARWATER, FLORIDA

Frank V. Hibbard
Mayor

By:

William B. Horne II
City Manager

Approved as to form:

Attest:

_ Laura Mahony
Assistant City Attorney

Rosemarie Call
City Clerk

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TERMS & CONDITIONS OF MAINTENANCE

1. **GENERAL.** The Terms and Conditions stated herein shall, together with the attached Maintenance Agreement, form the agreement for maintenance of a TECOCHILL Chiller by a Buyer (Buyer) from TECOGEN Inc. (Seller).

By its signature hereto, the Buyer agrees that the provisions of this Agreement shall be subject to any term or condition regarding maintenance set forth in any purchase order, contract, or other document delivered by the Buyer to the Seller.

This agreement covers only the Chiller(s) or portion(s) of the Chiller(s) specified in the attached SERVICE COVERAGE section of the Maintenance Agreement and manufactured by Seller and not the associated installed equipment.

For the purposes of clarifying the specific equipment covered by this Agreement, the following definitions shall apply:

Chiller Service, Scheduled Service Only - Seller's responsibility shall be for scheduled service to the entire Chiller(s) as manufactured by the Seller including the engine, coupling, controls, evaporator, condenser, compressor, compressor oil and refrigerant system, and other factory-supplied, skid-mounted devices, but not including items relating to the installation such as the field installed exhaust system, chilled and condenser water piping, power wiring to the Chiller, and similar off-skid systems. Scheduled Service shall be as defined in the current Service Manual for the relevant chiller model and summarized in the attached table entitled "Tecochill Service Interval Guideline". TECOGEN Inc. reserves the right to modify this guideline at any time during the Agreement period. The provisions of Article 5 of this Agreement shall also apply.

Chiller Service, Complete - Seller's responsibilities shall be those described in the preceding paragraph under "Chiller Service, Scheduled Service Only", and will include in addition unscheduled service repairs to the Chiller(s) equipment included under scheduled service described in the preceding paragraph. The provisions of Article 5 and Article 6 shall also apply.

Engine Service, Complete - Seller's responsibilities shall be those described in the preceding paragraph under "Engine Service, Scheduled Service Only" but will include in addition unscheduled service repairs to the engine and related equipment. The provisions of Article 5 and Article 6 shall also apply.

2. **TERM.** The maintenance period under this maintenance agreement shall be as set forth in the DURATION OF AGREEMENT section and shall begin on commencement of operation of the Chiller(s) unless otherwise stated.

3. **SERVICE ESCALATION.** Seller will increase the maintenance service charge rate on each anniversary of the commencement date of the maintenance period of this Maintenance Agreement by a factor equal to (1) the rate of increase in the Consumer's Price Index as published by the U.S. Government for the year immediately preceding, plus 2%, as specified by attached Tecogen Maintenance Quotation.

4. **ACCESS.** Buyer will allow Seller and Seller's representatives access to the Chiller(s) during regular business hours to perform scheduled and unscheduled maintenance and to make periodic inspections of the Chiller(s).

5. **SCHEDULED SERVICE.** Seller's representatives shall make routine maintenance visits to the Buyer's Chiller facility at the seasonal start-up of the Chiller and at intervals prescribed in the "Tecochill Service Interval Guideline" attached to this Agreement. The scheduled service tasks performed shall be those listed in this guideline for the portions of the Chiller(s) specified in the SERVICE COVERAGE section of the Agreement. TECOGEN Inc. reserves the right to modify this guideline at any time during the Agreement period.

Buyer shall notify Seller no less than five (5) days in advance of the passage of the most frequent category of Service Interval, as defined under the EQUIPMENT DESCRIPTION section of the agreement. In the event that the unit is equipped with the Tecogen Remote Monitoring and Control System option (RMCS) this Buyer requirement is waived so long as Buyer maintains at his expense a working telephone line and allows Seller telephone access to the Chiller(s).

6. **UNSCHEDULED REPAIR SERVICE.** In the case that the SERVICE COVERAGE section of the Agreement has been specified to include complete service coverage, then Seller responsibilities for unscheduled service repair shall be as follows:

In the event of a breakdown, malfunction, or failure of the Chiller(s), Buyer shall promptly notify Seller of such event and Seller shall use its best efforts to repair the Chiller(s); provided, however, that if such breakdown, malfunction, or failure results from any of the exclusions set forth in this Agreement, Buyer shall reimburse Seller for all service charges paid to repair the Chiller(s) at the prevailing rate per hour of serviceworker time (shop-to-shop), plus all travel expenses and material cost paid. Any service performed after 5:00 p.m. will be charged at time and one-half and any service performed on Sundays will be charged at double time.

In the event of a breakdown, malfunction, or failure of any equipment or any part thereof, outside the Chiller(s), Buyer will promptly notify Seller of such event.

Buyer shall not, during the term of this Maintenance Agreement, without the prior written consent of Seller, allow any person other than Seller or Seller's representative to perform any maintenance service, repairs, or adjustments to the Chiller(s). However, those activities performed by the Buyer's designated maintenance specialist for the Chiller(s), where such activities are performed under the supervision of, or at the request of, representatives or service personnel of Seller, shall be permitted.

The Seller's responsibilities for unscheduled repair shall not extend beyond the portions of the Chiller included in the Service Coverage Section of this Agreement nor, in any case, to items not part of the Chiller.

7. **EXCLUSIONS.** This Maintenance Agreement does not cover any maintenance or repair to any Chiller(s) that results in whole or in part from:

- Willful damage, misconduct, or negligence of Buyer, its employees, agents or invitees;
- Fire, theft, or other risks now or hereafter normally covered by an "all risks" policy of insurance, including extended coverage;
- War, riots, civil commotion, flood, storm, earthquake, or any similar event;
- Any alteration, addition to, substitution, or replacement of any part of the Chiller(s) or related electrical, plumbing, or fuel connection not authorized by Seller;
- Adjustment, maintenance service or repair to the Chiller(s) or related electrical, plumbing, or fuel connections not authorized by Seller;
- Any use of the Chiller(s) in any manner other than its designed use;
- Improper installation of the Chiller(s) by anyone other than Seller or Seller's authorized representatives;
- Failure due to corrosion, erosion, algae, scaling or slime caused by improperly treated or untreated water in the equipment;
- Any damage or malfunction resulting from vibration, electrolytic action, freezing, contamination, corrosion, erosion, or caused by scale or sludge on internal surfaces except where water treatment protection services are provided by Tecogen as part of this Agreement;
- Buyer's failure to keep the Chiller(s) protected from the weather or elements, including freezing;

- Buyer's failure to perform any covenant contained in this Maintenance Agreement.
- Inspection, maintenance, repair, replacement of or services for: chilled water and condenser water pumps and piping; electrical disconnect switches or circuit breakers; motor starting equipment that is not factory mounted and interconnecting power wiring; recording or portable instruments, gauges or thermometers; non-moving parts of non-maintainable parts of the system, including, but not limited to, storage tanks; pressure vessels, shells, coils, tubes, housings, castings, castings, drain pans, panels, duct work; piping; hydraulic, hydronic, pneumatic, gas, or refrigerant; insulation; pipe covering; refractory material; fuses, unit cabinets; electrical wiring; ductwork or conduit; electrical distribution system; hydronic structural supports and similar items; the appearance of decorative casing or cabinets; damage sustained by other equipment or systems; and/or any failure, misadjustment or design deficiencies in other equipment or systems;
- Repairs or replacement of parts made necessary as a result of electrical power failure, low voltage, burned out main or branch fuses, low water pressure, vandalism, misuse or abuse, improper operation, unauthorized alteration of Equipment, accident, negligence of Customer or others, damage due to freezing weather, calamity or malicious act;
- Furnishing any items of equipment, material, or labor, or performing special tests recommended or required by insurance companies or federal, state, or local governments;
- Failure or inadequacy of any structure or foundation supporting or surrounding the Equipment or any portion thereof;
- Building access or alterations that might be necessary to repair or replace Customer's existing equipment;
- The normal function of starting and stopping the Equipment or the opening and closing of valves, dampers or regulators normally installed to protect the Equipment against damage;
- Valves that are not factory mounted: balance, stop, control, and other valves external to the device unless specifically included in the Agreement;
- Any responsibility for design or redesign of the system or the Equipment, obsolescence, safety tests, or removal or reinstallation of valve bodies and dampers;
- Failure of Customer to follow manufacturer recommendations concerning overhaul and refurbishing of the Equipment;

8. **PARTS REPLACEMENT.** Buyer agrees that upon replacement of any parts, lubricants, refrigerants, components, or other materials by Seller during the term of this Maintenance Agreement, the corresponding items removed shall become the property of Seller.

The engine(s) contained in the Chiller(s) will be repaired or replaced as necessary to correct mechanical defects or failures of an engine. The cost of engine replacement or repair is included in the maintenance service charge subject to the terms of Section 7 and Section 10. In the event of engine replacement, Seller will supply a similar new engine or for engine with removable cylinder liners, a similar rebuilt engine. The replaced engine that is removed from the Chiller shall become the property of Seller.

9. **LIMITATIONS OF LIABILITY.** In no event shall Seller or its agents be liable for any indirect, incidental, consequential, or special damages, including but not limited to loss of use or anticipated profits, whether in an action on contract.

Commercial General Liability Insurance coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$2,000,000 (two million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.

10. **ACCEPTANCE.** All orders for maintenance are subject to acceptance in writing by an authorized employee of Seller.

11. **OTHER.** The terms of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto. Except as set forth herein, neither party shall assign any of its rights or delegate any of its duties hereunder without the prior written consent of the other.

The Maintenance Agreement including these Terms and Conditions sets forth the entire understanding of the parties regarding maintenance service of Chiller(s) and supersedes all prior agreements, communications, representations or warranties, whether oral or written, by an officer, employee or representative of either party regarding such maintenance service.

Any performance or covenant under this Agreement may be waived in writing signed by both parties. No waiver by either party of any default shall operate as a waiver of any other default or of the same default on a future occasion.

Any change in the terms of this Agreement must be in writing and signed by both parties.

Buyer and Seller agree that if any provision of this Agreement is held by any court to be illegal or unenforceable, the remaining provision shall, to the extent practicable, remain in full force and effect.

This agreement shall be construed and enforced in accordance with the laws of the State of Florida.

12. **TERMINATION.** This agreement may be terminated by either party upon 90 days written notification to the other party.

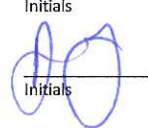
13. **SUSPENSION.** Service under this Agreement will be suspended upon written notification by Seller to Buyer if maintenance fees are in arrears.

14. **ADDITIONAL CHARGES.** In addition to the maintenance service charge set forth, Buyer shall also be responsible for the charges incurred as follows:

- Any outside rigging charges shall be billed to Buyer at cost.
- Any outside agency emissions testing charges shall be billed to Buyer at cost.
- Any maintenance or service covered by this Agreement requested by Buyer to be performed outside normal business hours shall be billed to Buyer at the difference between regular and overtime hourly rates then in effect.
- Replacement cost for lost refrigerant when loss is due to over-pressurization of the refrigerant system and opening of the associated pressure relief device(s). Replacement cost due to other causes, the Seller's responsibility is limited to 20% of specified charge per year.
- This agreement covers maintenance for the TECOGEN equipment specified. Buyer will be billed for any requested service calls and work due to problems with the chilling system excluded from this Agreement at Seller's prevailing Time and Material Rates, including travel time, mileage and actual hours worked. Seller will not exceed two hours of diagnosis and/or corrective work without the express approval of Buyer.

15. **FINANCE CHARGE.** Payments and any applicable late charges shall be paid in accordance with the Florida Prompt Payment Act.

16. **COLLECTIONS.** Buyer agrees to pay all costs and expenses of collections, including, but not limited to, all Attorneys' fees incurred up to the maximum permitted by applicable law.

Initials	Date
	9/23/19
Initials	Date

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RT Preventative Maintenance Schedule

Category	Interval	Item	Action
A	1000 EFLH or 2000 Operating Hours (Whichever Comes First)	<ol style="list-style-type: none"> 1. Air Filter 2. Battery 3. Timing 4. Carburetor 5. Engine Lube Oil 6. PCV Valve 7. Distributor Cap & Rotor 8. Spark Plugs & Wires 9. Coupling 10. Engine Mounts 11. Water Pump Belt 12. Compressor Shaft Seal 13. Compressor Oil 14. Filter Dryer Cores 15. Engine Evaluation 16. Condenser and Radiator 17. General 18. Safety Circuit 	<ol style="list-style-type: none"> 1. Replace 2. Inspect 3. Check & Adjust if Necessary 4. Check & Adjust if Necessary 5. Change Reserve Tank and Engine Pan, Replace Filter 6. Replace 7. Replace 8. Replace 9. Inspect 10. Inspect 11. Inspect & Replace If Necessary 12. Monitor Leakage Rate 13. Check Level, Take Sample and Log 14. Replace (First Season Only, Then as Required) 15. Blowby & Compression Test (Omit on First Service) 16. Check, Clean if Necessary 17. Check for Leaks, Check Electrical Connectors 18. Verify Operation (HTS1 & HTS2)
B	2000 EFLH or 4000 Operating Hours (Whichever Comes First)	<ol style="list-style-type: none"> 1. A Items 2. Engine Coolant 3. Water Pump 	<ol style="list-style-type: none"> 1. See above 2. Replace 3. Inspect & Replace
C	Typical Life	<ol style="list-style-type: none"> 1. Engine, Partial 	<ol style="list-style-type: none"> 1. Replace as indicated by Blowby and Compression Tests
E	Seasonal	<ol style="list-style-type: none"> 1. Startup & Shutdown 	<ol style="list-style-type: none"> 1. Follow Procedure

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City of Clearwater, Florida – Purchase Order Terms and Conditions

1. **CHANGES:** No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of this purchase order (PO) will be effective without written consent of the City of Clearwater, Florida (City).
2. **HANDLING:** No charges will be allowed for handling which includes, but is not limited to, packing, wrapping, bags, containers, or reels, unless otherwise stated herein.
3. **DELIVERY:** For any exception to the delivery date as specified on this order, Vendor shall give prior notification and obtain written approval thereto from the City. With respect to delivery under this order, time is of the essence, and the order is subject to termination for failure to deliver as specified. The acceptance by the City of late performance with or without objection or reservation shall not waive this right to claim damage for such breach nor constitute a waiver of the requirement for the timely performance of any obligation remaining to be performed by Vendor.
4. **MSDS AND SAFETY:** Material Safety Data Sheets shall be included with shipments of any material requiring this documentation, per OSHA regulations, and comply with the Consumer Products Safety Act, and all other applicable state and Federal laws or agency regulations.
5. **PAYMENT AND TERMS:** The terms of payment shall be as stated. PO numbers must be noted on all invoices. Payment will not be processed until items invoiced are received and accepted. All payments shall be made in accordance with the Local Government Prompt Payment Act, Florida Statutes § 218.70. The City offers a credit card payment process (ePayables) and encourages vendors to participate in this program.
6. **CASH DISCOUNT:** In the event that the City is entitled to a cash discount, the period of computations will commence on the date of receipt of a correctly completed invoice.
7. **ASSIGNMENTS.** The provisions of monies due under this PO shall only be assignable with prior written consent of the City.
8. **INSURANCE.** The Vendor shall maintain insurance acceptable to the City, in full force and effect throughout the term of this purchase order. The Vendor must provide a Certificate of Insurance with endorsement, naming the City as Additional Insured, in accordance with the insurance requirements, evidencing such coverage prior to the commencement of work under this agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s), when applicable. Vendor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage. Vendor's insurance shall be primary and non-contributory coverage for Vendor's negligence. The stipulated limits of coverage provided by the City, if any, shall not be construed as a limitation of any potential liability to the Vendor, and failure by the City to request evidence of this insurance shall not be construed as a waiver of Vendor's obligations to provide the insurance coverage specified.
9. **APPLICABLE LAWS:** Vendor shall comply with all applicable federal, state, and local laws and regulations. The sole venue of any legal action arising from execution of this PO, shall be the Pinellas County Superior Court of the State of Florida and the interpretation of the terms of the PO shall be governed by the laws of the State of Florida.
10. **LICENSES:** As applicable, vendor shall have a valid and current Business Tax Receipt (BTR) to do business in the City. Said BTR shall be obtained prior to the award of any purchase order. BTR information available at http://www.myclearwater.com/gov/depts/planning_dev/btr/index.asp
11. **SHIPPING INSTRUCTIONS:** Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. When shipping address indicates a room number and/or inside delivery, it is the Vendor's responsibility to make delivery to that location at no additional charge. Where specific authorization is granted to ship goods to FOB shipping point, Vendor agrees to prepay all shipping charges and route as instructed. No COD shipments will be accepted.
12. **REJECTION:** All goods or materials purchased herein are subject to approval by the City. Any rejection of goods or materials resulting because of nonconformity to the terms and specifications of this order, whether held by the City or returned, will be at the Vendor's risk and expense.
13. **IDENTIFICATION:** All invoices, packing lists, packages, shipping notices, correspondence, and other written documents affecting this order shall reference the applicable purchase order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the contents therein.
14. **INFRINGEMENTS:** Vendor agrees to protect and save harmless, the City against all claims, suits, or proceedings for patent, trademark, copyright, or franchise infringement arising from the purchases, installation, or use of goods and materials ordered and to assume all expenses and damages arising from such claims, suits, or proceedings.
15. **WARRANTIES:** Vendor represents and warrants that the goods are new, current, fully warranted by the manufacturer, and fit for the intended purpose. Delivered goods will comply with specifications and be free from defects in labor, material, and manufacture. All UCC implied and expressed warranties are incorporated in this purchase order. Vendor shall transfer all warranties to the City.
16. **LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims, or encumbrances of any kind.
17. **RISK OF LOSS:** Regardless of FOB Point, vendor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery. Such loss, injury, or destruction shall not release Vendor from any obligation hereunder.
18. **HOLD HARMLESS:** Vendor shall indemnify, defend, and hold harmless the City and its agencies, their divisions, officers, employees, and agents, from all claims, suits, or actions of any nature arising out of or related to the activities of vendor, its officers, subcontractors, agents, or employees under this purchase order up to the limits of the insurance required hereunder. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity to which City is entitled or the extent of any limitation of liability pursuant to § 768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall be interpreted as limiting or in any way affecting any defense City may have under § 768.28, Florida Statutes or as consent to be sued by third parties.
19. **FORCE MAJEURE:** Vendor will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, war, riot, delay in transportation or railcar transport shortages, provided Vendor notifies the Purchasing Manager immediately in writing of such pending or actual delay. Normally, in the event of any such delays the date of delivery will be extended for a period equal to the time lost due to the reason for

delay.

20. **TERMINATION:** (i) The parties may terminate this PO by mutual agreement. (ii) The City may terminate this PO at any time with thirty (30) days written notice to Vendor; upon receipt of the notice, Vendor shall stop performance and the City shall pay Vendor for goods and/or services delivered and accepted. (iii) The City may terminate this PO with thirty (30) days written notice if City fails to receive funding, appropriations, or other expenditure authority. (iv) If Vendor breaches any PO provision or is declared insolvent, the City may terminate this PO for cause with written notice to Vendor, and Vendor shall be liable for all damages as provided in the UCC.
21. **PUBLIC DISCLOSURE:** PO and all contents and attachments shall be deemed a public record as defined in Florida Statutes §119.
22. **ANTI-TRUST:** Vendor and the City recognize that in actual economic practice, overcharges resulting from anti-trust violations are in fact borne by the City, therefore, Vendor hereby assigns to the City any and all claims for such overcharges.
23. **DEFAULT:** The Vendor covenants and agrees that in the event suit is instituted by the City for any default on the part of the Vendor and the Vendor is adjudged by a court of competent jurisdiction to be in default, he shall pay to the City all costs and expenses incurred by the City in connection therewith, and reasonable attorneys' fees.
24. **SEVERABILITY:** If a court of competent jurisdiction declares any provision of the PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.
25. **ACCEPTANCE:** This order expressly limits acceptance to the terms and conditions stated herein. All additional or different terms proposed by Vendor are objected to and hereby rejected, unless otherwise accepted in writing by the City.
26. **ORDER OF PRECEDENCE:** When this PO is issued subsequent to the results of a request for quote, bid, or proposal, additional terms and conditions, if any, contained in the solicitation or resulting contract shall control.
27. **NONDISCRIMINATION:** During the performance of this PO, the Vendor agrees as follows: (i) The Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, age, marital status, disability, sex, sexual orientation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause. (ii) The Vendor will furnish all information and reports required by the City and will provide on request evidence to substantiate compliance with non-discrimination clauses of this PO. (iii) In the event of the Vendor's noncompliance with the clauses of this PO or with any of such rules, regulations, or orders, this PO may be canceled, terminated, or suspended in whole or in part, and the Vendor may be declared ineligible for any future City PO.
28. **CODE OF ETHICS:** Florida Statutes §112.313 provides ethical standards for City personnel; and unethical conduct by others including bidders and vendors is grounds for debarment. City employees may neither solicit, accept, or agree to accept any gratuity for themselves, their families or others that results in their personal gain which may affect their impartiality in making decisions on the job. Further, City Procurement staff are also held accountable to the National Institute of Government Procurement (NIGP) Code of Ethics.
29. **COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.** Vendor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324 et. seq., and regulations thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the agreement, at the discretion of the City.
30. **TAX EXEMPTION:** The City's Florida State Sales Tax Exemption Number is 85-8012740095C-1 and Federal Tax ID Number is 59-6000-289.