



THIS PRODUCT SUPPLY AGREEMENT ("Agreement") numbered 061022MW and dated as of November 18, 2022 (the "Effective Date"), is made by and between LINDE GAS & EQUIPMENT INC., a Delaware corporation, having an office at 10 Riverview Drive, Danbury, Connecticut 06810-5113 ("Seller") and **The City of New Orleans**, a political subdivision of the State of Louisiana, having an office at 1300 Perdido St. New Orleans, LA 70112 ("Buyer" or "City").

1. Requirements.

Seller will sell to Buyer, and Buyer will purchase from Seller, on the terms and conditions herein and in any rider hereto (each, a "Rider"; capitalized terms not defined herein shall have the meanings set forth in the Rider) executed by the parties from time to time, Buyer's total present and future requirements, in gaseous, liquid or solid form, of Product and any substitute therefor, including mixtures, whether in cylinders, microbulk, bulk tanks or other containers or by any other means and including any hardgoods or other items set forth on a Rider for use at Buyer's location(s) ("Locations") listed thereon, as well as at any expanded or new locations. As of the date of first delivery of Product under a Rider, Buyer will not be obligated under the terms of any other contract to purchase such Product for Buyer's Location.

2. Prices

Buyer will pay Seller the Prices, Charges and Surcharges set forth in the Rider.

3. Delivery.

The delivery of Product will constitute Buyer's purchase thereof.

4. Specifications; Warranties; Remedies.

Product delivered hereunder will meet the Specifications. Buyer may reject any Product which does not meet the Specifications and no charge will be made for Product so rejected. With respect to any items or equipment, including cylinders and supply systems (collectively, "Equipment") covered hereunder and not manufactured by Seller, Seller shall make reasonable efforts to assist Buyer in obtaining the benefit for Buyer of any manufacturer's warranty, to the extent available and applicable to Buyer (copies of which may be available on the manufacturer's website). **THERE ARE NO EXPRESS WARRANTIES BY SELLER OTHER THAN UNDER THIS ARTICLE 4. NO WARRANTIES BY SELLER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED INCLUDING WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.** No claim of any kind with respect to the conformance of Product to the Specifications, or for nonconforming Equipment, whether or not based on negligence, warranty, strict liability, or any other theory of law, will be greater than the price of the quantity of nonconforming Product or Equipment in respect to which such claim is made. Buyer's exclusive remedy for the unexcused failure to deliver Product when required by Buyer, regardless of cause, including negligence, shall be to recover from Seller the difference between the cost to Buyer of any reasonable purchase of Product in substitution for Product not delivered and the price of such quantity of Product hereunder. Seller's sole obligations and Buyer's exclusive remedies are set forth in this Article 4 with respect to the claims addressed herein. No action, regardless of form, may be brought by either party more than one year after delivery of the Product or Equipment to which such action applies, except that any claims by Seller for non-payment of invoices, taxes or recovery of any Equipment may be brought at any time.

5. Price Changes

Seller may adjust Prices upon fifteen (15) days prior written notice provided if (a) Buyer, within fifteen (15) days after such notice, furnishes Seller with credible written evidence that Buyer can purchase Product to which such increased Prices apply from a responsible supplier for a specified term in like quantities, at lower prices and under similar terms and conditions, and (b) Seller, within fifteen (15) days thereafter, does not agree to either meet such lower prices or rescind the notice of increased Prices, then Buyer will have the right, upon giving Seller ten (10) days written notice, to terminate the applicable Rider as to the supply of Product for which such lower prices are offered. If Buyer exercises such right of termination, the cost of removal of the Supply System used for the supply of such Product will be borne by Buyer. If Seller agrees to meet the lower prices or rescind the notice of increased Prices, Seller may extend the term of the Rider covering such Product for a period equal to the period of the Basic Term of such Rider notwithstanding any prior termination notice by Buyer. The foregoing provision does not apply to Charges and Surcharges, the Facility Fee or Rental Charge in the Rider.

6. Contingencies.

Except for the obligation to pay money when due, neither party hereto shall be liable to the other for default or delay in performance due to act of God, accident, fire, flood, storm, riot, war, terrorism, sabotage, disease, epidemic, explosion, strike, labor disturbance, governmental law or regulation, inability to obtain electricity or other type of energy, feedstock, raw or finished material, equipment or transportation, or any similar or different contingency beyond its reasonable control which would prevent or delay performance or make performance commercially impracticable. During a contingency, Seller will allocate Product among its own requirements and those of its customers in a fair and reasonable manner and Buyer will either pay for any related additional costs when Product Seller is able to deliver to Buyer during the contingency or source Product from another supplier solely for the duration of the contingency.

7. Health, Safety.

Buyer (i) acknowledges that there are hazards associated with Product and Equipment, including the storage, use and handling thereof; (ii) will warn, protect and train its employees, contractors and others exposed to the hazards posed by Buyer's storage, use and handling of Product and Equipment; (iii) assumes all responsibility for the suitability and the results of using Product alone or in combination with other articles or substances and in any manufacturing, medical, or other process or

procedures; and will notify Seller of any hazards and safety procedures at the Location(s). If, at any time, Seller considers that performance of its supply obligations hereunder would pose an unreasonable risk to safety, Seller may suspend its supply obligations without notice. Buyer will be responsible for complying with all applicable laws and relevant reporting obligations, including the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sections 11001-11049. Buyer is directed to www.lindeus.com for the applicable Safety Data Sheets related to Product(s), and Buyer will incorporate such information into Buyer's safety program.

8. Limitation on Liability. (a) Notwithstanding any other provision of this Agreement to the contrary, Seller shall not be liable to Buyer or any third party for any: incidental, consequential, indirect, special, exemplary, punitive or enhanced damages, lost profits or revenues, diminution in value, sales, cover, losses in any way related to damage to vaccines, biological material or scientific research; or any other similar loss or damage, arising in connection with this Agreement regardless of (i) whether such damages were foreseeable or Seller was advised of the possibility of such damages and (ii) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based. (b) In no event shall Seller's cumulative liability for any and all claims of any kind under this Agreement exceed the amount of the purchase price for the Product related to such claim(s).

9. Confidentiality.

This Agreement, and all pricing and other information furnished by either party hereunder are the proprietary and confidential information ("Information") of the disclosing party, to be kept confidential for ten (10) years after termination hereof, provided (i) the receiving party may disclose Information to the extent legally obligated if such party provides notice to the disclosing party where practicable; and (ii) either party may disclose the Agreement to enforce its rights hereunder.

10. Term.

(a) The term of this Agreement shall be for one (1) year, beginning on the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

(b) **Termination for Convenience.** The City may terminate this Agreement at any time during the term of the Agreement by giving Seller written notice of the termination at least thirty (30) calendar days before the intended date of termination.

(c) **Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice, and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

(d) **Termination for Cause.** The City may terminate this Agreement for cause by sending written notice to Seller. "Cause" includes without limitation any failure to perform any obligation or abide by any material condition, representation or warranty in this Agreement which remains uncured after thirty (30) days written notice to Seller, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging Party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging Party; no further notice will be required.

(e) **Suspension.** The City may suspend this Agreement at any time and for any reason by giving two (2) business days' written notice to Seller. Seller will resume work upon five (5) business days' written notice from the City.

11. Dispute Resolution.

A party that reasonably believes the other party has failed to fulfill any obligation hereunder shall, prior to commencing any legal action, promptly notify the other party in writing. The other party must, within thirty (30) days, respond in writing with evidence of a cure, or an explanation of disagreement, in which case the parties shall arrange to meet within thirty (30) days of such response. If the parties cannot, in good faith discussions, resolve their dispute, they may pursue all remedies under law without prejudice.

12. Assignment and Notice.

This Agreement (i) may not be assigned without the prior written consent of the other party, except to an affiliate of Seller, and (ii) will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties. Except as otherwise stated herein, notices shall be in writing and deemed given on the date hand delivered, mailed, or electronically transmitted to either party at the address in the preamble above.

13. General.

The entire agreement is contained herein and in the Rider(s) and any other or different current or subsequent terms or conditions, including on any website or in any purchase orders, will be deemed null and void unless duly executed by both parties, regardless of any party's "acceptance" by any means including electronically. This Agreement supersedes any prior agreement(s) among the parties covering the supply of Product or Equipment to Buyer's Location(s). If Seller records any telephone conversations, notice of such recordings will be provided and Buyer hereby consents to such recordings. Modifications and waivers hereof are not binding unless in writing by both parties and a waiver will apply solely to the instance for which sought. Headings are solely for convenience and shall not be used to interpret the Agreement. The word "including" and variations thereof herein are deemed to be followed by the words "without limitation." Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply. In the event of conflict between the terms and conditions contained in this Agreement and any Rider, the Rider will govern. This Agreement will be governed by the laws of the State of Louisiana. This Agreement

may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument and may be delivered by a party by facsimile transmission or by email. If any provision or portion thereof herein or in any Rider is held invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions or portions shall not in any way be affected or impaired thereby. **THE PARTIES WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY, IN ANY ACTION OR PROCEEDING, IN ANY WAY RELATING TO THIS AGREEMENT.**

14. Declared Emergency.

(a) Declaration. During the declaration of an emergency by federal, state, and/or local government, Seller shall use reasonable efforts to provide Product to the City on an as available basis. Because of the uncertainty of the scale and/or type of emergency, and the potential impact on both the Seller and the Buyer, the services to be agreed by the parties at that time will vary and may need to be adjusted as needs are identified.

(b) Task Order. Notification and Personnel. Prior or during the declaration of an emergency, the City will notify Seller via task order if the City requires Seller's support. Upon activation by task order, Seller will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

(c) Purchase Order. Once services are identified, the City will issue a purchase order to Seller. The City will issue a subsequent purchase order in case of additional needs for services or may issue a modified purchase order if changes are made to the initial purchase order.

(d) Access to Documents. Seller will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

(e) Limitation. The Seller's obligations under this provision do not extend to any declarations where the Seller is directly impacted by the circumstances giving rise to the declared disaster. In any event, the Seller is obligated to communicate with the Buyer and identify a reasonable timeframe when services can be resumed. For avoidance of doubt, Seller will not be obligated to perform during a contingency in accordance with Section 6 of this Agreement.

15. Cost Recovery.

In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, Seller shall reimburse the City or disgorge anything of value or economic benefit received from the City only to the extent required to do so under applicable law if Seller fails to deliver Product and meet its contractual obligations.

16. Audit and Other Oversight.

Seller shall abide by all provisions of City Code §2-1120, including without limitation, City Code §2-1120(12), which requires Seller to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement.

17. Convicted Felon Statement.

The Seller complies with City Code §2-8(c) and no principal, member, nor officer of Seller providing services under this Agreement has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

18. Prohibition of Financial Interest in Agreement.

No elected official nor employee of the Buyer shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the Buyer shall be deemed to be a financial interest of such elected official or employee of the Buyer. To the extent required under applicable law, any willful violation of this provision, with the expressed or implied knowledge of such party, shall render this Agreement voidable and a party may seek to recover remedies in accordance with applicable law.

19. Prohibition on Political Activity.

None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

20. Non-Solicitation Statement.

Seller has not employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. Seller has not paid nor agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

BY SIGNING BELOW, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS CONDITIONAL UPON THE TERMS AND CONDITIONS HEREIN AND ON ANY RIDER OR OTHER ATTACHMENT HERETO. Buyer and Seller intending to be legally bound have by the signatures of their authorized representatives executed this Agreement as of the date first above written.

(Buyer) CITY OF NEW ORLEANS

Signature: 

Name and Title: LATOYA CANTRELL, MAYOR

Date: August 17, 2023

FORM AND LEGALITY APPROVED:
LAW DEPARTMENT

BY: 

LINDE GAS & EQUIPMENT INC. (Seller)

Submitted by: MARGARET D. WHITE

Signature: Alfred E. Thesmar

Name and Title: ALFRED E. THESMAR, GOVERNMENT CONTRACTS MANAGER

Date: 01 August 2023