

AGREEMENT NO. 12-198

AGREEMENT made this ____ day of _____, 1997, by and between John Lundell, doing business as Energy Unlimited, a sole proprietorship having offices at 4881 County Highway YZ, Dodgeville, Wisconsin (hereinafter referred to as the "Contractor"), and the Muscoda Solid Waste Commission, a municipal corporation organized pursuant to sec. 66.30, Wisconsin Statutes, having offices located at 130 West Maple Street, Lancaster, WI 53813-1625 (hereinafter referred to as the "Commission").

W I T N E S S E T H :

WHEREAS, the Commission has obtained or acquired certain ownership rights to tangible personal property associated with a solid waste incinerator facility located in Muscoda, Wisconsin (hereinafter referred to as the "Incinerator"); and

WHEREAS, the Commission, along with the Counties of Iowa, Grant and Richland, the Village of Muscoda and the Muscoda Light and Water Commission, has deemed the Incinerator to be inoperable and surplus property; and

WHEREAS, it is the intent of the Commission, along with the Counties of Iowa, Grant and Richland, the Village of Muscoda and the Muscoda Light and Water Commission to sell, on a salvage basis, the personal property associated with the Incinerator; and

WHEREAS, the Contractor is in the business of salvaging and selling personal property such as that associated with the Incinerator; and

WHEREAS, the Commission desires to retain the Contractor to salvage and sell on behalf of the Commission the personal property associated with the Incinerator, to which it holds ownership rights upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration moving from each party to the other, receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Personal Property to be Salvaged and Sold. The Contractor shall utilize his best effort to arrange for the sale on behalf of the Commission all of the personal property owned by the Commission and located at the Incinerator (hereinafter referred to as the "Personal Property"), which property is itemized on Exhibit A to this Agreement. Subject to the provisions of Paragraph 4.D. of this Agreement, the Contractor may arrange for certain items of Personal Property to be disposed of without compensation or to remain at the Incinerator following expiration of the term of this agreement.

2. Term of Agreement.

This agreement shall commence upon the execution of this agreement by both parties. This agreement shall terminate upon the first of the following to occur:

- A. One year from the date of execution of this agreement; or
- B. When the Contractor and Commission agree that the Contractor has completed all of his duties under this Agreement.

3. Transfer of Title.

This agreement shall not cause title to any of the Personal Property to be transferred from the Commission to the Contractor. It is understood that the Contractor is acting solely as the selling agent for the Commission. Any responsibilities of Contractor for removal of Personal Property shall be in consultation with and upon compensation from buyers.

Should any buyer of salvageable personal property require a bill of sale, the Commission shall execute appropriate documents to transfer title to said Personal Property to said buyer.

4. Additional Duties of the Contractor. The Contractor shall procure buyers for the Personal Property and shall arrange for and complete the sale of the Personal Property as provided in Paragraph 1 of this Agreement. The Contractor's duties shall include, but shall not be limited to, the following:

- A. Those duties previously set forth.
- B. The Contractor shall, at his expense, advertise the Personal Property as being for sale. Contractor shall expend up to \$1,500.00 in procuring advertisements, relating to the Sale of Incinerator personal property owned by the Commission or the Muscoda Light and Water Commission.
- C. The Contractor shall cooperate with and assist the Commission in determining the minimum sale price for each piece of the Personal Property, except as noted elsewhere in this Agreement. All minimum sale prices shall be determined prior to the sale of any item of Personal Property and shall be listed on Exhibit A to this Agreement. The Commission delegates to the Contractor the right to sell all of said Personal Property for the minimum sale price or any amount higher than same that the Contractor believes is appropriate.

D. Any Personal Property not itemized on Exhibit A shall be deemed to have minimal value and may be sold by the Contractor for the Commission without further authority, except the duty to account for said sale. When the Contractor determines that all Personal Property for which buyers can be located has been sold, he shall so notify the Commission. Within three business days of said notice, the Commission or its agent may remove from the Incinerator any remaining Personal Property. Not less than three business days after providing notice to the Commission, the Contractor may contract with another company for the salvage and/or removal of all remaining Personal Property. The Contractor has discretion to enter into such a contract even if it does not provide compensation for the Commission and the Contractor. The Commission and Contractor agree that, following the sale of all property that can be sold and the disposal of property that can be disposed of without compensation, there may be some items of Personal Property and debris generated by the salvage remaining at the Incinerator. Contractor shall locate individuals and/or companies who will remove all such items and property at the expense of the Commission and shall make the appropriate arrangements for such removal, subject to the approval of the Commission.

E. The Contractor shall meet, as reasonably necessary, with prospective buyers to allow inspection of the Personal Property prior to sale or purchase;

F. When offers to purchase pieces of the Personal Property are received from prospective buyers, which offers are at or above the minimum sale price, the Contractor shall determine which offers shall be accepted and shall complete the necessary steps to finalize the sales of the pieces of the Personal Property. The Contractor shall require each buyer to execute an exculpatory agreement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference, before said buyer may commence removal of any piece of Personal Property from the Incinerator;

G. The Contractor shall supervise the removal of all pieces of the Personal Property from the Incinerator by the buyers;

H. During the time the Personal Property is available for inspection or removal by buyers, the Contractor shall keep the gates at the incinerator locked, except as needed for the Contractor and/or buyers to enter and exit the property.

I. The Commission shall execute and deliver to the Contractor sufficient bills of sale, leaving the Contractor with discretion to include the item or items sold, name of buyer and the amount thereof so that the Contractor may

close transactions without further consultation with the Commission. Within three business days of the sale of each piece of the Personal Property, the Contractor shall forward payment to the Commission, informing the Commission of the name and address of the buyer, the item or items purchased, the amount of the sale price, the date the buyer made payment, and the date said piece(s) of Personal Property was or is expected to be removed from the Incinerator. Payments shall be delivered by the Contractor to the Village of Muscoda Village Clerk at the Village Hall, 206 North Wisconsin Avenue, Muscoda, WI 53573

5. Commission's Duties. The Commission shall make the Personal Property available to the Contractor for salvage and sale pursuant to the provisions of this Agreement. All Personal Property shall be priced and sold on an "as is, where is" basis, with the buyer or the buyer's agent to remove the Personal Property from the Incinerator. The Commission shall further cooperate and use all reasonable efforts to assist the Contractor in completing the terms of this agreement.

6. Payment to Contractor. The Commission shall pay to the Contractor ten percent (10%) of the payment received by it for each piece of the Personal Property. Such payment shall be made within 30 days after the sale has been made.

7. Insurance. The Contractor has provided to the Commission evidence of liability insurance, which provides coverage for the Contractor's performance of his duties under this Agreement. Said liability insurance has a minimum single occurrence coverage limit of \$1,000,000.00. The Contractor shall list the Commission, the Village of Muscoda, the Counties of Grant, Iowa and Richland and the Muscoda Light and Water Commission as Additional Insureds. The Contractor has provided evidence of worker's compensation insurance providing coverage for any and all employees of the Contractor who shall provide services in connection with this Agreement. The Contractor shall maintain the above-described insurance throughout the term of this Agreement.

8. Independent Contractor. The Contractor is an independent contractor, who shall provide services under this Agreement. The Contractor is not an employee of the Commission. The Contractor warrants and asserts that he meets all of the conditions set forth in sec. 102.07(8)(b), Wisconsin Statutes.

9. Risk of Injury. The Contractor has a duty to warn buyers or others entering on the Incinerator property with his permission of hazards known to Contractor. Any buyer on the property is an invitee of the Commission. Contractor assumes the responsibility only for his own negligence or intentional torts. The Commission agrees to indemnify and hold the Contractor harmless for any liability that may occur as a result of the conditions at the incinerator site except for those conditions caused by the negligence or intentional torts of the Contractor.

10. Mutual Indemnification. The parties hereto shall be liable for their own intentional torts and negligence, and each agrees to indemnify the other for any losses, damages, costs or expenses, including litigation expenses, paid or sustained by reason of the intentional tort or negligence of the other.

11. Entire Contract. This Agreement and the attached Exhibits represent the sole and entire agreement between the parties and supersede any and all other agreements, written or oral, between them.

12. Waiver of Modifications. No waiver or modification of any term of this Agreement shall be effective unless in writing and duly executed by the party to be charged therewith. Waiver of any breach hereof shall not operate as a waiver of any subsequent breach, nor may the same be asserted in any proceeding as an estoppel against the party asserting such subsequent breach.

13. Governing Law. This Agreement shall in all respects be governed by the laws of the State of Wisconsin. Venue of any suit or other proceeding hereunder shall be properly placed in Grant County, Wisconsin, and both parties waive any objection to venue of any such proceeding therein.

14. Assignment. The duties of the Contractor hereunder are personal and may not be assigned. Pursuant to Paragraph 4.D. of this agreement, certain of the Contractor's duties may be delegated.

15. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors, assigns, legal representatives and heirs of the Commission.

16. Severability. If any term, condition, or provision of this Agreement shall be found to be illegal or unenforceable to any extent for any reason, such provision shall be modified or deleted so as to make the balance of this Agreement, as modified, valid and enforceable to the fullest extent permitted by law.

17. Notices. All notices called for in this Agreement shall be in writing and shall be served either (a) personally by handing the same to the person to be served or leaving the same with an individual at the person's place or residence; or (b) by mailing the same by certified or registered mail to the party to be served at the address shown below or at such other address as the party may hereafter designate to the other in writing. If notice is personally served, the date of such notice shall be deemed the date on which it is served. If notice is served by mail, the date of such notice shall be deemed the second business day following the day on which it is mailed.

The addresses of the parties are as follows:

Contractor: Mr. John Lundell
Energy Unlimited
Post Office Box 7
4881 County Highway YZ
Dodgeville, WI 53533

Commission: Muscoda Solid Waste Commission
c/o Neil Gardner
130 West Maple Street
Lancaster, WI 53813-1625

18. Termination. This Agreement may only be terminated by a writing executed by all of the parties hereto or as herein provided.

19. Attorney's Fees. The parties hereto hereby agree that the non-prevailing party in any action to enforce any terms or conditions of this Agreement shall pay all reasonable costs, attorney's fees and expenses incurred by the prevailing party.

20. Environmental and Miscellaneous Matters. The undertaking of the Contractor shall not involve any remediation of any environmental problem, if any, to the premises. The obligations of Contractor are limited to those duties specified herein and to no other duties. The Commission agrees to accept the condition of its premises in the condition it finds same at the conclusion of this contract, subject to the provisions of Paragraph 4.D. of this Agreement. The Commission recognizes that salvage may require certain procedures which may render certain Personal Property unsalvageable and those choices as between salvageable and unsalvageable property shall be in the sole discretion of the Contractor, provided the Contractor acts reasonably in making this determination. The Contractor shall have no responsibility to improve the premises.

The Commission affirms that it is its intent that this agreement shall not put the Contractor within the chain of title to the Personal Property. The Commission affirms that the Contractor is simply a sales agent, operating on behalf of the Commission for the purposes of selling salvageable property. Further, the Commission shall indemnify and hold harmless Contractor for all environmental liability, if any, arising from the salvage operations, except that environmental liability caused by the negligence or intentional torts of the Contractor.

The structure in which the Personal Property is located may need to be dismantled to access Personal Property. The Contractor shall bear no responsibility for damage to said structure, provided the Contractor acts reasonably in determining the damage to be done to the structure.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below indicated, at Muscoda, Wisconsin.

CONTRACTOR:

_____ By: _____
Date Name: John Lundell

COMMISSION:

_____ By: _____
Date Name: Neil Gardner
Title: Chairman