

PR#: _____
Contract Number: _____
RFP Number (if applicable): _____

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this **28th day of October, 2022**, by and between Direct Energy Business Marketing, LLC d/b/a Direct Energy Business (“Contractor”) and Milwaukee Board of School Directors (“MPS”).

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

Contractor, shall sell, and MPS shall purchase, natural gas.

Contractor submitted a proposal dated September 7, 2022 to TFS Energy Solutions, LLC d/b/a/ Tradition Energy, who solicited proposals on behalf of MPS through a piggyback to the cooperative contract through U.S. Communities for Energy Consulting and Management Services Agreement No. 2018-017 available through Omnia Partners Public Sector and incorporated herein by reference. All gas purchases and sales shall be governed by the Energy Consulting and Management Services Agreement No 2018-17 and the Transaction Confirmation and CMA attached herein as **Attachment A**, which is incorporated by reference herein and made a part hereof.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM:

Service shall commence April 1, 2024 and shall terminate on March 31, 2029.

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed contract with approval to proceed shall not be compensated pursuant to this contract. Any continuation of the contract beyond this term must be set forth in writing and signed by the original signatories to the contract.

3. COMPENSATION

The estimated Contract Quantity per year is projected to be 875,659 dekatherms and is estimated **not to exceed \$9,000,000** per year without Board approval and is based on historical usage and consideration of worst-case scenarios. MPS shall be responsible for payment of actual volumes which may be higher or lower based on actual use by MPS and will be purchased or sold at prevailing market rates. All invoicing and payment obligations shall be governed by the terms of this Contract.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

DFMSProcurement@milwaukee.k12.wi.us
and Accountspayable@milwaukee.k12.wi.us

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

The total cost of transportation, daily balancing and basis during the Term is NYMEX plus a not to exceed amount of \$1.15 per dekatherm (Dth).

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4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not be limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees and which arise prior to title passing to MPS at the delivery point (Wisconsin Gas / Pooling Area 101 Firm Pool). If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom. In no event will either Party be liable to the other or to any third-party, for any special, incidental, consequential, punitive, or exemplary damages arising out of or in connection with this Agreement,

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS' negligence for acts, policies, or directives that affect the activities covered by this Contract.

7. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall affect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be given to MPS. The certificate of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation or non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this contract. Ten (10) days' notice will be given for any nonpayment of premium.

8. SHIPPING/TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

9. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

10. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage. In the event of default by either party, damages may become due to the other party.

11. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

12. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days notice, but reserves the right to give immediate notice. If in the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. In the event the Contract is terminated for convenience by MPS, damages may become due to Contractor. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

13. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

14. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other, consent not to be unreasonably withheld.

15. PROHIBITED PRACTICES

- A. Contractor during the period of this contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Resources Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this contract.

16. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

17. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this contract, or to their designees.

18. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

19. INTEGRATION/SEVERABILITY

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein unless mutually agreed upon by the parties.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

20. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

21. TIMING

Time is of the essence in this Contract.

22. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

23. FORCE MAJUERE

MPS will not be liable to pay contractor for any work that the contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS' reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

24. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. See Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

25. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

26. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Executive Director of Communications & Outreach.

27. ORDER OF PRIORITY

Should Contractor and MPS sign Contractor's Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict, including a conflict with Attachment A.

28. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

29. CCS REQUIREMENT

The HUB requirement on this contract is 0%. The student employment requirement is 0 paid hours per contract year. The Career Education requirement is 0 hours per contract year. Failure to achieve this requirement may result in the application of

some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR:
Direct Energy Business Marketing, LLC

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____

By: _____
(Principal or Administrator Signature)

Dated: _____

Dated: _____

Address: _____

By: _____
Keith P. Posley, Ed.D.
Superintendent of Schools

Phone Number: _____

Tax Id or SS _____

By: _____
Robert E. Peterson
President - Milwaukee Board of School Directors



Direct Energy Business Marketing, LLC
d/b/a Direct Energy Business
 194 Wood Avenue South, Second Floor, Iselin,
 NJ 08830 1.888.925.9115
 www.directenergy.com

Date: 10/05/2022
Time: 8:23 AM
Proposal ID: 68450087
Marketer Name: Seastream, Sandra

CUSTOMER INFORMATION

Customer Name: Milwaukee Board of School Directors
 d/b/a Milwaukee Public Schools

New

Renew

Contact Name: Contract Clerk

Billing Contact:

Address: 1124 North 11th Street MILWAUKEE, WI
 53233

Billing Address:

Telephone: (414) 283-4600
Fax: (999) 999-9999

Telephone:

Fax:

Email:

NATURAL GAS TRANSACTION CONFIRMATION

This Transaction Confirmation confirms the terms of the Gas Transaction entered into between Direct Energy Business Marketing, LLC d/b/a Direct Energy Business ("Seller"), and the customer above ("Buyer" or "Customer") pursuant to the terms of the Commodity Master Agreement (CMA) between Buyer and Seller dated October 28, 2022 as may be amended and the Milwaukee Board Of School Directors Professional Services Contract ("Milwaukee PSC") between the Parties dated October 28, 2022, to which this Transaction Confirmation and CMA have been attached as Attachment A. The Purchase Price excludes Utility distribution charges and Taxes that are or may be the responsibility of Buyer. Gas volumes will be adjusted for Utility line loss, where applicable. The prices listed below are based on market conditions as of the time, stated above, that this Transaction Confirmation was issued and may be adjusted by Seller to reflect market conditions as of the date it is executed and returned by Buyer. THIS TRANSACTION CONFIRMATION WILL NOT BE EFFECTIVE UNTIL SIGNED BY BOTH PARTIES.

SERVICE LOCATIONS

(Additional pages may be attached if necessary)

Service Address	Utility Account Number	Rate
2404 W. Rogers Street	070981938500014	Tf-4
8251 N. Celina Street	071389293400007	Tf-4
1601 N. Hawley Road	071389293400009	Tf-4
5354 N. 68th Street	071389293400016	Tf-4
1647 N. Cass Street	071389293400019	Tf-4
3841 W. St. Paul Ave.	071389293400027	Tf-4
3600 W. Hope Ave.	071389293400033	Tf-4
2964 N. 81st Street	071389293400043	Tf-4
5100 N. 91st Street	071389293400046	Tf-4
9025 W. Lawrence Ave.	071389293400051	Tf-4
5131 N. Green Bay Ave.	071389293400054	Tf-4
5000 N. 53rd Street	071389293400056	Tf-4
1016 W. Oklahoma Ave.	071389293400057	Tf-4
3239 N. 9th Street	071389293400059	Tf-4
1021 S. 21st Street	071389293400064	Tf-4
4920 W. Capitol Drive	071389293400066	Tf-4
6945 N. 41st Street	071389293400068	Tf-4
1900 N. 1st Street	071389293400070	Tf-4
1250 E. Burleigh Street	071389293400073	Tf-4

Service Address	Utility Account Number	Rate
2765 S. 55th Street	071389293400075	Tf-4
3450 S. 32nd Street	071389293400081	Tf-4
619 E. Dover Street	071389293400084	Tf-4
1801 W. Olive Street	071389293400094	Tf-4
2300 W. Highland Ave.	071389293400099	Tf-4
3872 N. 8th Street	071389293400104	Tf-4
3517 W. Courtland Ave.	071389293400106	Tf-4
2760 N. 1st Street	071389293400111	Tf-4
1312 N. 27th Street	071389293400112	Tf-4
4141 N. 64th Street	071389293400117	Tf-4
2751 S. Lenox Street	071389293400120	Tf-4
6215 W. Warnimont Ave.	071389293400124	Tf-4
6600 W. Melvina Street	071389293400125	Tf-4
1715 S. 37th Street	071389293400127	Tf-4
6500 W. Kinnickinnic River Parkway #P	071389293400130	Tf-4
2222 W. Henry Ave.	071389293400134	Tf-4
2360 N. 52nd Street	071389293400135	Tf-4
5496 N. 72nd Street	071389293400136	Tf-4
730 W. Lapham Blvd.	071389293400138	Tf-4
8135 W. Florist Ave.	071389293400151	Tf-4
2430 W. Rogers Street	071389293400153	Tf-4
3666 S. Clement Ave.	071389293400159	Tf-4
3014 W. Scott Street	071389293400161	Tf-4
1940 N. 36th Street	071389293400164	Tf-4
4116 W. Silver Springs Dr.	071389293400166	Tf-4
4456 N. Teutonia Ave.	071389293400171	Tf-4
1943 E. Trowbridge Street	071389293400173	Tf-4
1618 W. Keefe Ave.	071389293400176	Tf-4
9520 W. Allyn Street	071389293400177	Tf-4
10825 W. Villard Ave.	071389293400178	Tf-4
4360 S. 20th Street	071389293400182	Tf-4
1516 W. Forest Home Ave.	071389293400183	Tf-4
4921 W. Garfield Ave.	071389293400185	Tf-4
4040 W. Forest Home Ave.	071389293400187	Tf-4
1210 W. Mineral Street	071389293400189	Tf-4
5575 N. 76th Street	071389293400190	Tf-4
2765 N. Fratney Street	071389293400192	Tf-4
1712 S. 32nd Street	071389293400197	Tf-4
971 W. Windlake Ave.	071389293400199	Tf-4
6720 W. Moltke Ave.	071389293400219	Tf-4
3707 N. 94th Street	071389293400220	Tf-4
1011 W. Center Street	071389293400221	Tf-4
8400 W. Burleigh Street	071389293400223	Tf-4
2463 N. Buffum Street	071389293400224	Tf-4
2227 E. Hatford Ave.	071389293400227	Tf-4
3635 S. 17th Street	071389293400229	Tf-4
1017 N. 12th Street	071389293400231	Tf-4
3230 S. Adams Ave.	071389293400233	Tf-4
3360 N. Sherman Blvd.	071389293400234	Tf-4
6035 W. Adler Street	071389293400235	Tf-4
2500 W. Oklahoma Ave.	071389293400239	Tf-4
3239 S. Pennsylvania Ave.	071389293400240	Tf-4
5760 N. 67th Street	071389293400244	Tf-4
3400 W. N. Ave.	071389293400249	Tf-4
12021 W. Florist Ave.	071389293400251	Tf-4
2319 W. Auer Ave.	071389293400254	Tf-4
7667 W. Congress Street	071389293400257	Tf-4
1555 N. Dr. Martin Luther King Dr.	071389293400258	Tf-4
4965 S. 20th Street	071389293400259	Tf-4

Service Address	Utility Account Number	Rate
3300 S. 39th Street	071389293400261	Tf-4
8718 W. Thurston Ave.	071389293400263	Tf-4
7900 W. Acacia Street	071389293400264	Tf-4
5110 W. Locust Street	071389293400265	Tf-4
7501 N. Granville Road	071389293400266	Tf-4
5700 W. Green Tree Road	071389293400269	Tf-4
921 W. Meinecke Ave.	071389293400278	Tf-4
5143 S. 21st Street	071389293400287	Tf-4
6850 N. 53rd Street	071389293400289	Tf-4
1940 N. 36th Street	071389293400292	Tf-4
5610 W. Wisconsin Ave.	071389293400296	Tf-4
1945 N. 31st Street	071389293400301	Tf-4
820 E. Knapp Street	071389293400304	Tf-4
3620 N. 18th Street	071389293400309	Tf-4
3815 W. Kilbourn Ave.	071389293400310	Tf-4
2035 N. 25th Street	071389293400312	Tf-4
3563 S. 97th Street	071389293400319	Tf-4
3275 N. Dr. Martin Luther King Dr.	071389293400320	Tf-4
227 W. Pleasant Street	071389293400323	Tf-4
2308 W. Nash Street	071389293400330	Tf-4
2430 W. Wisconsin Ave.	071389293400334	Tf-4
4850 N. 82nd Street	071389293400335	Tf-4
5440 N. 64th Street	071389293400340	Tf-4
3778 N. 82nd Street	071389293400341	Tf-4
1515 W. Lapham Blvd.	071389293400343	Tf-4
7001 N. 86th Street	071389293400344	Tf-4
5225 W. Vilet Street	071389293400348	Tf-4
3618 N. 53rd Street	071389293400356	Tf-4
357 E. Howard Ave.	071389293400362	Tf-4
1711 S. 35th Street	071389293400364	Tf-4
4200 S. 54th Street	071389293400367	Tf-4
2525 N. Sherman Blvd.	071389293400385	Tf-4
5966 N. 35th Street	071389293400387	Tf-4
2616 W. Garfield Ave.	071389293400392	Tf-4
2920 W. Grant Street	071389293400394	Tf-4
5225 W. Lincoln Creek Dr.	071389293400400	Tf-4
3255 N. Fratney Street	071389293400404	Tf-4
5372 N. 37th Street	071389293400409	Tf-4
5075 N. Sherman Blvd.	071389293400413	Tf-4
1817 W. Lincoln Ave.	071389293400415	Tf-4
2121 W. Hadley Street	071389293400416	Tf-4
2500 W. Oklahoma Ave.	071389293400417	Tf-4
2969 S. Howell Ave.	071389293400419	Tf-4
1728 S. 23rd Street	071389293400420	Tf-4
2029 N. 20th Street	071389293400424	Tf-4
1503 W. Hopkins Street	071389293400426	Tf-4
4950 N. 24th Street	071389293400428	Tf-4
3727 S. 78th Street	071389293400429	Tf-4
6453 N. 84th Street	071389293400434	Tf-4
2525 N. Sherman Blvd.	071389293400438	Tf-4
3120 W. Green Ave.	071389293400442	Tf-4
4931 N. 68th Street	071389293400443	Tf-4
6644 N. 107th Street	071389293400450	Tf-4
2555 S. Bay Street	071389293400452	Tf-4
1124 N. 11th Street	071389293400460	Tf-4
900 W. Walnut Street	071389293400463	Tf-4
6415 W. Mount Vernon Ave.	071389293400468	Tf-4
1615 E. Locust Street	071389293400469	Tf-4
1420 W. Goldcrest Ave.	071389293400470	Tf-4

Service Address	Utility Account Number	Rate
800 W. Walnut Street	071389293400472	Tf-4
7878 N. 60th Street	071389293400483	Tf-4
2424 S. 4th Street	071389293400490	Tf-4
6620 W. Capitol Dr.	071389293400491	Tf-4
2418 N. Marylnad Ave.	071389293400493	Tf-4
2816 W. Clarke Street	071389293400494	Tf-4
1547 N. 14th Street	071389293400499	Tf-4
6506 W. Warnimont Ave.	071389293400501	Tf-4

DELIVERY PERIOD

Begin:04/01/2024 ("Commencement Date")

End: 03/31/2029 ("End Date")

The service start date hereunder will be the date that the Utility enrolls Customer for Seller's service. Seller will request the Utility to enroll Customer on the first meter read date within the Delivery Period.

Upon the expiration of the Delivery Period, this Transaction shall continue for successive one month terms (collectively the "Renewal Term") until either Party notifies the other Party in writing of its intention to terminate, at least 15 days prior to (1) the end of the Delivery Period or (2) during the Renewal Term, the earlier of the end of each successive month Renewal Term or the next cycle read date, (3) but without notice, no service shall not continue beyond the End Date, March 31, 2029. After notice is given as contemplated in the previous sentence, the date of termination ("Termination Date") shall be the next effective drop date permitted by the Utility. The Purchase Price for delivery to the Delivery Point during the Renewal Term or for any period outside of the Delivery Period, shall be the then Market Price for delivery to the Delivery Point, unless otherwise agreed to in writing.

DELIVERY POINT

Wisconsin Gas / Pooling Area 101 Firm Pool

CONTRACT QUANTITY (MMBTU)

Buyer and Seller agree that the "Contract Quantity" purchased and received means a positive volume up to or greater than the estimated quantities listed below, provided, that for purposes of determining whether a Material Deviation has occurred and for purposes of calculating Contract Quantities remaining to be delivered under the Remedies section of the CMA, Contract Quantity shall be determined by reference to the applicable estimated quantity(ies) listed below.

	Daily	X	Monthly		
April		91153		October	32093
May		31598		November	106652
June		6959		December	128702
July		5359		January	180692
August		5042		February	150795
September		8019		March	128595

PURCHASE PRICE

Nymex Plus : \$0.000/MMBTU

SPECIAL PROVISIONS

NYMEX Plus with Trigger: For each month of the Delivery Period, the Purchase Price for the Contract Quantity, subject to the Gas Settlement Adjustment provision, will equal a fixed Basis charge of \$0.000/MMBTU, plus the Commodity charge for that month. Unless the Commodity charge has been set by agreement of the Parties in accordance with the Buyer-initiated trigger process instructions detailed below, the Commodity charge shall be the per Dth price equal to the settlement price on the expiration date for that month's New York Mercantile Exchange Henry Hub natural gas futures contract ("NYMEX Contract").

Buyer may fix the Commodity charge for blocks of Commodity through a Buyer-initiated trigger process ("Trigger Order"). Trigger Orders may be initiated for a specific individual month ("Monthly Order") or for a specific set of continuous months within the duration of the Delivery Period ("Strip Order"). Trigger Orders are filled on a best efforts basis during operating hours. The Commodity charge may be fixed by agreement of the Parties at any time prior to 1:00 PM on the expiration date of the applicable month's NYMEX Contract.

Buyer acknowledges that the Commodity charge may be set (fixed) for a period up to, but in no event beyond, the Delivery Period.

Buyer's "Responsible Trigger Contact(s)" have been identified as Sean Kane [kanest@milwaukee.k12.wi.us] and alternatively, [DFMSProcurement@milwaukee.k12.wi.us]. Seller will generate a confirmation to be sent to Buyer's Responsible Trigger Contact each time the Commodity charge is fixed ("Trigger Confirmation"). Each such Trigger Confirmation will be made a part of, and is not a replacement for, this Transaction Confirmation. All orders are binding upon being filled. Any notices regarding Trigger Confirmations must be sent to trigger@NRG.com. Changes to the Responsible Trigger Contact must be communicated in writing through your Direct Energy Business Development Manager.

Change in Utility Account Numbers:

The account number for a Service Location shall be the Utility Account Number set forth in the Service Locations section above or as attached, as applicable, or any replacement account number issued by the Utility from time to time. Service Locations may be added at a mutually agreed upon price. Accounts may be removed at Buyer's discretion if a particular location has been closed, sold, or acquired by Buyer, as long as they fall under 10% of the total volume.

Utility telemetry and usage fees are billed by the Utility and are the responsibility of Buyer, unless otherwise agreed to in writing by Seller.

Buyer acknowledges that it is responsible for compliance with all utility approved tariffs, handbook or other rules of the transportation program to effectuate a timely switch of suppliers. Seller shall not be liable to Buyer for any lost savings or lost opportunity as a result of a delay in service commencement due to actions or inactions of Buyer.

Gas Settlement Adjustment and No Swing: For each month of the Delivery Period, Buyer will pay the Purchase Price for the Contract Quantities plus the following settlements and adjustments as applicable. The term Contract Quantity is defined above.

If the Actual Quantity is more than the Contract Quantity, then the Purchase Price for each additional Dth of Actual Quantity will be the Market Based Rate CU-WG PA 101 Firm Pool Over plus \$0.000. If the Actual Quantity is less than the Contract Quantity, then Seller will credit Buyer at the Market Based Rate CU-WG PA 101 Firm Pool Under plus \$0.000 for each Dth under the Contract Quantity.

"Market Based Rate" is a variable price determined by Seller in commercially reasonable manner based on market conditions for the applicable Delivery Point.

Buyer acknowledges that it is acting for its own account, and that it has made its own independent decisions with respect to this Transaction Confirmation and that Seller is not acting as a fiduciary, financial, investment or commodity trading advisor for it in connection with the negotiation and execution of this Transaction Confirmation.

TAX EXEMPTION STATUS - If exempt, must attach certificate

In order to ensure accurate billing, tax status indication is required. Please check the appropriate status below:

Non-Exempt

Exempt (e.g. Residential, Non-Profit Organization, Manufacturing, Small Business, Agricultural, Resale, etc.)



This Commodity Master Agreement ("CMA") among **Direct Energy Business, LLC, Direct Energy Business Marketing, LLC d/b/a Direct Energy Business**, (collectively "Seller"), each a Delaware limited liability company, and Milwaukee Board of School Directors d/b/a Milwaukee Public Schools ("Buyer" or "Customer") (each a "Party" and collectively, the "Parties") is entered into and effective as of October 28, 2022.

1. Transactions: The terms of this CMA apply to all end-use sales of electric power and/or natural gas as applicable (each a "Commodity" and collectively, the "Commodities"), by the applicable Seller to Buyer (each sale a "Transaction") which will be memorialized in a transaction confirmation signed by both Parties (each a "Transaction Confirmation"). Each Transaction Confirmation shall set forth the Seller party providing service to Customer for such Transaction. This CMA, any amendments to this CMA, the Milwaukee PSC to which this CMA is attachment A, and related Transaction Confirmation(s) (together, a single integrated, "Agreement") is the entire understanding between Parties with respect to the Commodities and supersedes all other communication and prior writings with respect thereto; no oral statements are effective.

2. Performance: Buyer is obligated to purchase and receive, and Seller is obligated to sell and provide, the Contract Quantity of Commodity specified in a Transaction Confirmation. Buyer will only use the Commodity at the listed Service Locations in the applicable Transaction Confirmation and will not resell the Commodity.

3. Term: The Delivery Period and any Renewal Term are set forth in the applicable Transaction Confirmation. This CMA shall remain in effect until the "End Date" noted above, or is terminated by either Party pursuant to Section 14, as otherwise terminated by either Party for convenience upon at least 30 days' prior written notice; provided, or Sections 10-12 of the Milwaukee PSC, however, that this CMA will remain in effect with respect to Transactions entered into prior to the effective date of the termination until both Parties have fulfilled all outstanding obligations.

4. Purchase Price: Buyer will pay the Purchase Price stated in each Transaction Confirmation, subject to Sections 5 and 10. If the Purchase Price incorporates an index and the index is not announced or published on any day for any reason or if the Seller reasonably determines that a material change in the formula for or the method of determining the Purchase Price has occurred, then the Parties will use a commercially reasonable replacement price calculated by the Seller.

5. Changes to Purchase Price: In the event there is a change to any tariff, law, order, rule, tax, regulation, transmission rate, or any LDC, EDC or ISO changes to supplier obligations to serve, which increase Seller's costs, the Purchase Price may be adjusted by Seller to include such costs, but only 30 days after Seller has provided Buyer with a detailed written explanation of the source and amount of any such increase.

6. Billing and Payment: Seller will invoice Buyer for the Actual Quantity of Commodity and for any other amounts for which Buyer is responsible under this Agreement. Except as otherwise set forth herein, payment is due within 30 days of the date of the invoice. If Seller cannot verify the Actual Quantity at the time an invoice is issued, Seller shall invoice once said Actual Quantity is known and will not invoice based on estimated quantity. Buyer may pay interest on late payments for any amount due under this Agreement at 1.50% per month or, if lower, the maximum rate permitted by law ("Interest Rate"). Buyer may be responsible for all costs and fees, including reasonable attorney's fees, incurred in collecting any amounts owed to Seller and any fee charged to Seller for insufficient funds of Buyer. "Actual Quantity" means the actual quantity of Commodity that is either delivered or metered, as applicable, to Buyer's account. "Utility" means a state regulated entity engaged in the distribution of the applicable Commodity.

7. Taxes: The Purchase Price does not include Taxes that are or may be the responsibility of the Buyer, unless such inclusion is required by law. Buyer will reimburse Seller for any Taxes that Seller is required to collect and pay on Buyer's behalf and will indemnify, defend and hold Seller harmless from any liability against all Taxes for which Buyer is responsible. Buyer must provide Seller with any applicable Tax exemption documentation and Buyer will be liable for any Taxes assessed against Seller because of Buyer's failure to timely provide or properly complete any such documentation. "Taxes" means all applicable federal, state and local taxes, including any associated penalties and interest and any new taxes imposed in the future during the term of this Agreement. Liabilities imposed in this Section will survive the termination or expiration of this Agreement.

8. Disputes: If either Party in good faith disputes amounts owed hereunder, the disputing Party will contact the non-disputing Party in writing and pay the undisputed portion by the payment due date. The Parties will have 21 Business Days to negotiate a resolution. "Business Day" means any day on which banks are open for commercial business in Milwaukee, Wisconsin; any reference to "day(s)" means calendar days.

9. Title and Risk of Loss: Title to, possession of and risk of loss to the Commodity will pass to Buyer at the Delivery Point specified in the applicable Transaction Confirmation.

10. Material Deviation: Seller may in its sole discretion pass through to Buyer any losses and/or costs incurred by Seller related to a deviation of +/-25% from Contract Quantity (or, as applicable, estimated Contract Quantities) stated in the applicable Transaction Confirmation (which is not caused by weather). In addition, there are no penalties for Operational Flow Orders related to weather. Buyer is not obligated to a specific MDQ, Contract Quantity, or amount of gas during these events and thus no Material Deviation shall apply during these events.

11. Force Majeure: Other than payment obligations, a Party claiming Force Majeure will be excused from its obligations under Section 2 only if it provides prompt notice of the Force Majeure, uses due diligence to remove its cause and resumes performance as promptly as reasonably possible. During a Force Majeure, Buyer will not be excused from its responsibility to pay for Balancing Charges nor from its responsibility to pay for Commodity received. "Force Majeure" means a material, unavoidable occurrence

beyond a Party's control, and does not include inability to pay, an increase or decrease in Taxes or the cost of Commodity, the economic hardships of a Party, the full or partial closure of Buyer's facilities, unless such closure itself is due to Force Majeure.

12. Financial Responsibility: Buyer's Credit Assurance has already been established with Seller at the time this Agreement was entered, no other assurance is required. If Buyer falls under BB credit rating, Seller may require Buyer to provide adequate assurance in the amount of 2 months' worth of billings, which may include, in the Seller's discretion, security in the form of cash deposits, prepayments, letters of credit or other guaranty of payment or performance ("Credit Assurance").

13. Default: "Default" means: (i) failure of either Party to make payment by the applicable due date and the payment is not made within 15 Business Days of a written demand; (ii) any representation or warranty made by a Party in this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true and such breach is not cured within 15 Business Days after written notice; (iii) a secured party has taken possession of all or any substantial portion of its assets or is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation or merger); (iv) failure of a Party to fulfill any of its obligations in this Agreement (except as otherwise provided in subsections (i), (ii) (iii) and (iv) hereof) and such failure is not cured within 15 Business Days after written notice; provided that no cure period or demand for cure applies to an early termination of a Transaction Confirmation by Buyer or under Section 15(A)(iii).

14. Remedies: In the event of a Default, the non-defaulting Party may: (i) withhold any payments or suspend performance; (ii) accelerate any amounts owing between the Parties and terminate any Transactions and/or this Agreement between the Parties and/or their affiliates; (iii) calculate a settlement amount by calculating all amounts due to Seller for Actual Quantity and the Close-out Value for each Transaction being terminated. Any settlement amount due from the defaulting Party to the non-defaulting Party will be paid within 15 Business Days of written notice from the non-defaulting Party. "Close-out Value" is the sum of (a) the amount due to the non-defaulting Party regarding the Contract Quantities remaining to be delivered as stated in the applicable Transaction Confirmation(s) during the Delivery Period or, if applicable, the current Renewal Term, calculated by determining the difference between the Purchase Price and the Market Price for such quantities; and (b) without duplication, any net losses or costs incurred by the non-defaulting Party for terminating the Transaction(s), including costs of obtaining, maintaining and/or liquidating commercially reasonable hedges, Balancing Charges and/or transaction costs. "Market Price" means the price for similar quantities of Commodity at the Delivery Point during the Delivery Period or Renewal Term. For purposes of determining Close-out Value, Market Price may be established through agreed upon third parties. The Parties agree that Close-out Value constitutes a reasonable approximation of damages and is not a penalty or punitive in any respect. Physical liquidation of a Transaction or entering into a replacement transaction is not required to determine Close-out Value. The defaulting Party may be responsible for costs and fees incurred for collection of reasonable attorney's fees and expert witness fees.

15. Representations, Warranties and Covenants: Each of the following are deemed to be repeated each time a Transaction is entered into and during the Delivery Period and any Renewal Period: **A.** Each Party represents that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform to this Agreement; (ii) the execution of this Agreement is within its powers, has been duly authorized and does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it; and (iii) there are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, its parent or guarantor or to its knowledge, threatened against it, its parent or guarantor. **B.** Buyer represents, warrants and covenants that: (i) it is not a residential customer; (ii) execution of this Agreement initiates enrollment and service for the Delivery Period and any Renewal Term up until the End Date; (iii) if it is the person or entity executing this Agreement is doing so in its capacity as an agent, such Party represents and warrants that it has the authority to bind the principal to all the provisions contained herein and agrees to provide Seller true, correct and complete documentation of such agency relationship, and (iv) (a) it has and will provide, to Seller, all information reasonably required to substantiate its usage requirements; (b) acceptance of this Agreement constitutes an authorization for release of such usage information; (c) it will assist Seller in taking all actions necessary to effectuate Transactions, including providing an authorization form permitting Seller to obtain its usage information; and (d) the usage information provided is true and accurate as of the date furnished and as of the effective date of the Agreement. **C.** Each Party acknowledges that: (i) this Agreement is a forward contract and a master netting agreement as defined in the United States Bankruptcy Code ("Code"); (ii) this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodity; (iii) Seller is not a "utility" or an "energy generation facility" as defined in the Code; (iv) Commodity supply will be provided by Seller under this Agreement, but delivery will be provided by Buyer's Utility; (v) Seller does not own or operate transmission and distribution systems through which the Commodity is delivered to Buyer, and Seller is not liable for any damages or Losses associated with such transmission or distribution systems; and (vi) Buyer's Utility, and not Seller, is responsible for responding to leaks or emergencies on the Utility's distribution system should they occur. **D.** Seller warrants that (i) it has good title to Commodity delivered, (ii) it has the right to sell the Commodity, and (iii) the Commodity as delivered will be free from all royalties, liens, encumbrances, and claims. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

16. Confidentiality: Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. In addition, this Agreement with its terms and conditions, will be published and presented to the Milwaukee Board of School Directors in a public meeting and website.

17. Indemnification; Limitation of Liability: **A.** Pursuant to the limitations of the applicable laws, Buyer shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of Buyer's negligence for acts, policies, or directives that affect the activities covered

by this Agreement. **B.** Seller will be responsible for and indemnify Buyer against any Losses which attach before title passes to Buyer. **C.** NEITHER PARTY WILL BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, LOST PROFITS OR SPECIFIC PERFORMANCE.

Other: **(A)** The Agreement, and any dispute arising hereunder, is governed by the law of the state in which the Service Locations are located, without regard to any conflict of rules doctrine. **(B)** Any notice or waiver including without limitation any termination or disconnection notice, shall be provided in writing and, if sent to Seller, a copy delivered to: Direct Energy Business, Attn: Customer Services Manager, 1001 Liberty Avenue, Pittsburgh, PA 15222, Phone: (888) 925-9115; Fax: (866) 421-0257; Email: CustomerRelations@NRG.com. Notice sent by electronic means to Seller shall be deemed to have been received by the close of the Business Day on which it was transmitted, or such earlier time as is confirmed by the receiving Party. Notice delivered by overnight courier shall be deemed to have been received on the Business Day after it was sent, or such earlier time as is confirmed by the receiving Party. Notice delivered by first class mail (postage prepaid) shall be deemed to have been received at the end of the third Business Day after the date of mailing. Notice to Buyer shall be sufficient if sent by Certified or Registered mail to Milwaukee Board of School Directors, Attn: Director of Procurement & Risk Management, 5225 W. Vliet Street, Milwaukee, WI 53223, and copied to Milwaukee Public Schools, Attn: Division of Facilities and Maintenance Services, 1124 N. 11th Street, Milwaukee, WI 53233. **(E)** No amendment to this Agreement will be enforceable unless reduced to writing and executed by both Parties. **(F)** Seller may not pledge, encumber or assign this Agreement or the accounts, revenues and proceeds thereof without Buyer's consent. Consent shall not be unreasonably withheld. Buyer may not assign this Agreement without Seller's consent not to be unreasonably withheld. **(G)** This Agreement may be executed in separate counterparts by the Parties, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. **(H)** Any capitalized terms not defined in this CMA are defined in the Transaction Confirmation or shall have the meaning set forth in the applicable Utility rules, tariffs or other governmental regulations, or if not defined therein then it shall have the generally accepted meaning customarily attributed to it in the natural gas or electricity generation industries, as applicable. **(I)** Any document generated by the Parties with respect to the Agreement, including the Agreement, may be imaged and stored electronically and may be introduced as evidence in any proceeding as if it were an original business record and shall not be contested by either party as admissible evidence. **(J)** Where multiple parties are Party to this Agreement with Seller and are represented by the same agent, this Agreement will constitute a separate agreement with each such Party, as if each such Party executed a separate Agreement, and that no such Party shall have any liability under this document for the obligations of any other Parties. **(K)** If a conflict arises between the terms of this CMA and a Transaction Confirmation, the Transaction Confirmation will control with respect to that particular Transaction. However, the Milwaukee PSC shall supersede the CMA and Transaction Confirmation **(L)** If a broker or agent has been involved in any Transaction, such broker is an agent of Buyer only and not an agent of Seller.