



Product Supply Agreement

THIS PRODUCT SUPPLY AGREEMENT ("Agreement") numbered 1704B and dated as of January 28, 2013, is made by and between PRAXAIR DISTRIBUTION, INC., a Delaware corporation, having an office at 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113 (hereinafter called "Seller") and Muskegon County Wastewater], a MI corporation, having an office at 8301 White Road, Muskegon, MI 49442 (hereinafter called "Buyer").

1. Definitions

The term "First Delivery" means the date on which Seller first delivers Product to Buyer, which date will in no event be earlier than the date on which Buyer is no longer obligated to purchase Product for Buyer's Location under the terms of any other contract. In addition to the meaning of the term "Supply System" set forth in the Rider(s), the term "Supply System" means a system located at Buyer's Location which is owned by Seller for the supply of Product to Buyer hereunder and which may be comprised of Product generating systems, storage units, vaporizers, piping up to Buyer's Product distribution system, controls and other equipment, devices and/or instrumentation as deemed appropriate by Seller. Capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Rider(s).

2. Requirements

Seller will sell to Buyer, and Buyer will purchase from Seller, on the terms and conditions hereinafter set forth, Buyer's total present and future requirements, in gaseous and liquid form, of Product for use at Buyer's Location(s), and if the operations at Buyer's Location(s) are conducted at expanded or new location(s), Seller will have the right to supply Product to such expanded or new location(s). As to each Rider, Buyer represents and warrants to Seller that as of First Delivery Buyer will not be obligated under the terms of any other contract to purchase Product for Buyer's Location(s). In the event the foregoing representation and warranty proves to be false, Buyer will indemnify, and hold harmless Seller from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims which Seller may incur in connection with any claim or claims asserted by any third party as a result thereof. Buyer will not purchase any other substance(s) or system(s) in replacement of Product unless Seller has first refused a written offer from Buyer to supply such substance(s) or comparable system(s) at the same total cost contained in

such offer on terms and conditions substantially similar to those terms and conditions contained herein.

3. Prices and Payment

Buyer will pay Seller the Prices for Product, equipment, or services supplied hereunder and any charges and surcharges related thereto, including those associated with regulatory and environmental compliance, greenhouse gas emission reductions, and obtaining power and transportation, whether or not set forth in the Rider. If Seller provides Buyer with product(s), equipment and/or services not specifically covered by any Rider or other agreement, the prices, charges and surcharges as are set forth in Seller's schedule applicable to such product(s), equipment or services will apply, any such product(s) will meet industry standards for purposes of Article 5 and any such product(s), equipment, or services will be deemed to be provided pursuant to the terms and conditions of this Agreement. In addition, Buyer will pay or reimburse Seller for any sales, property, use, excise or other duty, tax, charge or fee now or hereafter imposed by reason of any sale, delivery or furnishing of any Product, equipment, or services hereunder. Nothing contained in this Agreement will be construed to relieve Buyer from its obligations to pay any applicable Monthly Service Charge, Monthly Facility Fee, Demand Charge, Monthly Rental or Cylinder Rental during the term of any Rider. Seller will invoice Buyer by Seller's standard billing methods. Terms of payment will be net thirty (30) days following date of invoice. At Seller's request and subject to Buyer's ability to do so, Seller and Buyer will utilize Seller's website or other electronic data interchange for invoicing and paying of invoices. If Buyer fails to make timely payment in accordance with the terms of this Agreement, or its financial responsibility becomes otherwise impaired, or if Buyer is otherwise in default of its obligations hereunder, Seller reserves the right, among other remedies, to refuse to supply Product except for receipt of cash with order

and/or payment in full of all outstanding charges, and/or assess and collect from Buyer a monthly late charge on any delinquent balance equal to the lesser of eighteen percent (18%) per annum or the maximum charge permitted by law, and/or enter Buyer's premises and remove any Supply System, Cylinders or other Seller's equipment located thereat with or without notice of legal process, and/or suspend Seller's performance under this Agreement and/or terminate this Agreement or any Rider. If any action is required to collect Buyer's delinquent account, recover any Cylinders or otherwise enforce the terms and conditions of this Agreement, Buyer will pay Seller all fees and costs of such collection, recovery or enforcement including reasonable legal fees and expenses.

4. Delivery

Seller will deliver to Buyer Buyer's requirements for Product in accordance with the terms of this Agreement. Product in Cylinders will be delivered F.O.B. point of shipment. At Seller's request, Buyer will provide to Seller information relating to Buyer's pattern of use of Product from each Supply System. Seller may anticipate Buyer's requirements for Product and deliver Product at such times as are consistent with Seller's delivery schedule. The delivery of Product by Seller will constitute Buyer's purchase thereof, and the quantities delivered will be measured by Seller by the method it regularly uses for the type of delivery made. Buyer grants to Seller the right of twenty-four (24) hour access to each Supply System site or the site of any Product storage system provided by Buyer as provided in any Rider, and if (a) Buyer fails to grant or delays such access, or (b) Seller is unable to deliver Product (i) from Seller's Shipping Point or (ii) at any time consistent with Seller's delivery schedule or otherwise in accordance with the terms of this Agreement due to any act or omission of Buyer, Buyer will pay Seller any applicable delivery charge set forth in Seller's delivery charge schedule. If Seller is requested by Buyer and is able to make deliveries during a strike or other concerted acts of workers affecting Buyer's Location(s), then such deliveries will be made at Buyer's sole risk and, notwithstanding anything in this Agreement to the contrary, Buyer will indemnify and hold harmless Seller from and against any and all costs, fees (including reasonable legal fees and

expenses), damages, liabilities and claims arising out of or incident to any such deliveries. In addition, Seller reserves the right to request, in its sole discretion, that Buyer provide qualified personnel to deliver Product to any Supply System affected by such strike or concerted acts, and Buyer will provide such personnel.

5. Specifications

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. Since Buyer may obtain devices which have the capability of testing whether Product meets the Specifications, no claim of any kind with respect to the conformance of Product to the foregoing Specifications, 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 in respect to which such claim is made. The foregoing constitutes Buyer's exclusive remedy and Seller's sole obligation with respect to any such claim. THERE ARE NO EXPRESS WARRANTIES BY SELLER OTHER THAN THOSE SPECIFIED IN THIS ARTICLE 5. NO WARRANTIES BY SELLER (OTHER THAN WARRANTY OF TITLE AS PROVIDED IN THE UNIFORM COMMERCIAL CODE) WILL BE IMPLIED OR OTHERWISE CREATED UNDER THE UNIFORM COMMERCIAL CODE INCLUDING WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

6. Price Changes

Seller will have the right to adjust the Prices by giving Buyer not less than fifteen (15) days prior written notice of the effective date of such adjustment; provided, however, that if said Prices are increased and Buyer, within fifteen (15) days after said 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 Seller, within fifteen (15) days thereafter, does not agree to either meet said lower prices or rescind the notice of increased Prices, Buyer will have the right within ten (10) days thereafter to terminate this Agreement as to the supply of Product for which such lower prices are offered by giving Seller not

less than ten (10) days prior written notice. 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. Any adjustments made by Seller pursuant to this Article 6 with respect to any Monthly Service Charge, Demand Charge or Monthly Rental set forth in the Rider or to surcharges or other charges which arise pursuant to Article 3 will not be subject to the proviso contained in the first sentence of this Article 6.

BY SIGNING BELOW, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT IS CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED ON THE BACK OR SECOND PAGE HEREOF AND/OR ON ANY RIDER, EXHIBIT OR SCHEDULE ATTACHED HERETO AT THE TIME OF EXECUTION OR AT THE TIME SUBSEQUENTLY EXECUTED BY BUYER AND SELLER. 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) Muskegon County Wastewater
Submitted

by: Commissioner Terry J. Sabo

By: _____

Signature: 

Title: Public Works Chairman

Date: 05/14/13

PRAXAIR DISTRIBUTION, INC. (Seller)

Submitted

by: Jake Black

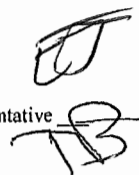
By: Erica Jones

Signature: 

Title: Region Specialty Gas Sales Manager

Date: 6/13/13

- (f) Seller will, at Buyer's expense, remove each Supply System within a reasonable time after the termination of the Basic Term of this Rider. Seller may at its expense remove any Supply System or part thereof, and replace it with another Supply System or part thereof, as Seller may deem appropriate for the supply of Buyer's requirements. Seller will have the right from time to time to shut down each Supply System for such period of time as may be necessary for repairs and maintenance consistent with proper operation. Each Supply System will remain the property of Seller at all times. Buyer will hold harmless Seller from and against liens and claims against each Supply System due to its location on Buyer's premises.
- (g) If Buyer no longer has Product requirements hereunder for the remainder of the Basic Term hereof, Buyer's expiration of such Basic Term. Seller will remove such supply system at No Charge, and in the event that following the removal of such Supply System, Buyer's need for Product resumes at any time within the Basic Term covering such Supply System, this Rider will be reinstated, the Basic Term will be deemed extended by the number of days that such Supply System was removed from Buyer's Location(s) and Buyer will reimburse Seller for the cost of reinstalling the Supply System. If Seller relocates, modifies or replaces all or part of any Supply System due to a change in Buyer's requirements, method of supply, pressure specifications, Buyer's Location(s) or Buyer's facilities, Seller may charge Buyer the cost of such relocation, modification or replacement, adjust the Monthly Service Charge set forth on the face hereof covering such relocated, modified or replaced Supply System, and extend the term hereof effective upon First Delivery to or from the relocated, modified or replacement Supply System for a period equal to the Basic Term hereof.
- (h) Buyer hereby authorizes Seller to file a UCC-1 Financing Statement in order to reflect Seller's ownership

Handwritten initials of two authorized representatives, one appearing to be 'WJ' and the other 'TB'.

4. Delivery, Supply System and Supply System Sites

(a) Product is to be delivered in bulk form. The Supply System shall be located at Buyer's Location(s) and shall at all times be owned and maintained by Seller for the supply of Product to Buyer hereunder. The Supply System may be comprised of air separation facilities, Product generating systems, storage units, vaporizers, piping, controls and other equipment, devices and/or instrumentation as deemed appropriate by Seller.

(b) Seller will install each Supply System and make the site ready for Buyer's Product distribution system. The Buyer.

(c) Buyer, at its expense, will provide a suitable site for each Supply System free from any underground or overhead obstructions and with access either by road or railroad siding as mutually agreed upon by the parties, construct a suitable foundation for each Supply System as specified by Seller, install fencing adequate to prevent tampering, install isolation barriers as required, obtain any necessary permits and licenses for each Supply System, install and maintain a properly designed system for the distribution of Product from each Supply System to Buyer's points of use, and furnish utilities as required by Seller in connection with each Supply System, such as electric power, lighting, telephone lines, water and/or steam, and the facilities to deliver such utilities to the point(s) on each Supply System site designated by Seller.

(d) Each Supply System site furnished by Buyer hereunder will be free from toxic and hazardous materials w Supply System site, or which would cause damage to any adjoining property. Notwithstanding anything in the Agreement to the contrary, Buyer hereby indemnifies and holds harmless Seller from and against any and all claims, liabilities, costs (including legal fees), expenses, damages, penalties and fines that result from any toxic or hazardous materials now or hereafter in, on or under the Supply System site and do not occur or result directly from Seller's performance pursuant to the Agreement. If subsequent to the date of

this Rider any new local, state or federal law, rule or regulation requires modification to any Supply System or Supply System site, or any additional permits, licenses or rights are required, any costs associated with performing such modifications or obtaining such permits, licenses or rights will be borne by Buyer.

(e) If any Supply System is damaged by Buyer, its agents, employees, contractors or invitees, the cost of repairing such Supply System will be borne by Buyer. Buyer will prevent persons other than those authorized by Seller from entering any Supply System site, delaying Buyer's Product distribution system. The repairing, adjusting or otherwise tampering with any Supply System.

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BY SIGNING BELOW, BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS RIDER IS CONDITIONAL UPON THE TERMS AND CONDITIONS CONTAINED ON THE BACK OR SECOND PAGE HEREOF AND/OR IN THE AGREEMENT OR ANY EXHIBIT, SCHEDULE OR ADDENDUM ATTACHED HERETO AT THE TIME OF EXECUTION OR AT THE TIME SUBSEQUENTLY EXECUTED BY BUYER AND SELLER. Buyer and Seller intending to be legally bound have by the signatures of their authorized representatives executed this Rider as of the date first above written.

Muskegon County Wastewater (Buyer)

PRAXAIR DISTRIBUTION, INC. (Seller)

Submitted by: David Johnson

Submitted by Jake Black

By: Commissioner Terry J. Sabo

By: Erica Jones

Signature: TJ Sabo

Signature: Erica Jones

Title: Public Works Chairman

Title: Region Specialty Gas Manager

Date: _____

Date: 6/3/13

TJ

TJ

As to the supply of Product pursuant to this Rider, the Agreement is hereby modified as follows:

A. Seller will provide normal and reasonable maintenance and repair of the Supply System(s) and, notwithstanding anything in the Agreement to the contrary, Buyer will reimburse Seller for the cost thereof.

Rev 2-1 1a Initials of each authorized representative _____

Handwritten initials 'D' and 'TB' are present, corresponding to the signature lines in the text above.



THIS RIDER ("Rider") numbered 1704B and dated as of January 28, 2013 (the "Effective Date"), is made a part of the Product Supply Agreement (the "Agreement") by and between PRAXAIR DISTRIBUTION, INC., a Delaware corporation, having an office at 39 Old Ridgebury Road, Danbury, Connecticut 06810-5113 (hereinafter called "Seller") and Muskegon County Wastewater, a(n) MI corporation having an office at 8301 White Road, Muskegon, MI 49442 (hereinafter called "Buyer").

1.As to this Rider, the following words and terms shall have the following meanings:

"Basic Term" means the period commencing on the Effective Date and continuing for five (5) years following the date of First Delivery to the Supply System.

"Buyer's Location(s)" means: 8301 White Road, Muskegon, MI 49442

"Prices" are:

Item No.	Product	Specification	Estimated Volume in Cubic Feet (ft ³)	Charge per 100 cubic feet (ft ³) of product	Monthly Service Charge	Monthly Demand Charge
1	Argon	99.998%	10,500	\$4.25	\$200.00	
2	Telemetry				\$20.00	

Pricing firm for the first twelve (12) months with a 5% cap thereafter per calendar year.

The Monthly Service Charge and Monthly Demand Charge for each Supply System will commence on the earliest of the following dates: (a) the date of First Delivery of Product(s) to or from such Supply System, (b) thirty (30) days after the date such Supply System is delivered to Buyer's Location in the event Seller is delayed in tendering delivery of Product(s) to Buyer from such Supply System and such delay is due to the acts or omissions of Buyer or (c) thirty (30) days after the date such Supply System or Product(s) would have been delivered to Buyer's Location had such delivery not been delayed due to the acts or omissions of Buyer.

"Product(s)" means the gaseous and liquid Product(s) noted in the table under "Prices" above.

"Estimated Monthly Volume" means the indicated amount for the Product(s) in the table under "Prices" above.

"Specifications" means the Product specification set under the column so indicated in the table under "Prices" above, or the Compressed Gas Association (CGA) specification for such Product, if none is indicated.

"Supply System" means the following supply system(s):

Item No.	Supply System	Supply System Delivery Pressure (psig)	Average Flow Rate (cfh)	Peak Flow Rate (cfh)	Peak Flow Duration (h/day)
1	FA MB450CHP	100	50	75	8
2	FA DATAQUEST				

2. MODIFICATIONS TO THE PRODUCT SUPPLY AGREEMENT

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party. Such materials and information are considered valuable trade secrets of the disclosing party and any unlawful disclosure of such materials or information will result in significant damages to the disclosing party. The receiving party will hold in confidence all such materials and information. However, the receiving party may disclose such materials and information to (a) governmental agencies for the purpose of obtaining permits under any Rider, and (b) the receiving party's employees for the purpose of performing the receiving party's obligations under this Agreement. In the case of any of the aforementioned disclosures, the receiving party will inform its employees or governmental agencies that such materials and information are the proprietary and confidential information of the disclosing party and are to be treated accordingly. Unless otherwise agreed, the receiving party will keep all such materials and information confidential for a period which will expire ten (10) years after the termination date of this Agreement. It is understood that the foregoing obligation of confidentiality does not apply to materials and information that: (i) was already known to the receiving party prior to the disclosure of same hereunder, as evidenced by the receiving party's written records prepared prior to such disclosure; (ii) was in or hereafter comes within the public domain, other than by the receiving party's failure to fulfill its obligations hereunder; (iii) is made available to the receiving party by a third party who does not have any direct or indirect obligation of secrecy to the disclosing party; or (iv) is developed by the receiving party independent of any disclosure under this Agreement as evidenced by its written records.

10. Assignment

Any assignment of this Agreement by either party without the prior written consent of the other party, which consent will not be unreasonably delayed or withheld, will be void; provided, however, that Seller will have the right without Buyer's consent to assign this Agreement in whole or in part to any affiliate of Seller, or any party obtaining all or substantially all of the business assets of Seller related to the production, storage or distribution of any Product(s). If Buyer sells or otherwise transfers or conveys all or substantially all of the assets relating to the operations at Buyer's Location(s),

Buyer will, as a condition precedent to the closing of such sale, transfer or conveyance, require the purchaser or transferee to assume all of the rights and obligations of Buyer under this Agreement. This Agreement will inure to the benefit of, and be binding upon, the respective heirs, representatives, successors, including any by way of merger or consolidation, and permitted assigns of the parties.

11. Notices

All notices, unless otherwise provided herein, will be in writing and deemed given on the date the notice is hand delivered, mailed or electronically transmitted to the receiving party at such party's Address. Either party may change its Address upon notice to the other party as set forth herein.

12. Term

Except as provided in Articles 3, 6 and 7 or the Rider(s), this Agreement will be in effect from the date hereof and will continue in effect thereafter as to each Rider for the period of the Basic Term, and will continue in effect thereafter as to such Rider unless or until either party terminates such Rider effective as of the date of expiration of the Basic Term thereof by giving to the other party not less than twelve (12) months prior written notice of termination with respect to such Rider or, if either party does not so terminate such Rider upon the expiration of the Basic Term thereof, such Rider will continue in effect thereafter for successive renewal terms equal to the period of the Basic Term of such Rider (the "Renewal Terms") until either party terminates such Rider effective upon the expiration of any Renewal Term by giving the other party not less than twelve (12) months prior written notice of termination with respect to such Rider.

13. Dispute Resolution

If a party to this Agreement has reasonable grounds to believe that the other party hereto has failed to fulfill any obligation hereunder, or that its expectation of receiving due performance under this Agreement may be impaired, such party will promptly notify the other party in writing of the substance of its belief. The party receiving such notice must respond in writing within thirty (30) days of receipt of such notice and either provide evidence of cure of the condition specified, or provide an explanation of why it believes that its performance is in accordance with the terms of this Agreement, and also specify three (3) dates,

7. Contingencies

Neither party hereto will be liable to the other for default or delay in the performance of any of its obligations hereunder (except any obligation to make payments when due) due to act of God, accident, fire, flood, storm, riot, war, act of terrorism, sabotage, explosion, strike, concerted acts of workers, national defense requirements, governmental law, ordinance, rule or regulation, whether valid or invalid, extraordinary failure of equipment or apparatus, inability to obtain electricity or other type of energy, feedstock, raw or finished material from normal sources of supply, labor, equipment or transportation, or any similar or different contingency beyond its reasonable control which would prevent or delay performance or make performance commercially impracticable whether or not the contingency is of the same class as those enumerated above, it being expressly agreed that such enumeration is non-exclusive; provided, however, that neither business downturn nor economic conditions will qualify as a contingency within the meaning of this Article 7. In the event any such contingency affects only a part of Seller's capability to produce and/or deliver Product, Seller will allocate production and/or deliveries among the requirements of all its affected customers and Seller's own requirements in a fair and reasonable manner. Buyer will pay or reimburse Seller for any additional costs incurred relating to the delivery of any Product to Buyer during a contingency. During any period that delivery of Product is interrupted or reduced due to a contingency hereunder, Seller may extend the Basic Term for a period equal to the duration of the contingency.

8. Health, Safety, Indemnity and Limitation of Liability

Buyer acknowledges that there are hazards associated with Product, including the storage, use and handling thereof, and Buyer agrees that its employees, agents, contractors, and others concerned with Product are aware of such hazards. Buyer 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. Buyer will notify Seller of any hazards and safety procedures at Buyer's Location(s) and Buyer will notify Seller in advance of any anticipated construction,

renovation, or change in operations in the area of any Supply System site so that any hazards associated with same can be minimized. Buyer will be responsible for complying with all relevant reporting obligations under all applicable laws, including the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sections 11001-11049 (EPCRA, also commonly known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)), that result from the presence at Buyer's Location(s) of Product supplied under this Agreement. Buyer will warn and protect its employees, contractors and others exposed to the hazards posed by Buyer's storage, use and handling of Product. Seller will provide documents to Buyer containing Seller's safety and health information pertaining to Product, including Seller's Material Safety Data Sheet(s), and Buyer will incorporate such information into Buyer's safety program. Buyer hereby waives any right of subrogation that Buyer, any insurer of Buyer or any third party making a claim through Buyer, may have under this Agreement. Seller will not be liable to Buyer for any incidental, consequential, indirect, special or exemplary damages (including lost profits, sales or other similar damages) arising in connection with this Agreement without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, strict liability, equity or any other theory of law) on which such damages are based. Each party will indemnify and hold harmless the other party from and against any and all costs, fees (including reasonable legal fees and expenses), damages, liabilities and claims arising from the injury, illness or death of the indemnifying party's employees in any way related to any activities performed in connection with or Product supplied by Seller under this Agreement, whether or not such injury, illness, or death is claimed to have been caused by, resulted from, or was in any way connected with the negligence of the party to be indemnified.

9. Confidentiality

This Agreement, including the Rider(s) and any addendum hereto, and all drawings, diagrams, specifications, operating data, pricing, costs and other materials or information furnished by either party to the other in connection therewith, and the information contained therein are the proprietary and confidential information of the disclosing