

**WARRANTY AGREEMENT BETWEEN THE CITY OF RAPID CITY AND  
TROJAN TECHNOLOGIES FOR UV DISINFECTION SYSTEM**

This Agreement is made by and between the **CITY OF RAPID CITY**, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701 (hereinafter the “City”), and **TROJAN TECHNOLOGIES**, an Ontario General Partnership, of 3020 Gore Road, London, Ontario, Canada N5V 4T7 (hereinafter collectively referred to as “Trojan”).

WHEREAS, the City issued a Request for Proposals for Water Reclamation Facility (WRF), Ultraviolet (UV) Disinfection System Selection, Project No. 14-2157, CIP 51017, in April 2014 (the “RFP”); and

WHEREAS, Trojan’s Proposal was selected by the City, and Trojan was awarded a contract by the City to supply a UV Disinfection System for installation at the WRF; and

WHEREAS, Trojan’s Proposal included a warranty as described therein; and

WHEREAS, the warranty described in Trojan’s Proposal differs from the warranty requirements of the Request for Proposals and the standard warranty that the City requires in equipment purchase contracts; and

WHEREAS, the UV Disinfection System (the “Equipment”) supplied by Trojan is specialized equipment utilized for a specific use at the WRF; and

WHEREAS, in light of the above, the City is agreeable to modifying the warranty terms to those contained herein; and

WHEREAS, the parties wish to reduce their understandings and agreements to writing.

NOW THEREFORE, the parties agree as follows:

1. **Recitals.** The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. **Equipment Purchase.** The City has accepted the Proposal provided by Trojan pursuant to the RFP. As part of City’s Water Reclamation Facility UV Disinfection System and Post Aeration System Improvements, Project No. 14-2157/ CIP No. 51017, the City has directed its contractor to purchase the equipment identified in the Proposal. The warranty described herein shall be assigned by the purchasing contractor to the City.
3. **Warranty Terms.** The terms of the warranty provided by Trojan shall be as identified in Exhibit A, attached hereto and incorporated herein as if fully set forth at length.

4. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

5. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

6. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors and permitted assigns, any legal or equitable rights hereunder.

7. Waivers. No waiver of any term or provision of this Agreement shall be binding unless executed in writing by the party entitled to the benefit thereof.

8. Cumulative Remedies. The rights and remedies under this Agreement are in addition to and not exclusive of any other rights, remedies, powers and privileges, whether at law or in equity, under this Agreement or otherwise, that any party may have against another. No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude the exercise of any other right, power or privilege. No waiver of any breach or default of any covenant or agreement hereunder shall be deemed a waiver of any preceding or subsequent breach or default of the same or any other covenant or agreement.

9. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

10. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

11. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

12. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible.

13. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

14. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

15. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2015.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor

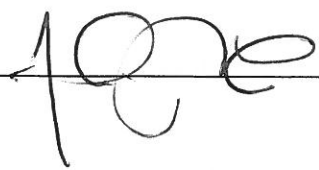
ATTEST

\_\_\_\_\_  
Finance Officer

(seal)

Dated this 6<sup>TH</sup> day of MAY, 2015.

**TROJAN TECHNOLOGIES**

By 

Its \_\_\_\_\_

ANDREW MCLELLAND  
(Printed Name)

VP OF OPERATIONS  
(Printed Title)

**EXHIBIT A**

**TROJAN TECHNOLOGIES WARRANTIES AND GUARANTEES  
WATER RECLAMATION FACILITY (WRF), ULTRAVIOLET (UV)  
DISINFECTION SYSTEM SELECTION,  
PROJECT NO. 14-2157, CIP 51017**

## PERFORMANCE GUARANTEE

Notwithstanding any and all Performance Guarantees submitted previously in relation to Owner's Project No. 14-2157 and CIP No. 51017, TROJAN TECHNOLOGIES, certifies to Rapid City WRF, SD that the TROJANUVSIGNA™ DISINFECTION EQUIPMENT to be supplied will disinfect to the limits defined in the City of Rapid City RFP, section 11300 1.3 A, and as amended by Addendum 1, provided the water quality criteria set out in said section is present and maintained.

This guarantee will comply with the requirements set out in the City of Rapid City RFP, section 11300 1.6 A thru D.

In no event shall Trojan's liability relating to the Equipment, or the agreement between Trojan and the Customer relating to the Equipment, exceed that portion of the purchase price for the Equipment which is actually paid to Trojan.

June 4, 2014



**GET GENUINE.**

***"If it's not a Genuine Trojan part, it shouldn't be part of your Trojan system."***

## REPLACEMENT PARTS PRICE GUARANTEE

TROJAN TECHNOLOGIES hereby certifies to Rapid City WRF, SD that the ULTRAVIOLET DISINFECTION EQUIPMENT replacement parts prices will not exceed the following:

- Lamp, each (P/N: 908040-003) \$500.00 each
- Lamp Driver, each (P/N: 915306) \$800.00 each
- Sleeve each (P/N: 336268-2672) \$225.00 each
- Wiper Cartridge Assy, (contains 2 seals) each (P/N: 337352) \$35.00, each

The percent increase in prices, in the subsequent seven (7) years, will not exceed the percent increase in the Producers Price Index. Also note pricing does not include freight/shipping charges.



**GET GENUINE.**

***"If it's not a Genuine Trojan part, it shouldn't be part of your Trojan system."***



June 12, 2014

## Equipment Limited Warranty – Rapid City Replacement, SD (204520)

The following terms and conditions will govern the equipment warranty provided by Trojan Technologies to the Owner/Operator:

**Period of Coverage:** Trojan Technologies ("Trojan") warrants to the Owner/Operator noted above (the "Customer") that if within 36 calendar months from equipment Substantial Completion, equipment manufactured by Trojan (the "Equipment") will be free from defects in material and workmanship and will function in accordance with the specifications agreed to by Trojan for the Equipment.

"Substantial Completion" is the date on which the Equipment commissioning and start-up is sufficiently completed such that the Equipment is capable of being put into operation such that the Owner can utilize the Equipment for its intended disinfection use.

Customer must notify Trojan in writing within 5 days of the date of any Equipment failure. This notification shall include a description of the problem, a copy of the operator's log, a copy of the Customer's maintenance record and any analytical results detailing the problem. If Customer does not notify Trojan of the problem as specified above, this warranty may, in Trojan's discretion, be invalid.

If a defect occurs, Trojan will repair or replace the defective component free of charge, at no cost to Owner, provided that:

1. Customer fully cooperates with Trojan, in the manner requested by Trojan, in attempting to diagnose and resolve the problem by way of telephone support. If the problem can be diagnosed and verified by telephone support and a replacement part is required, Trojan will either ship at Trojan's expense, a repaired, reworked or new part to the Customer, who will install such part as directed by Trojan, or direct Customer to acquire, at Trojan's expense, such part from a third party and to install such part as directed by Trojan;
2. In the event that Trojan determines that the problem cannot be resolved by way of telephone support and/or shipment by Trojan, or acquisition by the Customer of a replacement part for installation by the Customer, Trojan will send one or more persons to make an onsite inspection of the problem. If an onsite visit is made, Trojan personnel will evaluate the problem and repair or replace any Equipment determined to be in breach of this warranty. If the problem is not attributable to a breach of this warranty, Trojan reserves the right to invoice the Customer for this service; and
3. The Equipment is covered and the failure occurs within the Warranty Period

Trojan will use new and/or reconditioned parts in performing warranty repair. Trojan has the right to use parts or products of original or improved design in the repair or replacement.

The products or general components replaced or repaired free of charge under the Equipment Limited Warranty are warranted only for the *remaining* portion of the original Equipment Limited Warranty Period.

**Limitations:** This warranty shall not apply to any failure or defect which results from:

- the Equipment not being operated and maintained in strict accordance with instructions specified in the Operation and Maintenance manual or Product Bulletin or which results from mishandling, misuse, neglect, improper storage, improper operation of the Equipment with other equipment furnished by the Customer or by other third parties or from defects in designs or specifications furnished by or on behalf of the Customer by a person other than Trojan.
- Equipment that has been altered or repaired after start-up by anyone except: (a) authorized representatives of Trojan, or (b) Customer acting under specific written instructions from Trojan.
- Use of parts not supplied or approved by Trojan

This warranty does not cover:

- Normal wear and tear of the product
- Consumable components including but not limited to wiper seals, cleaning chemical, batteries
- Owner costs related to removal, installation, or troubleshooting of a component
- Physical damage
- Improper installation
- Acts of God, terrorism, biological infestations, or input voltage that create operating conditions beyond the minimum or maximum limits listed in the Operations Manual including high input voltage from generators and lightening strikes
- Damage caused by improper return packaging
- Taxes, duties or brokerage fees (if any)

This warranty is the exclusive remedy for all claims based on a failure of or defect in the Equipment, whether the claim is based on contract (including fundamental breach), tort (including negligence), strict liability or otherwise. This warranty is in lieu of all other warranties whether written, oral, implied or statutory. Without limitation, no warranty of merchantability or fitness for a particular purpose shall apply to the Equipment.

Trojan does not assume any liability for personal injury or property damage caused by use or misuse of the Equipment. Trojan shall not in any event be liable for special, incidental, indirect or consequential damages including, without limitation, lost profits, lost business opportunities, lost revenue or loss or depreciation of goodwill, even if it has been advised of the possibility thereof. Trojan's liability shall, in all instances, be limited to repair or replacement of Equipment in breach of this warranty and shall not exceed the cost of such repair or replacement. This liability with respect to repair or replacement will terminate upon the expiration date of this warranty.

In addition to the foregoing, in no event shall Trojan's liability relating to the Equipment, or the agreement between Trojan and the Customer relating to the Equipment, exceed that portion of the purchase price for the Equipment which is actually paid to Trojan.



June 13, 2014

## TrojanUV Solo Lamp™ Driver Warranty

### **Warranty Coverage:**

The following warranty applies to the Trojan Technologies Solo Lamp™ Driver (the “Lamp Driver”) for the Trojan TrojanUVSigna™. The warranty is only valid with respect to a new Lamp Driver that is purchased as: (i) a component of a new system, (ii) a spare part shipped with a new system, or (iii) a purchased replacement component, and that is properly stored, handled and installed as specified in the Operation and Maintenance manual supplied with the system in which the Lamp Driver is installed or as outlined in subsequent Product Bulletins. Without limiting the generality of the foregoing, any excess vibration or improper operation of the Lamp Driver shall void this warranty. In addition, Trojan Technologies shall not be liable for any Lamp Driver failure which results from UV equipment not being operated and maintained in strict accordance with the instructions set out in the Operation and Maintenance manual or Product Bulletins.

Trojan Technologies reserves the right to require the Customer to return failed Lamp Drivers to Trojan Technologies’ facilities for inspection along with the operator’s log and maintenance records or the appropriate system operating information obtained electronically from the system controller via SCADA/logging devices. Failure to return the Lamp Driver or provide logs or records when requested shall void the warranty.

### **Period Of Coverage:**

Where a Lamp Driver has been stored, handled and installed as specified in the Operation and Maintenance manual, and the relevant UV equipment has been operated and maintained in accordance with instructions specified in the Operation and Maintenance manual or Product Bulletin, and:

1. The Lamp Driver fails within three (3) calendar years after the Warranty Start Date, Trojan Technologies shall provide the Customer with a replacement Driver free of charge.
2. The Lamp Driver fails after the third (3<sup>rd</sup>), and before the tenth (10<sup>th</sup>) anniversary of the Warranty Start Date, Trojan Technologies shall provide the Customer with a replacement Lamp Driver at a discounted price. The following formula is used to determine the discounted price for the replacement Driver:

$$\text{Replacement Lamp Driver Price} = ((\text{Number of Elapsed Months}) / 120 \times \text{List Price})$$

The “Warranty Start Date” is, in the case of a Lamp Driver forming part of a new system installation or shipped as a spare part with a new system, the substantial completion of the new system. In the case of a Lamp Driver purchased as a replacement component, warranty start date is the shipment date of the Lamp Driver. One “Elapsed Month” shall be deemed to have passed at the beginning of the day in each subsequent month that is the same calendar day as the day on which the Warranty Start Date falls, or the first day of the next following month if the Warranty Start Date falls on a day not present in any particular month. For example, if the Warranty Start Date is January 10, one Elapsed Month will have occurred on each of February 10 and March 10, but if the Warranty Start Date is January 29, one Elapsed Month will have occurred on each of March 1 and March 29.

In order to assess and process any Lamp Driver warranty claim, Trojan Technologies requires the Customer to notify Trojan by submitting a completed Warranty Claim Form within one (1) month of the component failure. Failure to meet these terms will void the Lamp Driver warranty.

**Limitations:**

This limited warranty does not cover:

- Lamp Drivers that have been used with parts not supplied or approved by Trojan Technologies
- Lamp Drivers that have been physically damaged or fail due to corrosion, improper installation, exposure to moisture or abnormal stresses
- Damage caused by power quality disturbances falling outside the acceptable voltage tolerance of the ITIC (CBEMA) curve referenced from IEEE Standard 1100-2005
- Owner costs related to troubleshooting, removal or installation
- Damage caused by improper return packaging
- Taxes, duties or brokerage fees, if any.

The above warranty is the exclusive remedy for all claims based on a failure of or defect in a Lamp Driver, whether the claim is based on contract (including fundamental breach), tort (including negligence), strict liability or otherwise. This warranty is in lieu of all other warranties whether written, oral, implied or statutory. Without limitation, no warranty of merchantability or of fitness for a particular purpose shall apply to a Lamp Driver.

Trojan Technologies does not assume any liability for personal injury or property damage caused by use or misuse of a Lamp Driver. Trojan Technologies shall not in any case be liable for special, incidental, indirect or consequential damages, even if it has been advised of the possibility thereof. Trojan Technologies' liability shall not, in any case, exceed the cost of the Lamp Driver.

June 12, 2014

## **TrojanUV Solo Lamp™ Warranty – Rapid City Replacement, SC (204520)**

### **Warranty Coverage:**

The following warranty applies to Trojan Technologies Low Pressure Lamps (the “Lamps”) for the **TrojanUVSigna™**. The warranty is only valid with respect to a Lamp that is properly stored, handled and installed as specified in the Operation and Maintenance manual supplied with the system in which the Lamp is installed or as outlined in subsequent Product Bulletins. Without limiting the generality of the foregoing, any excess vibration or improper operation of a Lamp shall void this warranty. In addition, Trojan Technologies shall not be liable for any Lamp failure which results from UV equipment not being operated and maintained in strict accordance with the instructions set out in the Operation and Maintenance manual or as outlined in Product Bulletins.

In order to process any Lamp warranty claim, Trojan Technologies requires the Customer to provide a copy of the operator’s log, all maintenance records or the appropriate system operating information obtained electronically from the system controller via SCADA/logging devices and a completed Warranty Claim Form within one (1) month of the lamp failure. Failure to meet these terms will void the Lamp warranty.

Trojan Technologies reserves the right to require the Customer to return a failed Lamp to Trojan Technologies’ facilities for inspection. Failure to return the Lamp when requested shall void the warranty.

### **Period of Coverage:**

When a Lamp has been stored, handled and installed as specified in the Operation and Maintenance manual or as outlined in Product Bulletins, and the relevant UV equipment has been operated and maintained in accordance with instructions specified in the Operation and Maintenance manual, and:

1. The Lamp fails within the first 9,000 hours of operation; Trojan Technologies shall provide the Customer with a replacement Lamp free of charge.
2. The Lamp fails after 9,000 hours and prior to 15,000 hours of operation; Trojan Technologies shall provide the Customer with a replacement Lamp at a discounted price. The following formula is used to determine the discounted price for the replacement Lamp:  
Replacement Lamp Price = ((Lamp Operating Hours) / 15,000 x Lamp List Price)

Regardless of actual Lamp operating hours, the Lamp warranty is void if the date of Lamp failure occurs more than sixty (60) calendar months after the Lamp shipment date from Trojan Technologies.

The above operating conditions of Lamps are based on 4 On/Off cycles, on average per 24 hour period, when operated in automatic mode.

**Limitations:**

This limited warranty does not cover:

- Lamps that have been used with parts not supplied or approved by Trojan Technologies
- Lamps that have been physically damaged or fail due to corrosion, exposure to contaminants (e.g. effluent), incorrect installation or operation
- Owner costs related to troubleshooting, removal, or installation
- Damage caused by improper return packaging
- Taxes, duties or brokerage fees (if any)

If greater than 20 percent of the lamps in the system require replacement prior to 15,000 hours of operation, Trojan Technologies shall replace all of the lamps in the disinfection system with new lamps at no cost to Owner. The full replacement of lamps does not apply if the lamp failures can be shown as a result of the system not being operated in accordance with the O&M manual.

The above warranty is the exclusive remedy for all claims based on a failure of or defect in a Lamp, whether the claim is based on contract (including fundamental breach), tort (including negligence), strict liability or otherwise. This warranty is in lieu of all other warranties whether written, oral, implied or statutory. Without limitation, no warranty of merchantability or of fitness for a particular purpose shall apply to a Lamp.

Trojan Technologies does not assume any liability for personal injury or property damage caused by use or misuse of a Lamp. Trojan Technologies shall not, in any case, be liable for special, incidental, indirect or consequential damages, even if it has been advised of the possibility thereof. Trojan Technologies' liability shall not, in any case, exceed the cost of replacement of a defective Lamp.

**Sleeve Limited Warranty TrojanUVSigna™ - Rapid City Replacement SD (204520)**

**Warranty Coverage:** The following warranty applies to the Trojan Technologies Sleeve (the "Sleeve") for the Trojan UVSigna™. The warranty is only valid with respect to a new Sleeve that is purchased as: (i) a component of a new system, or (ii) a spare part shipped with a new system, and that is properly stored, handled and installed as specified in the Operation and Maintenance manual supplied with the system in which the Sleeve is installed or as outlined in Product Bulletins. Without limiting the generality of the foregoing, any excess vibration or improper operation of the Sleeve shall void this warranty. In addition, Trojan Technologies shall not be liable for any Sleeve failure which results from UV equipment not being operated and maintained in strict accordance with the instructions set out in the Operation and Maintenance manual or Product Bulletins.

In order to assess and process any Sleeve warranty claim, Trojan Technologies requires the Customer to provide a copy of the operator's log, and all maintenance records or the appropriate system operating information obtained electronically from the system controller via SCADA/logging devices within one (1) month of the failure otherwise the warranty shall be void.

Trojan Technologies also reserves the right to require the Customer to return failed Sleeves to Trojan Technologies' facilities for inspection. Failure to return the Sleeve or provide logs or records when requested shall void the warranty.

**Period Of Coverage:** Where a Sleeve has been stored, handled and installed as specified in the Operation and Maintenance manual or as outlined in a Product Bulletin, and the relevant UV equipment has been operated and maintained in accordance with instructions specified in the Operation and Maintenance manual or Product Bulletin, the water quality is within the specification agreed to by Trojan for the UV Equipment, and:

1. The Sleeve breaks due to structural defect within three (3) operational years after the Warranty Start Date, Trojan Technologies shall provide the Customer with a replacement Sleeve free of charge;
2. The Sleeve breaks, after the third (3<sup>rd</sup>), and before the fifteenth (15<sup>th</sup>), anniversary of the warranty start date; Trojan Technologies shall provide the Customer with a replacement Sleeve at a discounted price. The following formula is used to determine the discounted price for the replacement Lamp:

$$\text{Replacement Sleeve Price} = ((\text{Number of Elapsed Months}) / 180 \times \text{Sleeve List Price})$$

The "Warranty Start Date" is, in the case of a Sleeve forming part of a new system installation or shipped as a spare part with a new system, the substantial completion of the new system and, in the case of a Sleeve purchased as a replacement component, the shipment date of the Sleeve. Operational time is defined as the accumulated time when the lamps associated with each sleeve are powered by the ballasts. The guaranteed life of the sleeve shall not be limited by time periods when the lamps are not in operation, lamps are not powered by the ballasts, or the frequency of wiper intervals.

**Limitations:** This limited warranty does not cover:

- Sleeves that have been used with parts not supplied or approved by Trojan Technologies
- Sleeves that have been physically damaged, damaged by debris, improper installation or removal, incorrect operation of the UV system or subject to abnormal stresses
- Sleeves that have been operated in air with the lamps on
- Normal wear and tear of the sleeve (e.g. scratches cause by particulates in water)
- Owners costs related to removal, installation, or troubleshooting
- Damage caused by improper return packaging.
- Taxes, duties or brokerage fees, if any

If 20 percent of the quartz sleeves fail to maintain a minimum transparency factor of 0.92 prior to the nominal life warranted by Trojan Technologies, Trojan Technologies shall replace all quartz sleeves at no cost to Owner. The full replacement of quartz sleeves does not apply if the failures can be shown as a result of the system not being operated in accordance with the O&M manual.

The above warranty is the exclusive remedy for all claims based on a failure of or defect in a Sleeve, whether the claim is based on contract (including fundamental breach), tort (including negligence), strict liability or otherwise. This warranty is in lieu of all other warranties whether written, oral, implied or statutory. Without limitation, no warranty of merchantability or of fitness for a particular purpose shall apply to a Sleeve.

Trojan Technologies does not assume any liability for personal injury or property damage caused by use or misuse of a Sleeve. Trojan Technologies shall not in any case be liable for special, incidental, indirect or consequential damages, even if it has been advised of the possibility thereof. Trojan Technologies' liability shall not, in any case, exceed the cost of the Sleeve.