

PLANNED AND CORRECTIVE MAINTENANCE AGREEMENT

Customer

Broward County, a political subdivision of the State of Florida
Through its Water and Wastewater Services
2555 West Copans Road, Pompano Beach, FL 33069

Contractor

NIXON POWER SERVICES, LLC, d/b/a "Nixon Energy Solutions",
5038 Thoroughbred Lane
Brentwood, TN 37027

THIS PLANNED AND CORRECTIVE MAINTENANCE AGREEMENT (this "Agreement") is made and entered into effective as of this 7th day of June, 2016 by and between Broward County, a political subdivision of the State of Florida, through its Water and Wastewater Services located at 2555 West Copans Road, Pompano Beach, Florida 33069 (the "Customer"), and Nixon Power Services, LLC, a North Carolina limited liability company authorized to transact business in the State of Florida, d/b/a "Nixon Energy Solutions", with its principal place of business located at 5038 Thoroughbred Lane, Brentwood, Tennessee 37027 (the "Contractor"), (collectively referred to as the "Parties").

1. Definitions

The following terms shall have the meaning set forth below when used in this Agreement:

- 1.1 "Annual Period" means a twelve 12 month period beginning on the Effective Date and each anniversary date thereof during the term of this Agreement.
- 1.2 "Catastrophic Failure" means any failure not covered by manufacturer warranty that requires replacement of the engine block, the alternator or radiator.
- 1.3 "Contractor Taxes" means any and all import and export duties and any and all corporate and individual taxes that are measured by net income or profit imposed by any government authority of any country on Contractor, its employees or subcontractors, due to the performance of or payment for work under this Agreement.
- 1.4 "Covered Units" means the engine/modules and associated auxiliary supporting systems as supplied by Contractor to Customer under Broward County Agreement – RLI No. R0728501R1 and installed at the Broward County North Regional Wastewater Treatment Plant, 2401 North Powerline Road, Pompano Beach, FL 33069.
- 1.5 "Customer's Designated Representative" is Director, Broward County Water and Wastewater Services, Operations Division,, 2555 West Copans Road, Pompano Beach, FL 33069.
- 1.6 "Customer Taxes" means any sales or use taxes imposed by any governmental authorities in connection with sale or use of the Covered Units, parts, and related equipment.

- 1.7 “Effective Date” shall be the earlier of the date upon which Transfer of Equipment (TOE) occurs and the issuance of a Substantial Completion certificate by Broward County for Agreement – RLI No. R0728501R1.
- 1.8 “Facility” means the power generation plant, station or power generation section of the Site in which the Covered Units are located.
- 1.9 “Hazardous Materials” means toxic substances, hazardous substances or hazardous wastes, as such terms are defined by federal or Florida law, statute, ordinance, or regulations.
- 1.10 “Insolvent” means that:
- (a) a party makes an assignment for the benefit of creditors, or petitions or applies for or arranges for the appointment of a trustee, liquidator or receiver, or commences any proceeding relating to itself under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of the country under which the insolvent Party is organized or a country in which the insolvent Party conducts business, now or hereafter in effect (collectively “Bankruptcy Laws”), or shall be adjudicated bankrupt or insolvent in such a country; or
 - (b) a party gives its approval of, consent to, or acquiesces in, any of the following: the filing of a petition or application for the appointment of a trustee, liquidator or receiver against that Party; the commencement of any proceeding under any Bankruptcy Laws against that Party; or the entry of an order appointing any trustee, liquidator or receiver; or
 - (c) a party is generally unable to pay its debts when due.
- 1.11 “Manufacturer’s Specifications” means the maintenance schedule, maintenance instructions, manufacturer’s Operations and Maintenance Manuals that are provided by the manufacturer at the sale of the Covered Units, technical description, gas quality requirements and other documentation, identified in Appendix A, and all manufacturer’s Operations and Maintenance Manuals and technical procedures, referenced directly or indirectly, by Appendix A of this Agreement, as amended or supplemented from time to time by the manufacturer of the Covered Units.
- 1.12 “Monitoring and Performance System” means one or more systems which may be used from time to time by Contractor for monitoring of Facility equipment (including the Covered Units) and the collection of performance information and provision of support, such systems to include computer hardware, computer software, and a connection to a source of technical oversight or review.
- 1.13 “Operating Hours” (or “OPHs”) means the time a Covered Unit engine is running and hour meter is recording. Operating Hours shall be determined with the use of the respective Covered Unit device referred to as Operating Hour counter.
- 1.14 “Site” refers to Broward County North Regional Wastewater Treatment Plant, located at 2401 North Powerline Road in Pompano Beach, Florida 33069, which is the real property upon which the Facility is located.

- 1.15 “Transfer of Equipment” (TOE) refers to the written acceptance/approval by both Customer and Contractor that the Covered Units have been commissioned and transferred and accepted by the Customer as operational and commercially beneficial.
- 1.16 “Warranty” means Contractor’s Warranty set forth in Section 11 of this Agreement.
- 1.17 “Termination Date” The effective date of termination provided in accordance with Article 6 of this Agreement.
2. **Scope of Work.** Commencing on the Effective Date, Contractor shall perform certain maintenance services, and supply all of the parts and supplies related to such maintenance services, for the Covered Units and related accessories as more particularly set forth in this Section 2.
- 2.1 **Scheduled and Planned Maintenance Services and Parts.** Contractor shall provide all scheduled and planned maintenance and overhaul services and shall provide all scheduled parts related to and in accordance with the Manufacturer’s Specifications for the Covered Units and related accessories at each 2,000 Operating Hour interval (including minor overhauls at 30,000 Operating Hour intervals and the major overhaul at the 60,000 Operating Hour interval) as currently set forth in the Maintenance Schedule in Appendix A-1. The related accessories include:
- (a) GE Jenbacher engine generators/modules, which include base gen-sets, alternators, gas trains, control panels (i.e. Diane Controls included), and all GE Jenbacher mounted or supplied support systems.
 - (b) Mechanical accessories to the Covered Units including, coolant pumps (only associated with engine loops), oil pumps, container air filters, valves and sensors which require scheduled or planned maintenance and other similar parts related to the scheduled and planned maintenance; and
 - (c) Electrical and control accessories to the Covered Units; which include, monic controls, remote networking hardware and software supplied by Contractor and client license which require scheduled or planned maintenance and other similar parts related to the scheduled and planned maintenance.
- Contractor’s obligation to provide all scheduled and planned maintenance and overhaul services and to provide all scheduled and planned parts in accordance with the Manufacturer’s Specifications for the Covered Units and the related accessories is referred to herein as the “Scope of Work”. The Scope of Work is inclusive of all costs related to mobilization, demobilization, travel time, travel costs, tools, equipment, labor, and shipping. Contractor and Customer, through Customer’s Designated Representative, will agree in good faith on the date for carrying out all scheduled and planned maintenance included in the Scope of Work.
- 2.2 **Optional Services.** Customer’s Designated Representative may request Contractor to furnish parts and services related to but beyond Contractor’s Scope of Work (“Extra Work”). Contractor shall provide to Customer a proposal which describes the Extra Work, the terms under which the Extra Work will be provided, and a price quote for Contractor to complete the Extra Work, subject to the limitations in Section 5.3 and consistent with the terms and conditions of this Agreement. The proposal must be approved in writing by

Customer's Designated Representative before Contractor can proceed with the subject Extra Work.

The type of Extra Work shall be related to the maintenance and operation of the Covered Units and may include, but is not necessarily limited to, the following:

- (a) Extra Work regarding operations outside standard conditions or parameters
 - (i) Issues related to poor gas quality
 - Decoking or engine cleaning
 - Pre-chamber replacement
 - Cylinder head replacement (including valve damage)
 - Piston and/or liner replacement
 - Increased spark plug replacements
 - More frequent oil changes
 - Gas filters
 - (ii) Air Intake outside specifications
 - Air filters
 - Intercooler cleaning
 - (iii) Divergence from standard operation conditions
 - Heavy start/stop wear on ignition components (i.e. starters, plugs, coils, etc.)
- (b) Extra Work resulting from improper customer operation or maintenance
 - Starters
 - Spark plug replacement (due to accelerated usage)
 - Cylinder heads
 - Cleaning or repair of heat exchangers
 - Generator couplings
- (c) Extra Work related to, but outside of Scope of Work
 - Cranes and rigging
 - 4,160V Switchgear and accessories
 - Motor Control Center
 - Variable Frequency Drives
 - Process side heat recovery loop pumps
 - Heat Exchanger
 - Valves and instruments
 - Ignition Coils
 - Container related equipment (e.g. air conditioning)
 - Disposable items

Contractor shall perform the Extra Work consistent with Contractor's proposal and the terms and conditions of this Agreement.

2.3 Spark Plugs / Cylinder Heads / Oil filters. Spark plugs (not exceeding 164 sets totaling 656 pieces per Covered Unit based on 1,600 OPH plug life + 10%), oil filters, and cylinder heads are considered to be parts included in the Scope of Work.

2.4 Overhauls. Contractor shall provide scheduled overhauls, including a minor overhaul scheduled at 30,000 OPH and a major overhaul scheduled at 60,000 OPH, and shall provide

the necessary parts, services and freight for all overhauls. Contractor and Customer will agree on the date of each overhaul at least 3 months in advance for minor overhauls and 6 months in advance for major overhauls.

- 2.5 Remote Service. Contractor shall carry out remote service from time to time, by making use of the Monitoring and Performance System. Remote service includes performance of remote diagnosis, fault location on Covered Units and the inspection of existing data stock for trending analysis on a quarterly basis. Remote service does not include permanent monitoring of the Covered Units.
- 2.6 Use of Refurbished Parts. Contractor may install used parts, refurbished by Contractor. All parts installed by Contractor, whether new or refurbished, must meet the Manufacturer's Specifications (as provided by the manufacturer of such parts). Any refurbished parts shall be fully warranted by Contractor in the same manner and extent as new parts are warranted by the manufacturer, all in accordance with Section 11. Customer may request that Contractor quote a price for new parts (rather than refurbished parts) when available, and Customer may purchase such new parts as Extra Work.
- 2.7 Corrective Maintenance. Contractor shall be responsible to carry out the necessary repairs on only the GE Jenbacher supplied genset and related accessories per Section 2.1 plus the balance of plant items listed below. The repairs include all required parts, service and labor, travel time, travel costs, tools, equipment, and shipping. The required repair must arise from standard operations and maintenance within the Manufacturer's Specifications. The related balance of plant items include:
- (a) GE Jenbacher engine generators/modules, which include base gen-sets, alternators, gas trains, control panels (i.e Diane Controls included), and all GE Jenbacher mounted or supplied support systems.
 - (b) Mechanical accessories to the Covered Units including, dump radiator system, HT and LT coolant pumps, lube oil transfer pumps, ventilation fans and motors, exhaust silencer and flex connectors, Engine coolant and exhaust system valves and sensors; and
 - (c) Electrical and control accessories to the Covered Units; which include, batteries, battery charger, monic controls, remote networking hardware and software provided by Contractor, central servers, server software and interface, and client license.

The following balance of plant items are expressly excluded from Section 2: 4,160V switchgear and accessories; motor control center; switchgear battery system; variable frequency drives (VFDs); process side heat recovery loop pumps, heat exchanger, valves and sensors; and any additional equipment or device not listed above.

Additionally excluded are any wear parts which are the responsibility of Customer as per Appendix A-3.

- 2.8 Availability Guarantee. Contractor guarantees the availability of the Covered Units according to Section 7.

- 2.9 Lube Oil Analysis Kit. Contractor shall supply Lube Oil Analysis Kits (not exceeding 200 kits per Covered Unit based on 300 OPH per analysis). Contractor shall not be responsible for taking the oil samples or the cost for forwarding these oil samples to a laboratory.
- 2.10 Contractor shall provide delivery, transport, storage and disposal of commodities necessary for the operation of Covered Units as given in the Manufacturer's Specification. Such commodities include lubrication oils, flushing compounds, battery acid, cooling system compounds, and other additives. The Contractor shall be responsible for removal and disposal of all unused materials (excluding prepositioned supplies), waste products, packaging materials, and used parts related to all work performed by the Contractor at the conclusion of each mobilization to the site. Used lubricating oil shall be removed on a schedule required for the safe, timely, maintenance of oil levels in the fixed on-site oil storage tanks.
- 2.11 Contractor shall provide lube oil supply and changes (not exceeding 34 events based on 1,750 OPH per oil change). The evaluation of oil analysis results according to Manufacturer's Specifications ensuring that oil changes are made in due course. Should biogas be of such quality that more than 34 oil changes are required over the 60,000 OPH (1,750 OPH per change), Customer shall be responsible for the additional oil and changes.
3. **Not included in the Scope of Work.** Notwithstanding anything to the contrary herein, the following are not included in the Scope of Work:
 - 3.1 Upgrade or performance enhancement conversions and modifications of the Covered Units, except regular modifications required for proper performance in accordance with the Manufacturer's Specifications.
 - 3.2 Catastrophic Failure coverage shall be the responsibility of Customer.
 - 3.3 Additional expenditures due to shut-down of Covered Units for an uninterrupted period of time of more than 3 months (e.g. services related to the conservation or preservation of a Covered Unit in preparation for or in connection with a long term shut down) unless such shut down is due to Contractor's failure to comply with the terms of this Agreement or due to a violation of the Warranty provided hereunder.
 - 3.4 Intentionally Omitted.
 - 3.5 Repairs made necessary because of damages due to any kind of force (including natural (e.g. wind) and manmade (e.g. impact)), water or fire, corrosion, contamination, an Excusable Event pursuant to Section 17, and operation in material violation of the Manufacturer's Specifications (including gas contaminant or siloxane decoking/cleaning); unless such damage is a result of a design condition with the Covered Units that is in non-compliance with site design conditions or due to a violation of the Warranty provided hereunder. Damages or improper service rendered by unauthorized persons or third parties shall void any warranty or claims under this Agreement with respect to such damages or improper service.
 - 3.6 Any special services (e.g. construction or rebuilding activities, hydraulic modifications, cost for cranes) required after a necessary replacement of a Covered Unit as well as site modifications (and costs related thereto) required to remove/place the Covered Unit from / into the container package in the course of a major overhaul other than services related to

the disconnection and reconnection of the Covered Units within the containerized package (including gas lines and electrical connections) and providing removal access from the container (includes removing walls and equipment required to slide out engine).

- 3.7 Any activities or components that are not explicitly defined to be within Scope of Work for the Covered Units (*e.g.* gas conditioning skids, transformers, distribution gear, etc.).
 - 3.8 Repairs or damages outside the Scope of Work as set forth in this Agreement or otherwise the result of the actions of Customer or any third party who is not contracted by or an agent of Contractor.
 - 3.9 Troubleshooting which is a result of improper Customer operation and maintenance, gas quality or quantity issues, operating environment or conditions outside Manufacturer's Specifications, or system performance testing; unless such conditions have been noted by Customer or Customer's engineer and accepted by Contractor . This includes activities like nuisance items, minor repairs or adjustments that should have been addressed by Customer, such as exchange of minor components which are serviced and maintained by Customer and not covered in the Scope of Work (*e.g.* plugs, some filters, pressure and temperature transmitter, thermometer, gauges, ignition coils).
 - 3.10 The elimination of insignificant leaks or repair of cosmetic damages that are not material and detrimental to the safe and recommended operation of the Covered Units.
 - 3.11 Contractor shall not be responsible for the cost of removal or replacement of systems, structures or parts of the Facility other than the subject Covered Units unless necessary due to breach of the Warranty or Contractor's poor workmanship, negligence, or willful misconduct. Contractor shall not be required to perform any scheduled or routine maintenance other than from the hours of 7:30 a.m. until 3:30 p.m. Monday through Friday (excluding Broward County holidays), but may do so in order to accommodate orderly and timely completion of any scheduled or routine maintenance which may necessitate extended on-the-job periods.
 - 3.12 Operation, daily inspections and minor maintenance events below 1,750 OPH for each Covered Unit.
 - 3.13 Those obligations of Customer set forth in Section 4 of this Agreement.
 - 3.14 In the event siloxane levels in the fuel powering the Covered Units are more than the lowest level set forth on Appendix A-2, Customer may elect to engage Contractor to perform the Extra Work resulting from such poor gas quality in accordance with Section 2.2 of this Agreement.
4. **Obligations of Customer.** Customer shall be responsible for the following:
- 4.1 To carry out, and record the operation, inspection, and maintenance works which according to the operation log and Maintenance Schedule (Appendix A-1) are the obligations of Customer and to keep the operation log daily.
 - 4.2 To notify Contractor one (1) month in advance of any planned maintenance event as listed in the Maintenance Schedule (Appendix A-1), except for minor and major overhauls in which case three (3) months and six (6) months advanced notice shall be given respectively.

- 4.3 To carry out the daily operations and inspections of the Covered Units and perform scheduled and planned maintenance work below 1,750 OPH according to the Manufacturer's Specifications, with exception of oil changes which are the obligation of Contractor.
- 4.4 To cover Catastrophic Failure (*e.g.* complete equipment or block replacement) outside the warranty period.
- 4.5 To carry out the lube oil sampling and the associated shipping to the responsible Laboratory, and make sure that oil analysis are made in due course. The results of the lube oil analyses must be forwarded to Contractor promptly.
- 4.6 To carry out all spark plug maintenance, repair and replacement per the Manufacturer's Specifications and Recommendations, and according to site specific requirements and conditions.
- 4.7 To operate the Covered Units using minimum gas quality as defined in TA 1000-0300 Fuel Gas Requirements Technical Instructions (Release date 4/30/2015). Any maintenance necessary due to gas quality not in accordance with this standard shall be considered Extra Work. This includes siloxane de-coking of the Covered Units.
- 4.8 To provide Contractor promptly with the fuel gas analysis which must be carried out by Customer every six (6) months, based on data from onsite calibrated monitoring equipment. Contractor is not liable for damage to the Covered Units or otherwise resulting from gas quality which does not meet the Manufacturer's Specifications. Standard gas analysis of Customer is sufficient as long as gas quality does not materially change from the last gas analysis complying with the TA 1000-0300 standards and remains compliant with such standards. If the gas quality changes, Contractor reserves the right to request increased fuel gas analysis frequency and demand a gas analysis by an authorized laboratory.
- 4.9 To provide, free of charge, a secured room suitable for storage at site.
- 4.10 To make reasonable modifications to the Facility reasonably requested by Contractor for safe operations and to minimize the impact of an emergency that may result in physical harm to people or damage to the plant.
- 4.11 Intentionally omitted.
- 4.12 To make sure that the determined number of Operating Hours per Covered Unit is accurately recorded and reported to Contractor as per the terms of this Agreement.
- 4.13 To permit Contractor access to the Facility at all times during regular operating hours (7:30 am – 3:30 pm, Monday through Friday, excluding Broward County holidays) and after regular operating hours with pre-approval by Customer's Designated Representative, during the term of this Agreement. All scheduled repairs shall occur during such available operating hours unless otherwise agreed by the Parties.
- 4.14 To install a high speed Internet connection directly at the Covered Unit(s). A connection shall be available to the modem at all times.
- 4.15 All responsibilities as set forth in Appendix A-3 to this Agreement.

5. **Price.** The compensation to be paid by Customer to Contractor for performing the services and providing the parts described in the Scope of Work is as set forth in this Section 5.

5.1 Parts Supply:

TABLE 5-1: Parts Supply Prices			
Item	Description of Services	Cost per OPH	Inflation Index
Scheduled and Planned	Includes all parts for <ul style="list-style-type: none"> • The maintenance activities listed in the Planned Maintenance Schedule (Appendix A-1), • Oil sample kits at 300 OPH, • New spark plugs at 1600 OPH, • Oil, air, and fuel filters, • Preventive cleaning for balance of equipment, • Minor overhaul parts at 30,000 OPH, and • Alternator maintenance parts. 	\$13.91	3.5%
Long Block (60,000 OPH)	Includes all parts listed in the service manual Shortblock-type 6 Version C/E/F/G/H, Longblock-type 6 Version C, Genset type 6-Version C, (GE Power & Water – DP – Jenbacher Service Manual 2015) .	\$10.93	3.5%

- (a) Pricing excludes Customer taxes, if applicable.
- (b) Delivery, freight, and duties are included.
- (c) Commencing January 1, 2017, and each subsequent January 1 thereafter during the term of this Agreement, the Parts Supply Prices shown in **Table 5-1** shall increase by a fixed annual escalator of 3.5%.

5.2 Maintenance Service:

TABLE 5-2: Maintenance Services Prices			
Item	Description of Services	Cost per OPH	Inflation Index
Planned Maintenance	Execution of maintenance activities <ul style="list-style-type: none"> • Listed in the Planned Maintenance Schedule (Appendix A-1), • Minor Overhaul at 30,000 OPH, • Preventive maintenance on Alternator, • Routine preventive services on Covered Units including non-GE supplied equipment, • Teleservice (remote failure analysis and support, performance analysis, and • Data trending on a quarterly basis. 	\$4.06	CPI
Major Overhaul	Services for <ul style="list-style-type: none"> • Dismount, remount, and commissioning of old and new Long Block for Major Overhaul at 60,000 OPH and • Alternator rebuild at 60,000 OPH, including necessary parts. 	\$2.03	CPI
Corrective Maintenance	Mechanical breakdown maintenance and services on the specified equipment listed in Section 2.7, Covered Units.	\$8.41	CPI
Oil Change	Supply, change, and dispose of new and waste oil at 1750 OPH or greater. Also includes supply of commodities (lubrication oils, flushing compounds, battery acid, anti-freezing compounds, and coolant) according to Other Technical Instructions listed in Appendix A-4.	\$7.00	Site delivered price of oil

- (a) Pricing excludes Customer taxes, if applicable.
- (b) For corrective repair on-site visits on nuisance items, minor repairs or adjustments that should have been addressed by Customer per Section 4 of this Agreement, as reasonably determined by Contractor, a corrective on-site fee of \$750.00 shall apply.

- (c) Escalation for Planned Maintenance, Major Overhaul, and Mechanical Breakdown. Commencing January 1, 2017, and each subsequent January 1 thereafter during the term of this Agreement, the Mechanical Service Prices shown in Table 5-2 for Planned Maintenance, Major Overhaul, and Mechanical Breakdown shall be increased at a percentage rate equal to the Consumer Price Index U Southeast USA (“CPI”) increase over the previous 12 months. The increase or decrease in CPI shall be calculated as follows: the difference of CPI current period less CPI previous period, divided by CPI previous period, times 100. The CPI current period shall mean the most recent published monthly index prior to contract anniversary. The CPI previous period shall mean for the same month of the prior year. All CPI indices shall be obtained from the U.S. Department of Labor table for Consumer Price Index - All Urban Consumers Southeast Region with a base period of 1982-84 = 100.
- (d) Escalation for Oil Change. Commencing January 1, 2017, and each subsequent January 1 thereafter during the term of this Agreement, the Mechanical Service Prices shown in Table 5-2 for Oil Change shall be adjusted at a percentage rate equal to the Site delivered price of oil changes over the previous 12 months. The starting price for oil delivered to Site is \$15.00 per gallon. The calculated percentage change will be round to the nearest hundredth of a percentage point (e.g. the format of x.xx%). At Customer’s request, Contractor shall provide Customer with proof of the Site delivered price of oil as quoted within 30 days after January 1 of each respective new year. The customer may discontinue or terminate the Oil Change services at any point in time without any penalty or true-up.

As an example, should the delivered oil price increase to \$15.50 per gallon as of January 1, 2016, the previous year price for Oil Change Services (\$7.00/OPH in this case) would be increased by 3.33% [$(\$15.50 - \$15.00) / \$15.00 * 100 = 3.33\%$]. The new year price for 2016 would become \$7.23/OPH [$\$7.00 * (1.00 + 0.0333)$]. Should the delivered oil price decrease to \$15.25 per gallon as of January 1, 2017, the previous year for Oil Change Services (\$7.23/OPH as calculated above) would be decreased by 1.61% [$(\$15.25 - \$15.50) / \$15.50 * 100 = -1.61\%$]. The new year price for 2017 would become \$7.11 [$\$7.23 * (1.00 - 0.0161)$].

- 5.3 Optional Services. Customer has established an amount of \$300,000 for the performance of Extra Work as identified in Section 2.2, which amount shall be a maximum not-to-exceed amount over the term of this Agreement. Any unused amounts shall be retained by Customer.
- 5.4 Billing and Payments. Customer shall pay the charges described in this Article 5 within 30 days after receipt of Contractor’s proper invoice, as required by the “Broward County Prompt Payment Ordinance”, Section 1-51.6, Broward County Code of Ordinances. Billing under Sections 5.1 and 5.2 shall take place every month based on actual OPH’s for each Covered Unit. The Operating Hour counters are the basis for the monthly billings.

The initial invoice shall include the OPHs accumulated prior to the Effective Date during the start-up and commissioning period of the Covered Unit(s). For example, if a Covered

Unit has 1,500 OPH on the Effective Date, this 1,500 OPH would be added to the first Month's OPH run total and invoiced accordingly.

6. **Term of Agreement.** This Agreement shall commence on the Effective Date and shall expire at 60,001 OPHs of the Covered Units, or eight (8) years from the effective date of this Agreement, whichever occurs first, unless earlier terminated by either Customer or Contractor as set forth herein. Customer shall have the option to extend this Agreement for two (2) additional eight (8) year renewal terms provided that Customer gives Contractor notice in writing of its election to renew no later than thirty (30) days prior to the expiration of the initial term or first renewal term, as applicable. Notwithstanding the foregoing, any renewal term of this Agreement shall automatically expire when the Covered Units reach 120,001 OPH.

6.1 **Termination Without Cause**

- (a) Contractor may terminate this Agreement without cause effective on any anniversary date of this Agreement provided that Contractor provides at least one hundred and twenty (120) days written notice prior to the effective date of termination and subject to Contractor paying the Major Overhaul Refund payment as set forth in Section 6.6 hereunder.
- (b) Customer may terminate this Agreement without cause at any time by providing Contractor at least one hundred and twenty (120) days written notice prior to termination subject to Customer paying the Planned Maintenance True Up Payments as set forth in Section 6.5 hereunder.

6.2 **Termination by Customer for Cause.** Customer may terminate this Agreement for "Cause" upon any of the following events:

- (a) Contractor becomes Insolvent (as defined in Section 1.10);
- (b) If Customer does not appropriate the funding needed to make payments under this Agreement for any given fiscal year. In such event, Customer will promptly notify Contractor of the non-appropriation, and this Agreement will be terminated at the end of Customer's fiscal year for which the funds were appropriated.
- (c) Contractor commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice from Customer of such breach which reasonably describes the breach; provided, however, if it is not possible for Contractor to cure such breach within the thirty (30) day period for reasons other than Contractor's negligence following the breach, Customer may only terminate for cause in the event that Contractor fails to commence to cure such breach within the thirty (30) day period or fails to thereafter continue diligent efforts to complete the cure as soon as reasonably possible. In no event, however, shall Contractor be allowed a period in excess of one hundred eighty (180) days (30 day breach plus an additional 150 days to cure breach for a total of 180 days) before Customer may declare a default; provided, however, (i) such cure period is extended until such notice of termination is delivered by Customer such that no termination can be exercised by Customer after the cure is completed and (ii) such cure period shall be extended if the default is the result of a default from a third party (e.g. a supplier fails to deliver its manufactured item) despite Contractor using

its reasonable best efforts to cure such default, and such extension shall only be for so long as the third party default and a reasonable time thereafter to cure any such breach.

- (d) An Excusable Event pursuant to Section 17 of this Agreement, and Customer terminates in accordance with Section 17.2.

Notwithstanding the above, in order for Customer to terminate this Agreement for Cause, Customer must notify Contractor of the events constituting the "Cause" by written notice within ninety (90) days of such event(s) giving rise to the default. In the event Customer terminates this Agreement for Cause under non-appropriation (as set forth in Section 6.2 (b) above) or upon an Excusable Event (as set forth in Section 6.2 above), Customer shall pay the Planned Maintenance True Up payment as set forth in Section 6.5 below, and Contractor shall pay the Major Overhaul Refund Payment as set forth in Section 6.6 below. In the event Customer terminates this Agreement for Cause as provided in Sections 6.2 (a) or (c) herein, Customer shall not be required to pay the Planned Maintenance True Up payment as set forth in Section 6.5 below and Contractor shall pay the Major Overhaul Refund Payment as set forth in Section 6.6 below.

6.3 Termination by Contractor for Cause. Contractor may terminate this Agreement for "Cause" upon any of the following events:

- (a) Customer becomes Insolvent (as defined in Section 1.10);
- (b) If the Covered Units do not reach 50,000 OPHs prior to the ninth (9th) anniversary of this Agreement;
- (c) Customer fails to make any payment to Contractor on the date due, which is not cured within fifteen (15) business days following written notice of such nonpayment; provided, however, that Contractor shall only be required to provide written notice of nonpayment and an opportunity to cure two (2) times during any twelve month period;
- (d) Customer commits a material breach of this Agreement and fails to cure such breach within thirty (30) days of written notice from Contractor; provided, however, if it is not possible to cure such breach within the thirty (30) day period for reasons other than Customer's negligence following the breach, Contractor may only terminate for cause in the event that Customer fails to commence to cure such breach within the thirty (30) day period or fails to thereafter continue diligent efforts to complete the cure as soon as reasonably possible. In no event, however, shall Customer be allowed a period in excess one (1) year to cure any such breach; or
- (e) An Excusable Event pursuant to Section 17 of this Agreement, and Contractor terminates in accordance with Section 17.2

In the event that Contractor terminates this Agreement for Cause, Customer shall be required to pay the Planned Maintenance True Up Payment as set forth in Section 6.5 hereunder. In the event Contractor terminates this Agreement for Cause under Section 6.3 (b) or (e), Contractor will pay the Major Overhaul Refund Payment as set forth in Section 6.6 hereunder.

- 6.4 Pre-Termination Obligations. Upon termination of this Agreement for any reason, Customer shall pay to Contractor all payments required to be paid under this Agreement for the period prior to the effective date of such termination. Without limiting the foregoing, the termination or expiration of this Agreement shall not relieve either Party of any obligation incurred prior to termination.
- 6.5 Planned Maintenance True-Up Payment. In the event this Agreement is either (i) terminated by the Customer without Cause (as set forth in Section 6.1 above); (ii) is terminated by the Customer for cause under non-appropriation of funds (as set forth in Section 6.2(b) above); or (iii) is terminated by the Contractor for Cause (as set forth in Section 6.3 above), Customer shall be required to pay to Contractor the True-Up Payment as calculated pursuant to this Section 6.5 no later than thirty (30) days from the date Customer receives the invoice for the True-Up Payment from Contractor consistent with this Agreement. The True-Up Payment is intended to reflect the difference between the current market value of all Planned Parts and Services (as set forth in Sections 5.1 and 5.2 above) provided by Contractor during the term prior to the Termination Date and the discounted amounts paid by Customer to Contractor up to the Termination Date pursuant to the terms of this Agreement.

Within sixty (60) days following the termination, Contractor will provide to Customer a list of all Planned Parts and Services (as covered in Sections 5.1 and 5.2 above) provided during the term prior to the Termination Date and the actual list price for all Planned Parts and Services delivered during the term of this Agreement. The “True-Up Payment” will be equal to the amount that (i) the list price for all Planned Parts and Services provided during the term (inclusive of escalating the value by the annual “Adjustment Factors” as set forth in Section 5 for each year during the Term) exceeds (ii) the total amount actually paid for such Planned Parts and Services (as set forth in Sections 5.1 and 5.2 above) prior to the Termination Date by Customer to Contractor, if any. Any late payment of this True-Up Payment shall be subject to the same penalties and interest attributable to other amounts owed by Customer to Contractor.

- 6.6 Major Overhaul Refund Payment. Contractor shall be required to pay to Customer the Major Overhaul Refund Payment as calculated pursuant to this Section 6.6 no later than thirty (30) days from the date Contractor receives the invoice for the Major Overhaul Refund Payment from Customer consistent with this Agreement. The Major Overhaul Refund Payment is intended to reflect the payments received and accrued by Contractor over the term of the Agreement for the Major Overhaul long block and services (as set forth in Sections 5.1 and 5.2 above) that have not been ordered or provided by Contractor at time of termination.

Within sixty (60) days following the termination, Contractor will provide to Customer a total of all Major Overhaul long block and services payments received (as covered in Sections 5.1 and 5.2 above) during the term prior to the Termination Date. The “Major Overhaul Refund Payment” will be equal to the amount Customer has paid Contractor for the Major Overhaul long block and services (as covered in Sections 5.1 and 5.2 above) during the term (inclusive of escalating the value by the annual “Adjustment Factors” as set forth in Section 5 for each year during the term). If Customer has notified Contractor of the Major Overhaul date (as covered in Section 4.2 above) and Contractor has ordered the long block from the manufacturer, the Major Overhaul Refund Payment shall be zero dollars (\$0) with no further obligations from either Party.

7. **Availability Guarantee.** Contractor provides to Customer an annual availability guarantee during any full calendar year of this Agreement equal to 87 % per Covered Unit. Such availability percentage shall be calculated in accordance with the formula and terms set forth below, and failure to meet such guarantee shall entitle Customer to the remedies set forth below.
- 7.1 The availability guarantee is based on annual time frames starting January 1 and ending December 31 and will not be pro-rated for partial years during the term. Customer shall be responsible for logging and tracking availability hours on a monthly basis and sharing the results with Contractor on the same monthly basis, with such results being reported by Customer to Contractor in writing no later than ten (10) days after month end. Customer must make all commercially reasonable efforts to keep the Covered Units connected to the remote network to allow accessibility by Contractor.
- 7.2 The format for the calculation of availability under this Section 7 is as follows:

$$A = (TI + TF) / 8,760 * 100$$

Definitions:

- TF: Standstill hours which are not within the limits of responsibility or control of Contractor or GE Jenbacher, including:
 - Notification period: Because Contractor is not responsible for site operation, daily operator tasks and/or maintenance events below 2,000 OPH, it is the responsibility of Customer to notify Contractor of any problem with the Covered Units that is preventing their availability as described herein. Once notified, if Contractor must travel to the site, a 4 hour travel time shall be included. The time for notification along with the 4 hour travel time, if necessary, is included under TF.
 - Customer maintenance and operational responsibilities and events: The time for Customer to perform the required maintenance and operation per the Manufacturer's recommendations and requirements is included under TF.
 - Improper Customer operations or maintenance: The downtime directly related to Customer, operations, maintenance or operating conditions outside the Manufacturer's recommendations and/or requirements shall be included under TF.
 - No demand or gas and/or periphery equipment failure: The downtime related to conditions or equipment external to the Covered Units shall be included under the TF.
- TI: Effective operating hours (according to service hour meter)
 - A: Availability in %

- 7.3 For every hour of down time below the guaranteed annual availability Customer will receive a compensation of \$ 60.00 per hour. Such compensations (liquidated damages) shall be in lieu of all actual damages and, except as provided in Section 7.4 below, shall be Customer's sole and exclusive remedy for failure to achieve the availability guarantee. Except as otherwise provided in Section 7.4, any amount payable by Contractor under this Section 7 shall be limited to ten percent (10%) of the annual billing (based on an uptime of 87%) for the Covered Unit(s) per year (the "Liability Cap").
- 7.4 In the event that Contractor willfully elects not to perform its services or other obligations to supply parts to Customer (including the provision of any minor or major overhaul as required under Section 2 of this Agreement) resulting in the availability falling below 50% pursuant to the formula set forth in Section 7.2 above, the liquidated damages outlined in Section 7.3 above shall no longer be Customer's exclusive remedy, and Customer may thereafter seek (i) reimbursement for Customer's additional and actual costs and expenses in obtaining replacement parts and services (after deduction for liquidated damages paid), and (ii) to the extent permitted by applicable law, equitable relief; provided, however, that the liquidated damages set forth in Section 7.3 shall remain the sole and exclusive remedy and the Liability Cap shall be in effect in the event that Contractor's refusal to perform or supply is in good faith, results from Customer's nonpayment of any amount due under this Agreement or results from Customer's failure to comply with the terms of this Agreement. IN NO EVENT SHALL CONTRACTOR BE RESPONSIBLE FOR OR REQUIRED TO PAY ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST SALES, LOST TIME, LOST USE, CONTINGENT LIABILITIES, OR OTHER ECONOMIC LOSS FOR ANY REASON INCLUDING CONTRACTOR'S FAILURE TO PERFORM THE TERMS OF THIS AGREEMENT
8. **Technical Instructions.**
- 8.1 Research and development work carried out by the manufacturer of the Covered Units may result in new findings as to optimization of the operation and maintenance, which might cause modifications of the maintenance schedules and technical instructions. Contractor will provide Customer with the latest edition of all operation and maintenance changes and related documents and adjust the maintenance accordingly. Based on such new information and research and development, Contractor will propose to Customer any changes recommended, if any, in the maintenance procedure, and whether and to which extent the new measures would be applied to the Covered Units. Nothing in this Section 8 shall be construed as authorizing Contractor to unilaterally change prices as a result of such manufacturer recommendations.
- 8.2 In the event there is a change to the Maintenance Schedules (Appendix A-1), both parties shall mutually agree on the required adjustments in pricing, if required. In the event that a mutual agreement is not reached, either party shall have the right to "Terminate Due to an Excusable Event" per Section 6 with the Planned Maintenance True Up payment and Major Overload Refund to be paid in accordance with Sections 6.5 and 6.6 of this Agreement, respectively.

9. **Insurance Coverage**

9.1 Contractor shall at a minimum maintain at its sole cost in force at all times during the term of this Agreement the insurance coverage set forth in this Article, in accordance with the terms and conditions required by this Article. Such policies shall be issued by approved companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be afforded on a form no more restrictive than the latest edition of the respective Insurance Services Office policy. Contractor shall name Broward County as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is Broward County. This official title shall be used in all insurance documentation.

- (a) Commercial General Liability or Public Liability (CGL) insurance with minimum limits of Five Million Dollars (\$5,000,000) combined single limit for bodily injury and property damage per occurrence and in the aggregate.
- (b) Workers' Compensation and any other statutory insurance required by law with respect to work-related injuries or disease for Contractor's employees. Coverage shall include: Employer's Liability with minimum limits of One Million Dollars (\$1,000,000) each accident.
- (c) Pollution Liability Insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate. Policy shall include clean-up costs and coverage for sudden and accidental incidents. Coverage shall remain in force for two (2) years after completion of services under this contract.
- (d) Commercial Automobile Liability insurance with minimum limits of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damages per occurrence.

Contractor shall provide proof of coverage upon execution of this Agreement and coverage renewal upon expiration throughout the term of this Agreement and until completion of services with the exception of the pollution liability insurance coverage. Customer shall be provided with a certified copy of any policy required by this Article within fifteen (15) days of a written request.

10. **Taxes and Duties**

10.1 **Taxes.** Contractor shall be responsible for, and shall pay directly, all Contractor Taxes. If Customer deducts or withholds Contractor Taxes, Customer shall furnish within one (1) month to Contractor accurate official receipts from the appropriate governmental authority for each deducted or withheld amount of Contractor Taxes. Customer shall be responsible for, and shall pay directly, all Customer Taxes.

10.2 **Exemption.** If Customer intends to claim any exemption from taxes or duties related to this Agreement or its performance, Customer agrees to furnish without charge evidence of tax or duty exemption acceptable to the taxing or customs authorities. Furthermore, if Customer arranges for export shipment, Customer agrees to provide Contractor, without charge, an export bill of lading.

11. **Warranty**

11.1 Contractor Warranty and Performance Guaranty.

- (a) Contractor warrants to Customer that the parts delivered during the term of this Agreement shall be new or refurbished and free from defects in material, workmanship and title and that all services performed during the term of this Agreement shall be performed in a competent, diligent manner in accordance with Manufacturer's Specifications.
- (b) The foregoing warranties shall expire as follows: (A) in the case of parts, the earlier of one (1) year after the date of installation or the stated operating life of such part; and (B) in the case of services, one (1) year after the performance of the service. In the event the term of this Agreement expires prior to the warranty period expiring, such warranty shall survive for the stated term. Any defect or nonperformance which is the basis for a warranty claim shall not be cause for any extension of the warranty period. Customer shall also adhere to published maintenance guidelines to prevent the manufacturer's parts and labor warranty from being voided.
- (c) If any failure of parts or services to meet the above warranties is discovered during the warranty period, Customer shall promptly notify Contractor in writing or by electronic mail and promptly make the affected parts or components of the Covered Units available for correction. Contractor shall thereupon correct any defect by re-performing the services and repairing or replacing the defective parts including any additional services and additional parts required due to damage caused by Contractor's defective services or parts.
- (d) In fulfilling its warranty responsibilities as described in this Section, Contractor shall be responsible for the cost of opening and closing of the Covered Units in order to access parts for warranty repair or replacement, and Contractor shall be responsible for connecting and disconnecting associated equipment connected to Covered Units, but Contractor shall not be responsible for removal or replacement of systems, structures, or parts of the Facility not directly connected to the Covered Units.
- (e) The preceding paragraphs of this Section set forth the exclusive remedies, other than those remedies set forth in Section 7 of this Agreement, for all claims based on failure of or defect in the parts and services provided under this Agreement or Contractor's performance, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise. **THE FOREGOING WARRANTIES AND GUARANTEES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND GUARANTEES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.**

12. **Delivery, Title Transfer, Risk of Loss**

12.1 **Delivery**

- (a) **General Delivery Terms.** Contractor shall be responsible for scheduling delivery of parts for Contractor's Scope of Work under this Agreement and coordinating all such deliveries with the Contractor's presence on site, pursuant to any work schedule discussed and agreed with Customer. Partial shipments will be permitted, other than deliveries of parts related to any Minor Overhaul or Major Overhaul, which shall be delivered shortly prior to such event. Contractor shall use commercially reasonable efforts to provide reasonable notice of any deliveries and coordinate such deliveries to the extent practicable. In the event Contractor delivers parts and Customer is not ready for the installation of the same, or the installation is prevented for any other reason, Customer agrees to store such parts on-site at no cost to Contractor until installation can be completed. If Customer does not store such parts, Customer shall pay Contractor its reasonable costs, expenses, and charges for doing the same. Customer will provide free of charge limited warehouse service to pre-stage long-lead or specialty parts for preventative or corrective maintenance.
- (b) **Delivery of Parts.** Contractor will deliver parts to the Site.

12.2 **Passage of Title**

- (a) **Passage of Title to Customer.** Title to parts shall pass to Customer when installed on the Covered Units.
- (b) **Passage of Title to Contractor.** Contractor shall have the right, at its option, to take title and possession of, and remove from the Site, any parts or components of the Covered Units which have been replaced with parts supplied by Contractor under this Agreement. Title to such parts and components shall pass from Customer to Contractor at the Site upon completion of the service during which the replacement part is installed.
- (c) **Packing.** Contractor shall be responsible for packing such parts and components for delivery and storage at the Site.

- 12.3 **Risk of Loss.** Risk of loss or damage to parts supplied by Contractor to Customer shall be borne by Contractor prior to the time of delivery to and acceptance by Customer, and by Customer upon acceptance.

13. **Health and Safety, Hazardous Material**

- 13.1 Contractor shall be responsible for the safety of its workforce and its equipment at Site. Customer will take reasonably necessary precautions to advise for the safety of Contractor's personnel at the Facility consistent with industry standards. This includes, but is not limited to, provision for review by Contractor of, and instruction by Customer on, Customer's safety practices, and conducting periodic safety consultations as needed.

- 13.2 Contractor shall comply with reasonable health and safety requirements established from time to time by Customer at the Facility, provided, however, that if Customer imposes unusual or new requirements, or requirements that materially impact Contractor's costs or performance, the Parties will negotiate appropriate amendments to this Agreement to address such impact, including an equitable adjustment in price and/or payment terms. Contractor is also required to comply with all local, state and Federal regulations for worksite health, safety, and hazardous material handling, including OSHA, Florida DEP, and Broward County regulations.
- 13.3 If, in Contractor's opinion, the safe execution of services at the Site is, or is apt to be, imperiled by local conditions, Contractor may remove some or all of its personnel from the Site or supervise performances of all or any part of its services or evacuate its personnel and Customer shall assist in said evacuation, any of which shall be considered to be an Excusable Delay. Customer reserves the right to require that Contractor evacuate the Site, including the securing of any equipment, tools, or uninstalled materials, in the event of an impending emergency or inclement weather.
- 13.4 The operation of the Facility at the Site is the responsibility of Customer.
- 13.5 If, at the Site, Contractor encounters any Hazardous Materials, not brought by the Contractor, which requires special handling or disposal, Customer shall immediately take whatever precautions are required to legally remove such Hazardous Materials, discovered at the Site but not brought by the Contractor, so that the work under this Agreement may safely proceed. If any such Hazardous Materials cause an increase in the Contractor's cost of or the time required for performance of any part of the work, an equitable adjustment shall be made in the price and schedule as applicable.
14. **Assignment.** Neither Party may transfer or assign, in whole or in part, any of its rights or obligations under this Agreement without the express written consent of the other Party. Customer shall have the right without notice to or consent from Contractor to assign this Agreement as collateral to a lender for financing the Facility, provided such Lender assumes in writing all of Customer's obligations arising under this Agreement. Any transfer or assignment, or attempted transfer or assignment, in contravention of this Section, whether by operation of law or otherwise, shall be null and void. Nothing in this Section shall restrict Contractor from subcontracting portions of its work, provided that Contractor shall remain responsible to Customer for performance of subcontracted scope.
15. **Indemnification and Sovereign Immunity**
- 15.1 **Indemnification by Contractor.** Contractor agrees to indemnify and hold harmless Customer from and against any loss or expense by reason of damage to the property or bodily injury, including death, of persons to the extent such damage or injury results from the negligent or reckless acts or omissions of Contractor or its subcontractors while engaged in the performance of this Agreement.
- 15.2 **Sovereign Immunity by Customer.** Nothing herein is intended to serve as a waiver of sovereign immunity by Customer nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Customer is a political subdivision as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

- 15.3 The indemnity provided for in this Section 15 shall only apply if the Party demanding to be indemnified gives the other Party prompt notice of any such claim and all necessary information and assistance so that the other Party, at its option, may defend or settle such claim and the Party demanding to be indemnified does not take any adverse position in connection with such claim.
16. **Intentionally Left Blank**
17. **Excusable Events**
- 17.1 Neither Customer nor Contractor shall have any liability or be considered to be in breach or default of its obligations under this Agreement to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to (i) Acts of God, act (or failure to act) of governmental authorities or third parties not engaged by the party claiming excusable delay, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riot, or acts of terrorism; or (ii) acts (or omissions) of the other Party, including failure to promptly perform its obligations under this Agreement; or (iii) inability on account of causes beyond its reasonable control to obtain necessary materials or components (“Excusable Event”). The party claiming delay due to the Excusable Event shall notify the other Party of any such delay. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, provided that the term of this Agreement shall not be extended due to any Excusable Event, unless mutually agreed upon in writing by the Parties. The occurrence of an Excusable Event shall not excuse any delay or failure of Customer to make any payment to be paid to Contractor pursuant to this Agreement unless the Excusable Event directly delays or prevents the transmission of the payment, itself.
- 17.2 If delay excused by Section 17.1 extends for more than ninety (90) days and the Parties have not agreed upon a revised basis for continuing the work at the end of the delay, including the equitable price adjustment, then either Party (except where delay is caused by acts or omissions of a Party, in which event only the Party not committing the acts or omissions), upon thirty (30) days written notice, may terminate this Agreement in accordance with Section 6 of this Agreement with respect to undelivered parts to which title has not yet passed and any uncompleted services.
18. **Limitation of Liability**
- 18.1 In no event, whether as a result of breach of contract, warranty, indemnity, tort/extra contractual liability (including negligence), strict liability, or otherwise, shall Contractor be liable for loss of profit or revenues, loss of use of the Facility or the Covered Unit(s) or any associated equipment, cost of capital, cost of substitute equipment, facilities, services or replacement power, downtime costs, claims of Customers for such damages, or for any special, consequential, incidental, indirect, punitive, or exemplary damages. In no event does this Section 18.1 preclude payment of damages under Section 7 of this Agreement.
- 18.2 For the purpose of this Section 18, the term “Contractor” shall mean Contractor, its parent, affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, whether individually or collectively. The provisions of this Section 18 shall prevail over any conflicting or inconsistent provision contained in any of the documents comprising this Agreement.

19. **Law, Jurisdiction, Venue, Waiver Of Jury Trial.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Contractor and Customer agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, Contractor and Customer agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND CUSTOMER HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**
20. **Confidential Information.** Information, suggestions or ideas transmitted in connection with performance hereunder are not to be regarded as secret or confidential unless the party claiming such identifies, in writing, the statutory exemption to the Florida Public Records Law.
21. **General Conditions**
- 21.1 Customer and Contractor are each independent of the other and nothing in this Agreement is intended, or shall be deemed, to create a partnership or joint venture of the Parties.
- 21.2 Notwithstanding anything to the contrary, Contractor shall have the right, in its discretion, to gather and use data and information concerning parts and Covered Unit performance, so long as Contractor does not disclose to any party that is not an affiliate of Contractor or a subcontractor of Contractor retained to perform any services anticipated in this Agreement the identification of Customer in connection with a particular item of data or information.
- 21.3 No modification, amendment, rescission, waiver, or other change shall be binding on a Party unless agreed in writing by that Party. This Agreement represents the entire agreement between the Parties. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Agreement.
- 21.4 The invalidity of any portion of this Agreement shall not affect the validity of the remainder of this Agreement. The rights and remedies set forth in this Agreement are the exclusive rights and remedies of each Party with respect to this Agreement, its performance, or breach.
- 21.5 The language of this Agreement, and all documents, materials, and training, if any, to be supplied by Contractor under this Agreement shall be English.

- 21.6 This Agreement may be signed in counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute one and the same contract.
22. **Appendices.** The Appendices form an integral part of this Agreement. In the event of any conflict between the terms and conditions herein and the Appendices, the terms and conditions herein shall prevail.

Appendix A (listed below):

Appendix A-1: Planned Maintenance Schedule

Appendix A-2: Siloxane Matrix

Appendix A-3: Customer Responsibilities

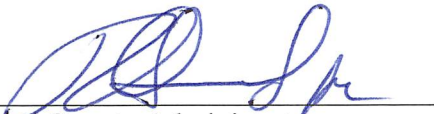
Appendix A-4: Other Technical Instructions

23. **Signatures.** See signature pages that follow.

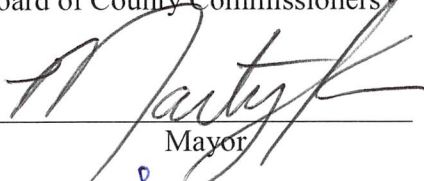
IN WITNESS WHEREOF, the parties have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 7th day of June, 2016 and NIXON POWER SERVICES, LLC, d/b/a "Nixon Energy Solutions", signing by and through its Manager member, duly authorized to execute same.

Customer

ATTEST:


Broward County Administrator, as
Ex-Officio Clerk of the Broward County
Board of County Commissioners

BROWARD COUNTY, by and through
its Board of County Commissioners,

By 
Mayor
7th day of June, 2016

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

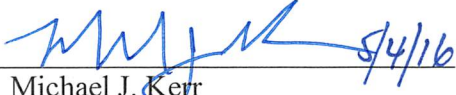
By  5/3/16
Risk Management Division (Date)
Signature

Jacqueline A. Binns

Print Name and Title above

Contracts Manager

By  5/4/16
Al A. DiCalvo (Date)
Assistant County Attorney

 5/4/16
Michael J. Kerr
Deputy County Attorney

Nixon's MA - Final



PLANNED AND CORRECTIVE MAINTENANCE AGREEMENT BETWEEN BROWARD COUNTY AND NIXON POWER SERVICES, LLC, D/B/A NIXON ENERGY SOLUTIONS

Contractor

**NIXON POWER SERVICES, LLC, d/b/a
"Nixon Energy Solutions"**
5038 Thoroughbred Lane
Brentwood, TN 37027

By: R. M. Siebert *R. M. Siebert*
Vice-President, Managing Director, *Manager*
R. M. Siebert, V.P. Managing Director,
(Print/Type Name and Title) *Manager*
2 day of May, 2016.

WITNESSES:

[Signature]
Signature

Ron Stanley
Print/Type Name

[Signature]
Signature

Mary Murphy
Print/Type Name



Appendix A

Appendix A-1: Planned Maintenance Schedule

Appendix A-2: Siloxane Matrix

Appendix A-3: Customer Responsibilities

Appendix A-4: Other Technical Instructions

Matrix | Content of Silicon

Please observe following for calculations of service contracts for plants with a silicon content above limits according

Silicon Content in Oil Analysis	Additional Spare Parts Preventative Maintenance	Additional Working Hours Preventative Maintenance	Lifetime of Spark Plugs	Additional Costs Corrective Maint.
>0.02≤0.08	2 x cylinder heads 2 x piston rings 2 x cylinder liners at 10,000; 30,000; 50,000 oph	additional 20 workings hours 10,000; 30,000; 50,000 oph	less 30% compared to normal silicon content	5%
>0.08≤0.14	5 x cylinder heads 5 x piston rings 5 x cylinder liners at 10,000; 30,000; 50,000 oph	additional 30 workings hours 10,000; 30,000; 50,000 oph	less 50% compared to normal silicon content	8%
>0.14≤0.20	10 x cylinder heads 10 x piston rings 10 x cylinder liners at 10,000; 30,000; 50,000 oph	additional 40 workings hours 10,000; 30,000; 50,000 oph	less 60% compared to normal silicon content	10%

A current measurement of the silicon content is necessary. At minimum there must be 6 oil analyses made available during one year.

The calculation of the silicon content must be carried out under strict observance of Jenbacher TI 1000-0300 regarding fuel gas quality.

Appendix A-5 - Customer Operational Responsibilities

	Daily	Weekly	Bi-weekly	Monthly	Quarterly	Annually	Other
Carry out daily operations of the generator and related systems.	X						
Notify Nixon of any unusual or abnormal operational data, conditions or issues (i.e. high/low temps or pressures, knocking, leaks, vibrations, noises, etc.)	X						
Carry out daily visual inspection of the generator module.	X						
Document on a daily basis: production, gas usage, gas quality, plant outages, maintenance logs listing daily maintenance activities for each engine and BOP equipment, the site log book listing daily activities at the site	X						
Intake air filter (container) - Review pressure at manometer at the pocket filter and clean if less than 4 mbar (400 Pa).	X						
Intake air filter (engine) - Review pressure at manometer at the pocket filter and clean if less than 10 mbar (1000 Pa).	X						
Visual inspection of the overvoltage deflectors.	X						
Check ignition voltage/spark plug. Undertake spark plug cleaning, gapping and change out (as appropriate).		X					
Lubricating oil - take oil samples and send to specified laboratory.		X					
Inspect Pre-combustion chamber gas compressor		X					
Gear- inspect oil level		X					
Battery - check acid level and pole binders are properly secured.				X			
Control cabinet cooling device - inspect and clean.						X	
Check smoke warning unit and gas warning unit and observe official regulations						X	
Cooling water - carry out concentration inspection and required top offs					X		
Exhaust gas system condensate drain line - inspect and clean.							X
Replace battery for the DIANE.							X
Replace storage battery at battery charger.							X
Undertake greasing of balance of plant items (including pumps and blowers) on a scheduled basis.		X					
Grease generator bearings. Will be based on generator name plate and/or site specific conditions.							X
Provide loctite and anti-seize (spark plugs) as required							X
Ensure proper damper operation by cycling gravity and motorized dampers. Apply a light oil or grease to all pivot and contact points.					X		
Ensure proper door operation by cycling all hardware. Apply a light oil or grease to all pivot and contact points.					X		
Ensure all screened openings, plenums, & louvers are clear of debris.						X	
Ensure exhaust flap is free by cycling by hand. Apply a high temperature grease to pivot point.						X	
Wash down enclosure & tank with water and mild detergent. Make sure any foreign matter that may cause rust (ie: salt, fertilizer, etc.) is removed.						X	
Manually cycle tank level switches to ensure they are operating properly.						X	
Make sure all tank vents are operating properly and clear of debris.						X	
Drain water from silencer as required via drain port at bottom of silencer.						X	

Appendix A-5 - Customer Operational Responsibilities

	Daily	Weekly	Bi-weekly	Monthly	Quarterly	Annually	Other
Check seals, hinges, latches, & gas springs for damage or wear. Replace if necessary.					X		X
Ensure radiator core is clean and clear of debris.							
Calibrate combustible gas sensors and monitors. Conduct visual inspection.					X		
Air conditioner filter inspection			X				
Visual inspection of heat exchanger. Check temperatures and performance.							X
VFD's							X
Switchgear and switchgear battery							X
MCC							X
Precompressor oil changes - 1st after 50 hours, 2nd after 500 hours and then annually at a minimum							X
Check precompressor oil level and pressure and/or cooling water temperature		X					
Open under pressure the drain valves on precompressure separators and air receiver for short moment of time		X					
Check precompressor v-belts							X
Precompressor Intake filter: clean or replace when dirty							X
Precompressor Piston rings: replace when worn away as output of compressor decreases							X
Precompressor gas seal rings and scraper collars: replace when gas leakage increases.							X
Check precompressor valves, if necessary, replace							X
Provide cleaning supplies as needed.							X
Visually inspect supplemental radiator rotors and assemblies					X		
Lubricate radiator motors						X	

Appendix A-4 - Other Technical Instructions

TA 1000-0099A, Approval procedure for various engine oils (Release date 05/26/2015);

TA 1000-0099B, Limit levels for used oil in GE Jenbacher gas engines (Release date 05/26/2015);

TA 1000-0099C, Procedure for testing the oil service life specific to the plant (Release date 05/26/2015);

TA-1000-0099D, Determining the initial pH value (ipH) for used lube oil (Latest date of Release);

TA1000-0099K, Aid to interpreting used oil analyses of engine lubricants (Latest date of Release);

TA 1000-0112, Sampling lubricating oil/Lubricating oil sampling protocol (Release date 08/26/2015);

TA 1000-0200, Composition of cooling water in closed primary circuits (Release date 05/27/2015);

TA 1000-0201, Anti-freeze products and testing the coolant (Release date 05/27/2015);

TA 1000-0204, Corrosion protection products for cooling water for GE Jenbacher engines and testing the coolant (Release date 05/27/2015);

TA 1000-0300, Fuel gas requirements (Release date 04/30/2015);

TA 1000-1109, Lubricating oil for type 2, 3, 4, and 6 GE Jenbacher engines (Latest date of Release);

TA 1100-0110, Boundary conditions for GE Jenbacher gas engines (Release date 05/21/2015);

TA 1100-0111, General conditions – Operation and Maintenance (Release date 05/27/2015);

TA 1400-0091, Fuel gases, avoidance of condensate (for GE Jenbacher gas engines) (Release date 09/06/2012);

Shortblock type 6 Version C/E/F/G/H – The basis of a major overhaul (GE Power & Water – DP – Jenbacher Service Manual 2015);

Longblock type 6 Version C – The extended scope of a major overhaul (GE Power & Water – DP – Jenbacher Service Manual 2015);

Genset type 6 Version C – The complete scope of a major overhaul (GE Power & Water – DP – Jenbacher Service Manual 2015);