



**FIRST AMENDMENT TO AGREEMENT BETWEEN
BROWARD COUNTY AND INNIO JENBACHER NORTH AMERICA LLC**

This First Amendment (“First Amendment”) is entered into by and between Broward County, a political subdivision of the State of Florida (“County”), and INNIO Jenbacher North America LLC, a corporation registered to transact business in the State of Florida (“Contractor”) (collectively referred to as the “Parties”).

RECITALS

A. County and Nixon Power Services, LLC, d/b/a Nixon Energy Solutions, entered into the Planned and Corrective Maintenance Agreement WS20-DM006, also rereferred to as a Contractual Service Agreement, dated June 7, 2016 (the “Agreement”), to provide scheduled and planned maintenance and overhaul services for the Covered Units at County’s North Regional Wastewater Treatment Plant.

B. On January 24, 2020, Nixon Power Services, LLC, d/b/a Nixon Energy Solutions, assigned the Agreement to Contractor. County consented to such assignment and Contractor agreed to assume the obligations owed to County under the Agreement by executing the Memorandum of Understanding, dated July 14, 2020.

C. The Parties now desire to amend the Agreement to: (i) extend the duration of the Agreement and (ii) increase the corrective on-site fee for the Covered Units.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this First Amendment shall retain the meaning ascribed to such terms in the Agreement.
2. Amendments to the Agreement made pursuant to this First Amendment are indicated herein by use of ~~striketroughs~~ to indicate deletions and **bold/underlining** to indicate additions. Except as modified herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.
3. Section 6 of the Agreement is hereby amended as follows (bold/underlining removed from original):

Term of Agreement. This Agreement shall commence on the Effective Date and shall expire ~~at~~ **when the final Covered Unit reaches** 60,001 OPHs ~~of the Covered Units, or eight (8) years from the effective date of this Agreement~~ **on June 8, 2032**, 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.

4. Section 5.2(b) of the Agreement is hereby amended as follows:

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~~ **\$1,860.00** shall apply.

5. Discriminatory Vendor and Scrutinized Companies List; Countries of Concern. Contractor hereby represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Sections 215.473 or 215.4725, Florida Statutes. Contractor represents and certifies that, as of the Effective Date, it is not, and for the remaining duration of the Agreement will not be, ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes. As of the Effective Date, Contractor represents that it is, and for the duration of the Agreement will remain, in compliance with Section 286.101, Florida Statutes.

6. Verification of Employment Eligibility. Contractor hereby represents that Contractor and each subcontractor have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this First Amendment will not violate that statute. If Contractor violates this section, County may immediately terminate the Agreement for cause and Contractor shall be liable for all costs incurred by County due to the termination.

7. Prohibited Telecommunications Equipment. Contractor hereby represents and certifies that as of the Effective Date, Contractor and all subcontractors do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Contractor represents and certifies that Contractor and all subcontractors shall not provide or use such covered telecommunications equipment, system, or services for the duration of the Agreement.

8. Criminal History Screening Practices. If this Agreement is subject to the requirements of Section 26-125(d) of the Code, Contractor hereby represents and certifies that Contractor will comply with Section 26-125(d) of the Code for the remaining duration of the Agreement.

9. Polystyrene Food Service Articles. Commencing on the Effective Date, Contractor agrees that it shall not sell or distribute on County property expanded polystyrene products or food service articles (e.g., Styrofoam), unencapsulated expanded polystyrene products, or single-use

plastic straws or stirrers, as set forth in more detail in Section 27.173, Broward County Administrative Code.

10. By January 1 of each year, Contractor must submit, and cause each of its subcontractors to submit, an Ownership Disclosure Form (or such other form or information designated by County), available at <https://www.broward.org/econdev/Pages/forms.aspx>, identifying the ownership of the entity and indicating whether the entity is majority-owned by persons fitting specified classifications.

11. In the event of any conflict or ambiguity between this First Amendment and the Agreement, the Parties agree that this First Amendment shall control. The Agreement, as amended herein by this First Amendment, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as amended in this First Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

12. Preparation of this First Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

13. Contractor acknowledges that through the date this First Amendment is executed by Contractor, Contractor has no claims or disputes against County with respect to any of the matters covered by the Agreement.

14. The effective date of this First Amendment shall be June 8, 2024.

15. This First Amendment may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment: 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 ____ day of _____, 2024, and Contractor, signing by and through its Authorized Signer, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

By: _____
Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By: _____
Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Matthew Haber (Date)
Assistant County Attorney


By _____
Michael J. Kerr (Date)
Chief Counsel

MH/tb
INNIO JENBACHER NORTH AMERICA LLC
First Amendment (DRAFT)
03/26/2024
#10985734

FIRST AMENDMENT TO AGREEMENT BETWEEN
BROWARD COUNTY AND INNIO JENBACHER NORTH AMERICA LLC

CONTRACTOR

INNIO Jenbacher North America LLC


By: 
Authorized Signer

Thomas Jaud

Print Name and Title

20 day of April, 2024

WITNESS/ATTEST:


Corporate Secretary or other witness

(CORPORATE SEAL)