

Introduced 2/6/17
Public Hearing 2/21/17
Council Action 3/6/17
Executive Action 3/8/17
Effective Date 3/8/17

County Council Of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 2

Bill No. 14 -2017

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a Planned and Scheduled Maintenance Agreement between Nixon Power Services, LLC d/b/a Nixon Energy Solutions and Howard County, Maryland that requires certain indemnification in future fiscal years.

Introduced and read first time February 6, 2017. Ordered posted and hearing scheduled.

By order

Jessica Feldmark
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on February 21, 2017.

By order

Jessica Feldmark
Jessica Feldmark, Administrator

This Bill was read the third time on March 6, 2017 and Passed , Passed with amendments _____, Failed _____.

By order

Jessica Feldmark
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 7th day of March, 2017 at 3 a.m./p.m.

By order

Jessica Feldmark
Jessica Feldmark, Administrator

Approved Vetoed by the County Executive March 8, 2017

Alan H. Kittleman
Alan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, the County has entered into a Planned and Scheduled Maintenance
2 Agreement with Nixon Power Services, LLC, d/b/a Nixon Energy Solutions, for the maintenance
3 and service of the gas-to-energy generator located at Alpha Ridge landfill; and
4

5 **WHEREAS**, Nixon Energy Solutions was selected in a sole-source procurement for a one-
6 year requirement contract with the option to extend the agreement for two additional one-year
7 renewal terms; and
8

9 **WHEREAS**, the Agreement, a copy of which is attached, includes an indemnity provision
10 at page 18 wherein the County agrees to pay certain costs to indemnify Nixon Energy Solutions in
11 certain situations; and
12

13 **WHEREAS**, the above referenced provision requires the payment of funds from an
14 appropriation in a later fiscal year because it may require indemnification by the County during
15 the entire term of the agreement, which expires in a future fiscal year; and
16

17 **WHEREAS**, such a multi-year term requires County Council approval as a multi-year
18 agreement pursuant to Section 612 of the Howard County Charter.
19

20 **NOW, THEREFORE,**
21

22 *Section 1. Be It Enacted by the County Council of Howard County, Maryland that in accordance*
23 *with Section 612 of the Howard County Charter, it approves the Planned and Scheduled*
24 *Maintenance Agreement between Nixon Energy Solutions and Howard County, Maryland,*
25 *substantially in the form of Exhibit A attached to this Act.*
26

27 *Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland that*
28 *the County Executive is hereby authorized to execute the Planned and Scheduled Maintenance*
29 *Agreement in the name of and on behalf of the County.*
30

1 **Section 3. And Be It Further Enacted** by the County Council of Howard County, Maryland that
2 the County Executive, prior to execution and delivery of the Planned and Scheduled Maintenance
3 Agreement, may make such changes or modifications to the Agreement as he deems appropriate
4 in order to accomplish the purpose of the transactions authorized by this Act, provided that such
5 changes or modifications shall be within the scope of the transactions authorized by this Act; and
6 the execution of the Agreement by the County Executive shall be conclusive evidence of the
7 approval by the County Executive of all changes or modifications to the Agreement, and the
8 Agreement shall thereupon become binding upon the County in accordance with its terms.

9

10 **Section 4. And Be It Further Enacted** by the County Council of Howard County, Maryland that
11 this Act shall be effective immediately upon its enactment.



Distributor
GE Jenbacher gas engines

Nixon Energy Solutions
5038 Thoroughbred Lane
Brentwood, TN 37027
(615) 309-5823
Fax (615) 309-5858

PLANNED AND SCHEDULED MAINTENANCE AGREEMENT

Customer

Howard County, Maryland
2350 Marriottsville Road
Marriottsville, MD 21104

Contractor

Nixon Power Services LLC doing business as "Nixon Energy Solutions"
5038 Thoroughbred Lane
Brentwood, TN 37064

THIS PLANNED AND SCHEDULED MAINTENANCE AGREEMENT (this "Agreement") is made and entered into effective as of this 25th day of November, 2016, by and between **Howard County, Maryland**, a body corporate and politic, on behalf of its Department of Public Works, with its principal place of business located at 2350 Marriottsville Road, Marriottsville, Maryland, 21104 (the "Customer"), and **Nixon Power Services, LLC d/b/a "Nixon Energy Solutions"**, a North Carolina limited liability company with its principal place of business located at 5038 Thoroughbred Lane, Brentwood, Tennessee 37027 (the "Contractor").

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 "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.
- 1.3 "Covered Unit" means the engine generator module and associated auxiliary supporting systems as supplied by GE Jenbacher and installed at the Facility.
- 1.4 "Customer's Designated Representative" is Niti Blackwell, Department of Public Works, Bureau of Environmental Services, 6751 Columbia Drive, Suite 514, Columbia, Maryland, 21046.
- 1.5 "Customer Taxes" means any and all non-exempt sales or use taxes imposed by any governmental authorities.



- 1.6 “Effective Date” shall be November 25, 2016.
- 1.7 “Facility” means the power generation plant, station or power generation section of the facility in which the Covered Unit is located. The Facility is located at 2350 Marriottsville Road, Marriottsville, Maryland, 21104.
- 1.8 “Hazardous Materials” means toxic substances, hazardous substances or hazardous wastes, as such terms are defined in any law, statute, ordinance or regulations promulgated by any national, federal, state, provincial or local government authority or the country governing the Site.
- 1.9 “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.
- 1.10 “Manufacturers Specifications” means the maintenance schedule, maintenance instructions, technical description, gas quality requirements and other documentation, identified on Annex 1 to this Agreement, as amended or supplemented from time to time by the manufacturer of the Covered Unit.
- 1.11 “Monitoring & 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 Unit) 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.
- 1.12 “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.
- 1.13 “Site” means the real property upon which the Facility is located.



- 1.14 “Time and Material Rates” means (i) Contractor’s published service rates set forth in Section 5.3 of this Agreement for technical services at the Facility (or remote via virtual connection) in effect at the time services are performed applied to the number of hours of such services including travel time, plus (ii) reasonable travel and living expenses (including standard per diems, if applicable) plus (iii) the published or standard price of GE Jenbacher manufactured or provided parts provided by Contractor as in effect at the time the parts are shipped, plus (iv) the price of other parts, materials and subcontracted labor and services, including craft labor, purchased by Contractor, as shown by invoices for the same, together with a markup of twenty percent (20%) of such invoices for other parts, materials and subcontracted labor and services. Mark-up of twenty percent (20%) is not applicable to Contractor’s published service rates, travel and living expenses, and published or standard price of GE Jenbacher manufactured or provided parts provided by Contractor. Documentation to support invoices including field service reports, timesheets, receipts, etc. shall be submitted with invoices. Any additional documentation reasonably requested by Customer shall be provided by Contractor.
- 1.15 “Warranty” means the Contractor’s Warranty set forth in Section 12 of this Agreement, and is separate from Original Manufacture Warranty.
2. **Scope of Work.** Contractor shall perform services, and supply all of the parts and supplies related to such maintenance services, for the Covered Unit 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, for each 10,000 OPH service interval, including minor overhauls, up to 60,000 OPH, and shall provide all scheduled parts related to and in accordance with the Manufacturers Specifications for the Covered Unit and related accessories at each 2,000 Operating Hour intervals (including minor overhauls). The related accessories include:
- (a) GE Jenbacher engine supplied generator/module which includes base gen-set, alternator, gas train, control panels, mounted support systems.
 - (b) Mechanical accessories to the Covered Unit, which include, but are not limited to, gas train, engine mounted: pumps, 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 Unit; which include the GE Jenbacher supplied equipment such as controls, remote networking, central servers, server software and interface, and client license which require scheduled or planned maintenance and other similar parts related to the scheduled and planned maintenance.

The Contractor’s obligation to provide all scheduled and planned maintenance and overhaul services and to provide all replacement parts in accordance with the Manufacturers Specifications for the Covered Unit and the related accessories is referred



to herein as the "Scope of Work". Contractor and Customer will agree in good faith on the date for carrying out all scheduled and planned maintenance included in the Scope of Work.

- 2.2 Spark Plugs / Cylinder Heads / Oil filters. Spark plugs, oil filters and cylinder heads are considered to be parts included in the Scope of Work.
 - 2.3 Overhauls. The Contractor shall provide scheduled overhauls, including minor overhauls, and shall provide the necessary parts for all overhauls. Contractor and Customer will agree on the date of each minor overhaul at least 3 months in advance.
 - 2.4 Remote Service. The Contractor shall carry out remote service from time to time, by making use of the Monitoring & Performance System. Remote service may include performance of remote diagnosis, fault location on the Covered Unit and the inspection of existing data stock. Remote service does not include permanent monitoring of the Covered Unit.
 - 2.5 Use of Refurbished Parts. In performance of the Scope of Work under this Agreement and if permitted under the Manufacturers Specifications, Contractor may install used parts refurbished by the Contractor. All parts used by Contractor, whether new or refurbished, must meet the Manufacturers Specifications. Any refurbished parts are fully warranted by Contractor in the same manner as new parts, all in accordance with Section 12.
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 Unit, except regular modifications required for proper performance in accordance with the Manufacturers Specifications.
 - 3.2 Delivery, transport, storage and disposal of commodities necessary for the operation of the Covered Unit as given in the Technical Instructions of the Contractor. Such commodities include lubrication oils, fuel gas, flushing compounds, battery acid, anti-freezing compound, and cleaning materials.
 - 3.3 Additional expenditures due to shut-down of the Covered Unit for an uninterrupted period of time of more than 3 months (e.g. conservation) unless such shut down is due to Contractor's failure to comply with the terms of this Agreement or due to a violation of this Warranty provided hereunder.
 - 3.4 Lube oil supply, changes and analyses, and the evaluation thereof according to Manufacturers Specifications and that oil changes are made in due course.
 - 3.5 Repairs and troubleshooting not covered under Warranty.
 - 3.6 Disposal of waste oil for the Covered Unit.



- 3.7 Repairs, not covered by the Original Equipment Manufacturer's Warranty, made necessary because of damages due to any kind of force, water or fire, corrosion, contamination, an Excusable Event pursuant to Section 18, and operation in material violation of the Manufacturers Specifications. 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.
- 3.8 Any special services (e.g. construction or rebuilding activities, hydraulic modifications, cost for cranes) required after a necessary replacement of the Covered Unit as well as any cost for dismounting, moving and remounting of the Covered Unit from / into the plant in the course of a major overhaul other than services related to the disconnection/reconnection of the Covered Unit (including gas lines and electrical connections)].
- 3.9 Any activities or non GE Jenbacher supplied components that are not explicitly defined to be within scope of supply agreed upon (e.g. gas conditioning skids, exhaust heat recovery unit, heat exchangers, HRSGs, silencers, external pumps, switchgear, MCC, transformers, distribution gear, etc.)
- 3.10 Repairs or damages outside the scope of supply or operations 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.
- 3.11 Troubleshooting, which includes simple activities like the exchange of minor components not covered in the Scope of Work (e.g. pressure and temperature transmitter, thermometer, gauges, ignition coils).
- 3.12 The elimination of insignificant leaks that are not material or detrimental to the safe operation of the Covered Unit.
- 3.13 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 Unit unless necessary due to breach of the Warranty or the Contractor's poor workmanship, negligence or willful misconduct. Any work and any costs beyond connection and disconnection of the Covered Unit, necessary for the performance of Scope of Work as well as Contractor's Warranty obligations, shall be paid as extra work at Time and Material Rates (unless necessary due to the Contractor's negligence or willful misconduct).
- 3.14 Contractor shall not be required to perform any scheduled or routine maintenance other than from the hours of 7:30 a.m. until 5:00 p.m. Monday through Friday (excluding federal, state and 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.
- 3.15 Operation, daily inspections and minor maintenance events below 10,000 OPH for each Covered Unit.



- 3.16 Those obligations of Customer set forth in Section 4 of this Agreement.
- 3.17 Additional work not specifically included in this Agreement with respect to the Covered Unit, including but not limited to commercially available conversions, modifications or upgrades, correction of damages and other impacts to a Covered Unit.

In the event that Contractor is requested to furnish parts and services beyond Contractor's scope expressly detailed in this Agreement, such additional parts and services shall be provided and performed under a separate purchase order. Acceptance of a purchase order by Contractor for such extra work shall be subject to Contractor's product and service offerings and capabilities at the time additional work is requested. Unless otherwise agreed and to the extent applicable, such purchase orders related to the Covered Unit and/or the Facility shall be subject to Sections 5.3, 5.4, 5.6, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, and any defined terms within such provisions, are set forth in this Agreement.

4. **Obligations of the Customer.** The 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 are the obligations of the Customer and to keep the operation log daily.
- 4.2 To carry out the daily operations and inspections of the Covered Unit and perform scheduled and planned maintenance work below 10,000 OPH events according to the Manufacturers Specifications.
- 4.3 To carry out the lube oil supply changes and the analyses and the evaluation thereof according to relevant technical instructions and make sure that oil changes are made in due course. The results of the lube oil analyses must be promptly forwarded to the Contractor.
- 4.4 To operate the Covered Unit using minimum gas quality as defined in TA 1000-0300. Any maintenance necessary due to gas quality not in accordance with this standard shall be charged separately to the Customer by Contractor.
- 4.5 To provide Contractor promptly with the fuel gas analysis this must be carried out by the Customer annually. Contractor is not liable for damage to the Covered Unit or otherwise resulting from gas quality which does not meet the Original Equipment Manufacturer's Specifications. Standard gas analysis by the Customer is sufficient as long as gas quality does not materially change. If the gas quality changes, the Contractor reserves the right to request increased fuel gas analysis frequency and demand a gas analysis by an authorized laboratory.
- 4.6 To provide, if necessary, free of charge, a secured room suitable for parts storage at site.
- 4.7 Customer shall 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; provided, however, that this paragraph shall not impose any obligations on Customer for unsafe operating conditions of which Customer has no actual knowledge, nor shall Customer be liable for any injuries to persons or property caused solely by the negligent or intentionally reckless actions of Contractor, its employees, agents and/ or subcontractors.

- 4.8 To permit the Contractor to carry out the maintenance and repair works during the normal working time from 7:30 a.m. to 5:00 p.m. from Monday to Friday.
 - 4.9 To make sure that the determined number of Operating Hours per Covered Unit is accurately recorded and reported to the Contractor as per the terms of this Agreement.
 - 4.10 To permit the Contractor access to the Facility at all reasonable times during the Term of this Agreement in accordance with Section 4.8 above.
 - 4.11 To supply and dispose of any lube oil and antifreeze/coolant necessary for the operation of the Covered Unit.
 - 4.12 To dispose of any used, old or waste parts which are non-core return components.
 - 4.13 To meet the requirements for engine lubrication oil or the oil changes, cooling water quality and anti-freezing compound anti-corrosion compound and fuel gas quality, all according to the Manufacturers Specifications.
 - 4.14 To install an Internet connection or a telephone modem and two telephone connections directly at the modem. A telephone connection shall be available to the modem at all times. The second telephone connection, which serves to provide communications with the Customer's personnel in the course of a remote diagnostic procedure, can also be provided by means of mobile telephone.
 - 4.15 To perform all labor for maintaining and replacing spark plugs.
 - 4.16 To provide necessary rigging or lifting of components to engine container for install and removal, to include, intercooler, turbocharger, and cylinder heads.
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:



- (a) Scheduled and Planned Parts Supply in 2,000 OPH intervals: To be order and invoiced per maintenance kit/event.

Preventative Maintenance Parts , Per Kit:	Estimated # of Events	Cost per Event
Spark Plugs	6	\$10,262.28
2,000 OPH Parts	12	\$1,506.24
10,000 OPH Parts	0	\$20,332.34
20,000 OPH Parts (minor overhaul)	0	\$131,075.52
30,000 OPH Parts	1	\$38,492.08
40,000 OPH Parts (minor overhaul)	1	\$131,075.52
50,000 OPH Parts	1	\$38,492.52

Subject to Section 7 below, commencing on the first day of the contract anniversary month, each annual period one year after the effective date of this Agreement; such price shall increase at the rate of 3.0% per year for each Annual Period thereafter, pursuant to Section 5.5.

Included in the foregoing price are all parts required for preventive (planned) maintenance, by maintenance event, on GE Jenbacher supplied equipment according to maintenance schedule as set forth in the Manufacturers Specifications which include:

Delivery, freight and/or duties of parts to the Site per maintenance event.

Turbo charger overhauls every 10,000 OPH on landfill gas.

All applicable core deposits are waived with this contract; cores must be returned to Contractor within 60 days from date of work performed.

- (b) Lube Oil and Engine Fluid Analysis Kits:

12 Month Lube Oil Subscription to include, but not to exceed 60 oil samples, four coolant samples, and four compressor samples.

Shipping and handling of samples to be handled by the customer.

Duration of contract: Annual Lump Sum Option

Price: \$4,097.73 per Covered Unit plus Customer Taxes, if applicable

Subject to Section 7 below, commencing on the first day of the contract anniversary month, each annual period one year after the effective date of this



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Agreement, the price will be adjusted based on current year market rates supplied by the oil laboratory facility mutually agreed upon by both parties to provide services under this Section 5.1 (b).

5.2 Maintenance and Minor Overhaul Service:

Labor Services Per Event:	Estimated # of Events	Cost per Event
10,000 OPH Service	0	\$10,675.67
20,000 OPH Service (minor overhaul)	0	\$35,351.57
30,000 OPH Service	1	\$13,225.34
40,000 OPH Service (minor overhaul)	1	\$35,351.57
50,000 OPH Service	1	\$13,225.34
LEANox Emissions Visit	3	\$2,083.06

Commencing on the first day of the contract anniversary month, each annual period one year after the effective date of this Agreement, the above stated price shall be increased at a percentage rate equal to the CPI-U Southeast USA increase over the previous 12 months.

The following services are included in the above mentioned price:

Scheduled or Planned maintenance labor and travel expenses on GE Jenbacher equipment according to maintenance schedule in 10,000 OPH intervals and above as set forth in the Manufacturers Specifications as well as:

Labor and travel expenses for minor overhauls to include:

Two pre-site visits for project planning and review, prior to each minor overhaul services. (Not to exceed eight hours per visit)

All GE Jenbacher special tooling to be provided by Contractor for work required, per event.

Tele-Service (Remote failure analysis and support, performance analysis upon request)

5.3 Nixon Service Rates:

Additional work not specifically included in this Agreement with respect to the Covered Unit, including but not limited to commercially available conversions, modifications or upgrades, correction of damages and other impacts to the Covered Unit, will be charged at Contractors agreed upon yearly published service rates, as follows:



2016/2017 Nixon Energy Solutions Hourly Service Rates:

Straight Time:	\$ 135.00 less 10% = \$ 121.50
Over Time:	\$ 202.50 less 10% = \$ 182.25
Double Time:	\$ 270.00 less 10% = \$ 243.00
Per Mileage Rate:	\$ 2.40 less 10% = \$ 2.16

Subject to Section 7, commencing on the first day of the contract anniversary month, each annual period one year after the effective date of this Agreement, such service rates shall be up for renewal based on Contractor's current year published service rates less 10%.

5.4 Payments.

The Customer shall pay the charges described in this Section 5 within 30 days from date of Contractor's invoice. Preventative parts kits will be invoiced upon shipment of each parts kit. Service Events will be invoiced no later than 10 days from completion of service work.

5.5 Parts Price Escalation

- a. The rate of payment described in Sections 5.1 includes the price of all parts provided in the Scope of Work. The price used in establishing such rates was based on the current GE Jenbacher parts price list. The compensation described in Sections 5.1 shall be increased to reflect the increase in the cost of parts in the Scope of Work as follows:
 - i. Subject to Section 7 below, the prices shall be escalated at a fixed rate of 3.0% per year, beginning on Commencing on the first day of the contract anniversary month, each annual period one year after the effective date of this Agreement.
 - ii. Notwithstanding the foregoing, the cumulative fixed escalation for parts pricing, as outlined in Section 5.5(a)(i) above, shall not be greater than ten (10) percentage points over or ten (10) percentage points less than the GE Parts Escalation (as defined below)
 - iii. Subject to Section 7 below, the "GE Jenbacher Parts Escalation" shall mean the GE Jenbacher parts price escalation beginning on January 1, 2017 and continuing each January 1st thereafter over the remainder of the



term of this Agreement. The “GE Parts Escalation” shall be measured January 1, 2017 and each January 1st thereafter and will be equal to a percentage change based on GE Jenbacher’s gross parts price changes for each part for the prior year, weighted by total usage of parts in the prior year in all of GE Jenbacher operations.

- iv. Subject to Section 7 below, for example, 3 years into the Agreement the cumulative fixed escalation for parts would be 9 % (3 years (commencing January 1, 2017) x 3.0% = 9%). If the annual GE Jenbacher parts price increases were: 8.0% in year 2017, 6.0% in year 2018, 7.0% in year 2019, then the cumulative GE Jenbacher price increase 3 years into the Agreement would equal 21% (the sum of 8, 6 and 7). In such case, parts price escalator under this Agreement will be adjusted upward by an additional 2% (from 9% to 11%) to maintain a 10 percentage point difference between the parts price escalation under Section 5.5 (a) (i) of this Agreement and the GE Parts Escalation (this would bring the cumulative fixed escalator hereunder to 11%, which is 10 percentage points below the GE Parts Escalation of 21%).

The adjustments described in 5.5 above would also apply if the cumulative fixed escalator would be more than 10 percentage points higher than the GE Parts Escalation escalator to maintain the 10 percentage point spread.

- 5.6 Past Due Payments. Customer shall pay interest to Contractor, at the rate of one percent (1%) per month, not to exceed the lesser of five percent (5%) per annum or the maximum interest rate permitted by applicable law on all amounts not timely paid in accordance with this Agreement.
- 5.7 Siloxane Levels. In the event siloxanes levels in the fuel powering the Covered Unit are more than the lowest level set forth on Appendix 3, Contractor shall work in good faith with Customer to appropriately adjust the pricing levels.
6. Major Overhaul. In addition to the Scope of Work set forth in Section 2, Customer has the option to have the Contractor provide the major overhaul at the 60,000 Operating Hour interval as set forth in the Manufacturers Specifications subject to the terms and conditions set forth herein (the “Major Overhaul Option”). In order to exercise the Major Overhaul Option, the Customer must deliver written notice to the Contractor no later than 54,000 OPH for the Covered Unit. After written notice of exercise of the Major Overhaul Option, the Contractor shall invoice 50% of the Major Overhaul Parts Price (as hereinafter defined).

The “Major Overhaul Parts Price” shall be equal to the base price of \$279,368.00 per Covered Unit plus the purchase price escalation of such sum as set forth in Section 5.5 of this Agreement plus all applicable Customer Taxes (the “Major Overhaul Parts Price”). The “Major Overhaul Service Price” shall be equal to the base price of \$68,350.00 per Covered Unit plus the purchase price escalation of such sum as set forth in Section 5.2 of this Agreement plus all applicable



Customer Taxes (the “Major Overhaul Service Price”). The Contractor shall be paid in accordance with the following schedule: (i) 50% of the Major Overhaul Parts Price shall be invoiced after written notice of exercise of the Major Overhaul Option (after receipt of payment Contractor shall release the order with GE for the long block and related parts); (ii) 40% of the Major Overhaul Parts Price shall be invoiced upon delivery of the long block to the worksite or into storage if the worksite is not ready for delivery; and (iii) 10% of the Major Overhaul Parts Price and 100% of the Major Overhaul Service Price shall be invoiced upon completion of the system startup and commissioning.

The Major Overhaul Parts Price includes the standard long block for the applicable GE Jenbacher equipment at 60,000 OPHs; the Major Overhaul Service Price includes (i) delivery, freight and/or duties on the long block and parts, and (ii) services (labor, travel and expenses) for dismount, remount and commission of old and new long block for major overhaul at 60,000 OPH. Services (labor, travel and expenses) for alternator/generator in the replacement/rebuild including necessary parts along with special services (e.g. construction or rebuilding activities, hydraulic modifications, costs for crane) are not included in the Major Overhaul Service Price.

In the event the Major Overhaul Option is exercised by the Customer, the Major Overhaul Option will thereafter be included in the Scope of Work as defined in Section 2 and subject to all of the same warranties, restrictions, limitations, exceptions, exclusions, terms, payment terms (except as otherwise specifically set forth above), termination rights, and other terms and conditions as set forth in this Agreement.

7. **Term of Agreement.** This Agreement shall commence as of the Effective Date and expire on the one (1) year anniversary thereafter. Customer shall have the option to extend this Agreement for two (2) additional one-year renewal terms provided that Customer gives Contractor notice in writing of its election to renew no later than fifteen (15) days prior to the expiration of the initial term or first renewal term, as applicable.

8. **Termination**

8.1 **Termination for Default and/or Insolvency and/or Excusable Events.** Either party (the “Non-Defaulting Party”) may terminate this Agreement if the other party (the “Defaulting Party”) (i) becomes Insolvent or (ii) the Defaulting Party commits a material breach of this Agreement and fails to cure the breach within twenty (20) days of written notice from the Non-Defaulting Party, or if it is not possible to cure such breach within twenty (20) days of such notice for reasons other than resulting from the Defaulting Party’s negligence following the breach, fails to commence to cure the breach within twenty (20) days or fails to thereafter continue diligent efforts to complete the cure as soon as reasonably possible. In no event however, shall the Defaulting Party be allowed a period in excess of one (1) year to cure any breach. Failure to make a payment required by Section 5 of this Agreement is a material breach. For any default other than a default in payment under Section 5, this provision for Termination for Default may only be exercised by notice in writing within ninety (90) days of the event(s) giving rise to the default and effective twenty (20) days from such written notice.



8.2 Termination Due to Excusable Event. If this Agreement is terminated on account of an Excusable Event, as herein defined, 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.

- (a) In addition to the foregoing, in the event this Agreement is terminated for any reason, the parties shall calculate the number of parts actually delivered to the Facility but not installed by Contractor as of the date of termination, and Customer shall pay to Contractor the price set forth in Sections 5.1 (a) and (b) for such parts delivered but not installed promptly following receipt of the invoice for the same, but no later than 30 days from invoice date.

8.3 Obligations Prior to Termination. Termination or expiration of this Agreement shall not relieve either Party of any obligation incurred prior to termination.

9. Technical Instructions. Research and development work carried out by the original Equipment Manufacturer of the Covered Unit may result in new findings as to optimization of the operation and maintenance, which might cause modifications of the maintenance schedules and technical instructions. The Contractor will provide the 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, the Contractor will propose to the 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 Unit. Nothing in this Section 9 shall be construed as authorizing Contractor to unilaterally change prices as a result of such changed maintenance procedures.

10. Insurance Coverage

10.1 Contractor's Insurance. During the Term of this Agreement, including any subsequent renewal terms, Contractor shall purchase and maintain the following Insurance coverage with limits of not less than those set forth below:

- (a) Workers' Compensation and any other statutory insurance required by law with respect to work related injuries or disease of employees of Contractor applicable to Contractor's employees in such form(s) and amount(s) as required by all applicable laws. Statutory coverage for Maryland jurisdiction, including Employer's Liability coverage, with a limit of at least \$100,000 is required.
- (b) Business Automobile Liability Insurance: Combined Single Liability limit of \$1,000,000 any one accident.
- (c) Commercial General Liability or Public Liability ("CGL") insurance for Contractor's protection, in broad form including coverage for liability assumed under contract, providing coverage for bodily injury and property damage with a combined single limit of not less than Five Million –US Dollars (\$5,000,000) cumulative total of underlying and excess coverage. The primary shall cover Howard County, MD, its officials, employees, & agents as additional insureds,



and the excess policy shall follow form with respect to coverage and additional insured status.

- (d) The Contractor shall assure that all subcontractors performing services in accordance with this solicitation carry identical insurance coverage as required of the contract, either individually or as an Additional Insured on the policies of the Contractor. Exceptions may be made only with the approval of the County. The Contractor shall indemnify the County for any uninsured losses relating to contractual services involving subcontractors, including workers' compensation claims.
- (e) The Contractor shall provide the County with Certificates of Insurance within ten days of bid award notification, evidencing the coverages required above. Such certificates shall provide that the County be given at least 30 days prior written notice of any cancellation of, intention to not renew, or material change in such coverage. The Contractor must provide Certificates of Insurance before commencing work in connection with the contract.
- (f) The providing of any insurance required herein does not relieve the Contractor of any of the responsibilities or obligations assumed by the Contractor in the contract awarded or for which the Contractor may be liable by law or otherwise.

10.2 Customer's Insurance:

The parties hereto agree that Howard County, Maryland, a body corporate and politic, and their respective employees are insured through the Self Insurance Fund established by Howard County Council Bill No. 57, 1986, as required by law and more fully set forth in the Courts and Judicial Proceedings Article, Section 5-301 through 5-304, Annotated Code of Maryland, entitled Local Government Tort Claims Act. Such coverage(s) apply to liability for property damage and/or bodily injury to third parties caused by the actions of said employees in the performance of their employment, as well as provide all-risk coverage for Customer owned properties. The establishment of this Fund does not constitute a waiver of the immunities, liability caps and defenses available to Howard County, Maryland, for its officers, agents and employees against third parties for tort claims, and both parties expressly reserves any indemnification rights under this Agreement.

- 10.3 Failure to Maintain Insurance. Failure of either of the Parties to maintain any insurance required under this Section 10 shall constitute an event of material breach for the purposes of Section 8.1 and, in addition to termination rights, either Party shall have the right to immediately suspend performance and delivery until such breach is cured. The suspending Party shall give notice of said suspension within twenty-four (24) hours of suspension.

11. Taxes and Duties

- 11.1 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. The Contractor acknowledges that Howard County, as a governmental entity, is exempt from all Federal, State and Local taxes, and will maintain a tax exemption on file with Contractor during the term of this Agreement.

- 11.2 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.

12. Warranty

12.1 Contractor Warranty and Performance Guaranty.

- (a) Contractor warrants to Customer that the parts delivered during the Term of this Agreement shall be new (unless otherwise permitted) 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 Manufacturers Specifications.
- (b) The foregoing warranties shall expire, (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. Notwithstanding the foregoing, in the case of any 3rd Party Engineering Study, Contractor does not warrant the accuracy of or the performance results of any conclusions or recommendations provided, or that any desired objective will result from the Engineering Study. The 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 Unit 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 Unit in order to access parts for warranty repair or replacement, and Contractor shall be



responsible for connecting and disconnecting associated equipment connected to the Covered Unit. But Contactor shall not be responsible for removal or replacement of systems, structures or parts of the Facility not directly connected to the Covered Unit.

- (e) The preceding paragraphs of this Section set forth the exclusive remedies for all claims based on failure of or defect in the parts and services provided under the 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. Any work, services or parts provided that are not expressly guaranteed by the terms of this Agreement shall not be subject to, or the beneficiary of, the above warranties and shall be governed by the terms of a separate purchase order or warranty.
- (f) Notwithstanding the foregoing, nothing in this Section 12.1 is intended to amend, supersede or replace any new project warranty awarded to the customer for GE with respect to the Covered Unit.

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

13.1 **Delivery**

- (a) **General Delivery Terms.** Contractor shall be responsible for scheduling delivery of parts for Contractor's Scope of Work under this Agreement, pursuant to any work schedule discussed and agreed with Customer. Partial shipments will be permitted. 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 until installation can be completed at no cost to Contractor. If Customer does not store such parts, Customer shall pay Contractor its reasonable costs, expenses and charges for doing the same.
- (b) **Delivery of Parts.** Contractor will deliver parts to the Customer Site.

13.2 **Passage of Title**

- (a) **Passage of Title to Customer.** Title to parts shall pass to Customer upon delivery to site.
- (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 Unit 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.

13.3 Risk of Loss. Risk of Loss or damage to Parts supplied by Contractor to Customer shall be borne by the Contractor prior to the time of delivery and by Customer upon and after the time of delivery.

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

14.1 Customer will take reasonably necessary precautions 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. Except to the extent specifically provided herein, Contractor is responsible for the safety of its personnel.

14.2 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.

14.3 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 and/or supervise performances of all or any part of its Services and/or evacuate its personnel and Customer shall assist in said evacuation, any of which shall be considered to be an Excusable Event.

14.4 The operation of equipment at the Site is the responsibility of Customer.

14.5 If, at the Site, Contractor encounters any Hazardous Material which requires special handling and/or disposal, Customer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions so that the work under the Agreement may safely proceed. If any such Hazardous Materials cause an increase in 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. Customer agrees to properly dispose of all Hazardous Materials produced or generated in the course of Contractor's work at the Site. To the extent provided by the Local Government Tort Claims Act, found at Sections 5-301 through 5-304 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, as supplemented from time to time, and the limitations of liability set forth therein, and subject to the appropriations of the Howard County Council, which shall not be unreasonably denied, Customer shall indemnify Contractor for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to (i) the presence of any Hazardous



Materials which are present on the Site prior to the commencement of Contractor's work or (ii) improperly handled or disposed of by Customer or (iii) brought on to the Site or produced thereon by parties other than Contractor. However, in no event shall the Customer be liable to the Contractor for damages caused by hazardous materials on the site generated by the Contractor. Nothing in this Section 14 shall be construed as providing an exclusive remedy with respect to the matters addressed herein or limiting either party's rights arising by operation of law.

15. **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, such consent not to be unreasonably withheld. 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.
16. **Indemnification.** 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. To the extent provided by the Local Government Tort Claims Act, found at Sections 5-301 through 5-304 of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, as supplemented from time to time ("LGTC"), and the limitations of liability set forth therein, and subject to the appropriations of the Howard County Council, which shall not be unreasonably denied, Customer shall likewise indemnify and hold harmless Contractor from and against any loss or expense by reason of physical damage to the property of third parties or bodily injury, including death, of persons to the extent such damage or injury results from the negligent acts or omissions of Customer or its other contractors but Customer's obligation to indemnify Contractor for actions of Customer's contractors shall be limited to the provisions of the "LGTC" as defined herein. In the event such damage or injury is caused by the joint or concurrent negligence acts or omissions of Customer (or its other contractors) and Contractor (or its subcontractors), the loss or expense shall be borne by each Party in proportion to its degree of negligence or the degree of negligence of its contractors/subcontractors. In no case, however, shall Customer or Contractor have any obligation under the foregoing unless Customer or Contractor is liable to such third parties (including without limitation such employees) under the law otherwise normally applicable. The indemnities provided for in this Section 16 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. Nothing in this Section 16 shall be construed as providing an exclusive remedy with respect to the matters addressed herein or limiting either party's rights arising by operation of law.
17. **Contractor's Suspension Right.** In addition to its other rights, if Customer fails to fulfil any of the payment conditions in this Agreement which is not promptly cured, becomes generally unable to pay its debts when they become due, or sustains a material deterioration of its financial condition, Contractor may suspend performance and delivery and/or thereafter require full or



Distributor
GE Jenbacher gas engines

Nixon Energy Solutions
5038 Thoroughbred Lane
Brentwood, TN 37027
(615) 309-5823
Fax (615) 309-5858

partial payment of invoices in advance. Any cost incurred by Contractor in accordance with such suspension (including storage costs) shall be payable by Customer upon submission of Contractor's invoices.

18. **Excusable Events**

18.1 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 labour disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riot, 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 (an "Excusable Event"). The party claiming an 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. If Contractor is delayed by acts or omissions of Customer, or by the prerequisite work of Customer's other contractors or suppliers, Contractor shall also be entitled to equitable price adjustments; provided, however, that Contractor will not require price adjustments for minor delays or delays customarily incurred in the ordinary course of practice. 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.

18.2 If delay excused by Section 18.1 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 8 of this Agreement with respect to undelivered parts to which title has not yet passed and any uncompleted Services.

19. **Limitation of Liability**

19.1 In no event, whether as a result of breach of contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability, or otherwise, shall either the Customer or Contractor or their employees, subcontractors or suppliers be liable for loss of profit, revenues, or for any special, consequential, incidental, indirect, punitive or exemplary damages to the other, provided, however, that such limitation shall not affect Contractor's ability to collect the full amounts due to be paid under this Agreement for services and products provided, ordered or delivered pursuant to the terms set forth herein.



- 19.2 If Contractor furnishes Customer with advice or assistance concerning any products, systems or work which is not required pursuant to this agreement, the furnishing of such advice or assistance will be the subject of a separate written agreement under Section 3.17 and will not subject contractor to any liability under this Agreement or the warranties or guarantees contained herein.
- 19.3 For the purpose of this Section 19, 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 19 shall prevail over any conflicting or inconsistent provision contained in any of the documents comprising this Agreement.
20. **Place of Jurisdiction/Governing Law.** This Agreement shall be interpreted in accordance with and governed by the laws of State of Maryland.
21. **Confidential Information.** Information, suggestions or ideas transmitted in connection with performance hereunder are not to be regarded as secret or submitted in confidence except in accordance with this Section 21. Any information disclosed by either Party in connection with this Agreement and designated in writing, by label, stamp or other written communication by the disclosing Party as "confidential" or "proprietary" at the time of disclosure shall be treated as "Confidential Information". It is agreed that this Agreement and all drafts hereof, shall be considered Contractor's Confidential Information at all times. The recipient Party agrees (i) to treat such Confidential Information as confidential and not disclose it to third parties other than Contractor Affiliate entities or either Party's lenders, agents, investment partners and advisors as necessary for performance of this Agreement, all of whom shall be subject to the terms of this paragraph and such Party shall be responsible for such compliance, (ii) to restrict the use of such Confidential Information to matters relating to the recipient Party's performance of this Agreement, and (iii) to restrict access to such information to employees of the recipient Party and Contractor's Affiliate entities whose access is necessary in the implementation of this Agreement. All copies of written Confidential Information will be returned to the disclosing Party upon request (i) except to the extent that an item of such information is designated to be retained by the recipient Party pursuant to a specific provision of this Agreement, and (ii) Contractor may retain one copy of Owner Confidential Information until such time as all its liability under this Agreement terminates. Information shall not be considered to the Confidential Information, and the recipient Party shall not be liable for the use and disclosure thereof, if such information: (a) was in the public domain at the time of disclosure, or thereafter comes into the public domain through no fault of the recipient Party; or (b) is otherwise available to the Receiving Party without restrictions on the recipient Party's use and disclosure similar to those restrictions contained in this Agreement; or (c) is independently developed by the recipient Party. Notwithstanding the above, the Contractor acknowledges and agrees that Customer's confidentiality obligations are subject to the Maryland Public Information Act, but Customer will provide Contractor with reasonable notice prior to any disclosure of Confidential Information pursuant to the Maryland Public Information Act.
22. **General Conditions**



- 22.1 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.
- 22.2 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 not a Contractor Affiliate company an identification of the Customer in connection with a particular item of data or information.
- 22.3 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.
- 22.4 The invalidity in whole or in part 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.
- 22.5 The language of this Agreement, and all documents, materials and training, if any, to be supplied by Contractor under this Agreement shall be English.
- 22.6 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.
23. **Appendices.** The Appendices form an integral part of this Agreement. In the event of any conflict between the terms herein and the Appendices, the terms and conditions herein shall prevail.
- 1) Maintenance schedules
 - 2) Technical Instructions:
 - TA 1000-0099A; TA 1000-0099B; TA 1000-0099C; TA-1000-0099D;
 - TA1000-0099K; TA 1100-0111; TA 1000-0112; TA 1000-1109;
 - TA 1100-0110; TA 1000-0200; TA 1000-0201;
 - TA 1000-0204; TA 1000-0300; TA 1400-0091
 - 3) Siloxane Matrix
24. **Signatures.**



Distributor
GE Jenbacher gas engines

Nixon Energy Solutions
5038 Thoroughbred Lane
Brentwood, TN 37027
(615) 309-5823
Fax (615) 309-5858

In Witness Whereof, the undersigned have executed this Agreement effective as of the Effective Date.

Contractor:

**NIXON POWER SERVICES LLC. doing business as
"NIXON ENERGY SOLUTIONS"**

5038 Thoroughbred Lane
Brentwood, TN 37027

By: *R. M. Siebert*
Name: R. Marty Siebert
Title: V.P., Managing Director NES

Date: 10-24-16

HOWARD COUNTY, MARYLAND ATTEST:

BY:

HOWARD COUNTY, MARYLAND

ATTEST:

IN WITNESS WHEREOF, the parties have executed this Agreement PA-038-2017.

WITNESS:

**NIXON POWER SERVICES LLC. doing business
as "NIXON ENERGY SOLUTIONS"**
5038 Thoroughbred Lane
Brentwood, TN 37027

Mary Murphy
Signature
Print Name: MARY MURPHY

By: R. M. Siebert
Name: R. Marty Siebert
Title: V.P., Managing Director NES

WITNESS:

HOWARD COUNTY, MARYLAND, a body
corporate and politic

Lonnie R. Robbins
Chief Administrative Officer

By: _____
Allan H. Kittleman
County Executive

APPROVED FOR LEGAL SUFFICIENCY
this _____ day of _____, 2016:

Gary W. Kuc
County Solicitor

REVIEWING ATTORNEY:

Type Name: _____
Title: _____

APPROVED FOR SUFFICIENCY OF
FUNDS:

DEPARTMENT APPROVED:

Stanley J. Milesky
Director of Finance

James M. Irvin
Director of Public Works



HOWARD COUNTY, MARYLAND

Office of Purchasing

AFFIDAVIT

Must be completed, signed by an officer of the company (President, CEO, Vice President, etc.).

Contractor Nixon Power Services, LLC.

Address 5038 Thoroughbred Lane, Brentwood, TN 37027

I, Rollan M Siebert, the undersigned, Vice President, Managing Director, NES of the above named
(Print Signer's Name) (Print Office Held)

Contractor does declare and affirm this 24th day of October, 2016, that I hold the aforementioned office
(Month) (Year)

in the above named Contractor and I affirm the following:

AFFIDAVIT I

The Contractor, his Agent, servants and/or employees, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein.

AFFIDAVIT II

No officer or employee of Howard County, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will receive subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the County, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the County received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the County in connection with this contract, job, work, or service for the County, excepting, however, the receipt of dividends on corporation stock.

AFFIDAVIT III

Neither I, nor the Contractor, nor any officer, director, or partners, or any of its employees who are directly involved in obtaining contracts with Howard County have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state, or of the federal government for acts of omissions committed after July 1, 1977.

AFFIDAVIT IV

Neither I, nor the Contractor, nor any of our agents, partners, or employees who are directly involved in obtaining contracts with Howard County have been convicted within the past 12 months of discrimination against any employee or applicant for employment, nor have we engaged in unlawful employment practices as set forth in Section 12.200 of the Howard County Code, or Subtitle 6 of Title 20 of the State Government Article, Annotated Code of Maryland or, of Sections 703 and 704 of Title VII of the Civil Rights Act of 1964.

AFFIDAVIT V

The Contractor:

- i. Is not currently identified on the list created by the Maryland State Board of Public Works as a person engaging in investment activities in Iran as described in Section 17-702 of the *Maryland State Finance and Procurement Article*; or
- ii. Is not currently engaging in investment activities in Iran as described in Section 17-702 of the *Maryland State Finance and Procurement Article*.

If the person is unable to make the certification, it will provide the County, a detailed description of the Contractor's investment activities in Iran

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavits are true and correct to the best of my knowledge, information and belief.

Rollan M Siebert

Signature

Rollan M Siebert

Printed Name

V.P., Managing Director, NES

Title

Rev.

ATTACHMENT B

HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

Charter Section 901. Conflict of Interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Code Section 4.119. Ethics and Fair Employment Practices.

(a) **Conflict of Interest.** Bidders, vendors, purchasers and county employees involved in the purchasing process shall be governed by the provisions of the Howard County Charter and Howard County law regarding conflict of interest. No vendor shall offer a gratuity to an official or employee of the county. No official or employee shall accept or solicit a gratuity.

(b) **Discouragement of Uniform Bidding.**

(1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.

(2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.

(3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms and conditions of a bid submitted by a competitor.

(c) **Fair Employment Practices**

(1) Bidders, vendors and purchases may not engage in unlawful employment practices as set forth in Subtitle 2 "Human Rights" of Title 12 of the Howard County Code, Subtitle 6 of Title 20 of the State Government Article, Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engage in such unlawful employment practices, they shall be subject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

(2) The Howard County Office of Human Rights shall notify the county purchasing agent when any bidder is found, by a court of competent jurisdiction, to have engaged in any high unlawful employment practices.

(3) If any bidder has been declared to be an irresponsible bidder for having engaged in an unlawful employment practice and has been debarred from bidding pursuant to this subtitle, the Howard County Office of Human Rights shall review the employment practices of such bidder after the period of debarment has expired to determine if violations have been corrected and shall, within 30 days, file a report with the county purchasing agent informing the agent of such corrections before such bidder can be declared to be a responsible bidder by the County Purchasing agent.

(4) Payment of subcontractors. All contractors shall certify in writing that timely payments have been made to all subcontractors supplying labor and materials in accordance with the contractual arrangements made between the contractor and the subcontractors. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented to the county purchasing agent.

Section 22.204. - Prohibited Conduct and Interests.

(a) Participation Prohibitions.

- (1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:
- (i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.
 - (ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:
 - a. A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;
 - b. A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;
 - c. A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating or has any arrangement concerning prospective employment;
 - d. If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;
 - e. An entity, doing business with the County, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or
 - f. A business entity that:
 - 1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and
 - 2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.
- (2) A person who is disqualified from participating under paragraph 1. of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:
- (i) The disqualification leaves a body with less than a quorum capable of acting;
 - (ii) The disqualified official or employee is required by law to act; or
 - (iii) The disqualified official or employee is the only person authorized to act.
- (3) The prohibitions of paragraph 1 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(b) Employment and Financial Interest Restrictions.

- (1) Except as permitted by regulation of the commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:
- (i) Be employed by or have a financial interest in any entity:
 - a. Subject to the authority of the official or employee or the County agency, board, commission with which the official or employee is affiliated; or
 - b. That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or
 - (ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.
- (2) The prohibitions of paragraph (1) of this subsection do not apply to:
- (i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;
 - (ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;
 - (iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or
 - (iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) Post-Employment Limitations and Restrictions.

- (1) A former official or employee may not assist or represent any party other than the County for compensation in a case, contract, or other specific matter involving the County if that matter is one in which the former official or employee significantly participated as an official or employee.
- (2) For a year after the former member leaves office, a former member of the County Council may not assist or represent another party for compensation in a matter that is the subject of legislative action.

(d) **Contingent Compensation.** Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the County.

(e) **Use of Prestige of Office.**

(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(f) **Solicitation and Acceptance of Gifts.**

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

(i) Is doing business with or seeking to do business with the County office, agency, board or commission with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit; or

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee.

(4) (i) Subsection (4)(ii) does not apply to a gift:

a. That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

c. Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

a. Meals and beverages consumed in the presence of the donor or sponsoring entity;

b. Ceremonial gifts or awards that have insignificant monetary value;

c. Unsolicited gifts of nominal value that do not exceed \$20.00 in cost or trivial items of informational value;

d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

e. Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the County and that the gift is purely personal and private in nature;

g. Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related, in any way, to the official's or employee's official position.

(g) **Disclosure of Confidential Information.** Other than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

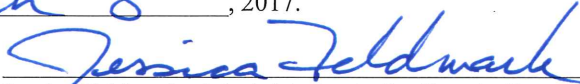
(h) **Participation in Procurement.**

(1) An individual or a person that employs an individual who assists a County, agency or unit in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement, may not submit a bid or proposal for that procurement, or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

(2) The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on March 8, 2017.



Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2017.

Jessica Feldmark, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2017.

Jessica Feldmark, Administrator to the County Council