



Certified: --

E-17-23

Filed with the Clerk of Nassau County
Legislature January 30, 2023 7:13pm

NIFS ID: CQPW23000001

Capital:

Contract ID #: CQPW23000001

NIFS Entry Date: 01/30/2023

Department: Public Works

Service: Operation and Maintenance Agreement for the
County's District Energy System

Term: from 01/31/2023 to 01/31/2025

Contract Delayed:

Slip Type: New		
CRP:		
Blanket Resolution:		
Revenue:	Federal Aid:	State Aid:
Vendor Submitted an Unsolicited Solicitation:		

1) Mandated Program:	No
2) Comptroller Approval Form Attached:	Yes
3) CSEA Agmt. & 32 Compliance Attached:	No
4) Significant Adverse Information Identified? (if yes, attach memo):	No
5) Insurance Required:	Yes

Vendor/Municipality Info:	
Name: Nassau Energy, LLC	ID#: 133407290
Main Address: 185 Charles Lindbergh Blvd Garden City, NY 11530 Contract Specific Address: 1360 Post Oak Blvd, Suite 400 Houston, Texas 77056	
Main Contact: Ann Garbacki Contract Specific Contact: Darin Hawkins	
Main Phone: (516) 222-2884 Contract Specific Phone: (713) 636-0000	

Department:
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Phone: (516) 571-9332
Email: cpetrucci@nassaucountyny.gov, Ldionisio@nassaucountyny.gov, Ekobel@nassaucountyny.gov, zirilli@nassaucountyny.gov

Contract Summary

Purpose: The subject Operation and Maintenance Agreement allows for the continued delivery of thermal energy in the form of high-temperature hot water and chilled water for heating and cooling purposes to several critical facilities which include educational, cultural and healthcare institutions in and around the Nassau County Hub. The proposed Operation and Maintenance Agreement has a term of two years.

Under the terms of the Operation and Maintenance Agreement, the operator, Nassau Energy LLC, will operate the existing facilities in order to continue to provide such thermal energy to the existing base customers (Nassau Community College, the Veterans Memorial Coliseum, Long Island Children's Museum, the Cradle of Aviation, Long Island Marriott, Nassau University Medical Center (NUMC), the Correctional Center, Technical Service Building and the Aquatic Center. The Operation and Maintenance Agreement also grants to Nassau Energy, LLC the right to pursue and negotiate a potential long-term solution for on-site

production of thermal and electric energy to the District Energy System that can contribute to the development of the Hub.

Method of Procurement: The subject agreement was procured via a Request for Proposals originally issued in January 2016. There were seven addenda to the RFP in response to questions and comments posed by several interested firms. The receipt of proposals was extended to July 29, 2016 and all responses were received on or before the due date.

Procurement History: The subject agreement was procured via a Request for Proposals issued in January 2016. There were seven addenda to the RFP in response to questions and comments posed by several interested firms. The receipt of proposals was extended to July 29, 2016 and all responses were received on or before the due date.

Despite an extensive effort to attract respondents through a Request for Expressions of Interest that was well attended, only two firms submitted proposals. With the assistance of outside counsel, engineers and financial advisors the two proposals were vetted and compared. In order to properly compare the proposals, the team of outside experts conducted interviews; submitted clarification questions; and, reviewed the responses from the proposers to assist the County's selection committee. In mid-2017, one member of the selection committee resigned from County service delaying the procurement process. Then with the change in administration, a selection committee had to be reconstituted and briefed before arriving at a recommendation. In the spring of 2018, the reconstituted committee met with the County's expert consultants over several weeks and ultimately selected the incumbent provider, Nassau Energy, LLC, a subsidiary of Engie NA, as the most advantageous proposal based on the criteria set forth in the RFP.

Nassau Energy, LLC, as successor to Nassau District Energy Corp., was a party to the Lease Agreement ("Lease") with an effective date of February 2, 1990, as amended, and a Master Energy Agreement ("MEA") dated as of February 2, 1990, as amended, under which the County leased to Nassau Energy, LLC portions of the Central Utility Plant Facilities and NUMC Facilities and related sites, and Nassau Energy, LLC owned and operated a cogeneration facility that produced electricity and resulting heat to operate the boilers and chillers to provide heating and cooling services to the base customers. New 25-year lease and master energy agreements were negotiated by the parties but due to Covid-19 and related price increases, among other factors, the contract documents were not forwarded to the Legislature for approval and negotiations on the contract documents were restarted. The cogeneration facility reached the end of its useful life in May of 2022, and has been decommissioned but the stand-alone boilers and chillers remain operational.

Nassau Energy, LLC delivered to the County a notice on November 10, 2022 terminating the Lease and the MEA effective as of December 10, 2022, subsequently amended to extend the effective date of termination to January 31, 2023, and such termination has been extended pending approval of the new Operation and Maintenance Agreement.

Description of General Provisions: The Operation and Maintenance Agreement has a term of two years and is essentially an interim arrangement until such time as Nassau Energy, LLC ("Operator") can propose a long-term solution to the County for the thermal and electric energy needs of the District Energy System.

The Operator has committed to perform the Contract Services under the Operation and Maintenance Agreement in accordance with Prudent Industry Practices and that meet the Contract Standards for providing thermal energy (heated and chilled water). The facilities, facilities sites and equipment will be owned by the County or NUMC, as applicable, and the role of the Operator is limited to providing operation and maintenance services on behalf of the County and NUMC.

The Operation and Maintenance Agreement also grants to the Operator the right to pursue a potential long-term solution for on-site

production of thermal and electric energy to the District Energy System that can contribute to the development of the Hub. The Operator and County have agreed to begin discussions of this arrangement upon the Commencement Date of the Operations and Maintenance Agreement in order for the Operator to submit a formal proposal to the County for its review by October 2023.

Impact on Funding / Price Analysis: The O&M agreement will result in higher costs to the County which are passed on to downstream customers. The County will pay Nassau Energy, LLC for the operation and maintenance services and will then recover the costs for such services from the non-County base customers (including Nassau Community College, NUMC, Nassau Coliseum tenant and Long Island Marriott). There are sufficient resources in the 2023 Budget to address the increased expense.

Change in Contract from Prior Procurement: N/A

Recommendation: Approve as Submitted

Advisement Information

Fund	Control	Resp. Center	Object	Index Code	Sub Object	Budget Code	Line	Amount
GEN	06	0640	DF	PWGEN0640	DF555	PWGEN0640 DF555	01	\$0.01
						TOTAL	\$0.01	

Additional Info	
Blanket Encumbrance	
Transaction	
Renewal	
% Increase	
% Decrease	

Funding Source	Amount
Revenue Contract:	
County	\$0.01
Federal	\$0.00
State	\$0.00
Capital	\$0.00
Other	
Total	\$0.01

Routing Slip

Department			
NIFS Entry	Chris Yansick	01/30/2023 05:43PM	Approved
NIFS Final Approval	Ken Arnold	01/30/2023 05:50PM	Approved
Final Approval	Ken Arnold	01/30/2023 05:50PM	Approved
County Attorney			
Approval as to Form	Thomas Montefinise	01/30/2023 06:16PM	Approved
RE & Insurance Verification	Thomas Montefinise	01/30/2023 06:16PM	Approved
NIFS Approval	Mary Nori	01/30/2023 06:23PM	Approved
Final Approval	Thomas Montefinise	01/30/2023 06:41PM	Approved
OMB			
NIFS Approval	Christopher Nolan	01/30/2023 05:50PM	Approved
NIFA Approval	Andrew Persich	01/30/2023 05:51PM	Approved
Final Approval	Andrew Persich	01/30/2023 05:51PM	Approved
Compliance & Vertical DCE			
Procurement Compliance Approval	Robert Cleary	01/30/2023 07:03PM	Approved
DCE Compliance Approval	Robert Cleary	01/30/2023 07:04PM	Approved
Vertical DCE Approval	Arthur Walsh	01/30/2023 07:05PM	Approved
Final Approval	Arthur Walsh	01/30/2023 07:05PM	Approved
Legislative Affairs Review			
Final Approval	Christopher Leimone	01/30/2023 07:07PM	Approved
Legislature			
Final Approval			In Progress
Comptroller			
Claims Approval			Pending
Legal Approval			Pending

Accounting / NIFS Approval			Pending
Deputy Approval			Pending
Final Approval			Pending
NIFA			
NIFA Approval			Pending

RULES RESOLUTION NO. – 2023

A RESOLUTION AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE A PERSONAL SERVICE AGREEMENT BETWEEN THE COUNTY OF NASSAU ACTING ON BEHALF OF THE DEPARTMENT OF PUBLIC WORKS AND NASSAU ENERGY, LLC

WHEREAS, the County has negotiated a personal services agreement with Nassau Energy, LLC for services in connection with the operation and maintenance of the District Energy System, a copy of which is on file with the Clerk of the Legislature; and, now, therefore, be it

RESOLVED, that the Rules Committee of the Nassau County Legislature authorizes the County Executive to execute the said agreement with Nassau Energy, LLC.

OPERATION AND MAINTENANCE AGREEMENT

between

COUNTY OF NASSAU

and

NASSAU ENERGY, LLC

Dated as of

_____, 2023

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OPERATION AND MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT (this “**Agreement**”) is made and dated as of _____, 2023 (the “**Effective Date**”) between the NASSAU COUNTY, a municipal corporation of the State of New York (the “**County**”), and NASSAU ENERGY, LLC, a limited liability company organized and existing under the laws of the State of Delaware, and authorized to do business in the State of New York (the “**Company**”).

RECITALS

WHEREAS, the County’s District Energy System consists of the Central Utility Plant consisting of dual fuel-fired boilers, chillers, cooling towers, steam pipe, appurtenant ancillary equipment, and other related assets located at 185 Charles Lindbergh Boulevard, Mitchel Field, Uniondale, New York (the “**Central Utility Plant Facilities**”), as well as the boilers, chillers, appurtenant ancillary equipment and other related assets located within the thermal energy boiler plant of the Nassau University Medical Center at 2201 Hempstead Turnpike, East Meadow, New York (the “**NUMC Facilities**”) (such facilities, with major Equipment as more specifically described in Exhibit A, the “**Facilities**”);

WHEREAS, the County and the Company, as successor to Nassau District Energy Corp., were parties to a Lease Agreement with an Effective Date of February 2, 1990, as amended (the “**Lease Agreement**”) and a Master Energy Agreement dated as of February 2, 1990 (the “**MEA**”), as amended, under which the County leased to the Company portions of the Facilities and the Facility Sites and the Company owned and operated a cogeneration facility and operated and maintained portions of the Facilities and in that capacity produced and provided to the County and Nassau University Medical Center and certain of their tenants thermal energy;

WHEREAS, the Company on November 10, 2022 delivered to the County a notice (the “**Notice of Termination**”) terminating the Lease Agreement and the MEA effective as of December 10, 2022, and subsequently amended the Notice of Termination to extend the effective date of termination to January 31, 2023;

WHEREAS, the County determined that it is in the County’s best interest to contract with a private vendor to operate and maintain the Facilities and the Facility Sites;

WHEREAS, the Company was selected from the Request for Proposals for the Nassau County District Energy System originally issued by the County on January 7, 2016 (the “RFP”);

WHEREAS, the County and the Company have completed their negotiations for this Agreement;

WHEREAS, the Parties desire for the Facilities to be operated and maintained by the Company on behalf of the County pursuant to this Agreement;

WHEREAS, a resolution determining this Agreement to be in the public interest and authorizing its execution and delivery was duly adopted by the County on _____, 2023; and

WHEREAS, the execution and delivery of this Agreement by the Company have been duly authorized by all necessary limited liability company action.

NOW, THEREFORE, it is agreed as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

Section 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

“**Actual Operation Costs**” has the meaning set forth in Section 7.1B.

“**Affiliate**” means, with respect to any specified Person (other than a natural person), any other Person that, directly or indirectly, through one or more intermediaries, either singly or jointly with any other Person controls, is under common control with, or is controlled by, such Person. For purposes of the foregoing, “control,” “controlled by,” and “under common control with” with respect to any Person will mean the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Agreement**” has the meaning set forth in the first paragraph of this Agreement.

“Alternative Transaction” has the meaning set forth in Section 10.20B.

“Appendix” means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

“Applicable Law” means all common law, laws, statutes, treaties, rules, orders, codes, ordinances, standards, regulations, restrictions, official guidelines, policies, directives, interpretations, Permits or like action having the effect of law of any Governmental Body.

“Bankrupt” means, with respect to a Party or other entity, that such Party or other entity: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 60 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Billing Month” means each calendar month during the Term. Any computation made on the basis of a Billing Month shall be adjusted on a pro rata basis to take into account any Billing Month of less than the actual number of days in the month to which such Billing Month relates.

“Billing Statement” has the meaning set forth in Section 7.2A.

“Business Day” means any day other than a Saturday, Sunday or legal holiday on which commercial banks located in Nassau County, New York, are open for business in the ordinary course. A Business Day will open at 8:00 a.m. and close at 5:00 p.m., in New York, New York.

“Capital Repair” means a maintenance or repair on a per occurrence basis of an individual piece of Equipment whose cost is greater than or equal to \$35,000, as set forth in Section 4.1C.

“Central Utility Plant Facilities” has the meaning set forth in the recitals to this Agreement.

“Change in Law” means any binding, written change after the Effective Date in the judicial or administrative interpretation of, or adoption after the Effective Date of, any Environmental Law or other Applicable Law, which is inconsistent or at variance with any Applicable Law in effect on the Effective Date; *provided, however*, that a Change in Law will not include any change or adoption of any Applicable Law with respect to (a) Taxes assessed on income, profits, revenues or gross receipts, (b) Taxes that vary the compensation, benefits, or amounts to be paid to or on behalf or on account of employees, or (c) organization, existence, good standing, qualification, or licensing in any jurisdiction.

“Chilled Water” means chilled water meeting the specifications set forth in Exhibit B.

“Chilled Water Delivery Point” means any physical point of interconnection between the Chilled Water systems of the Facilities, as set forth on Exhibit C.

“Chilled Water Flow Meter” means the fiscal grade meter at the Chilled Water Delivery Point to determine the amount of Chilled Water delivered to the Chilled Water Delivery Point by the Company.

“Chilled Water Interconnection Facilities” means those physical facilities of a quality and type reasonably required for the receipt and delivery of Chilled Water, including service stop valves, meter stop valves, meter supports, meter(s), pipe system(s), pipeline(s), and other facilities of a quality and type reasonably required to effectuate the purposes of this Agreement.

“Company” has the meaning set forth in the first paragraph of this Agreement.

“Company Fault” means the falsity of any material representation made by the Company under this Agreement or any breach, failure, non-performance or non-compliance by the Company with its obligations hereunder, in each case as caused by any willful or negligent act, error or omission by the Company, its officials, agents, employees, representatives or independent contractors or Subcontractors which materially and adversely affects the County’s performance or rights or obligations under this Agreement.

“Condensate” means the Steam condensate supplied by the County for use by the Company in the production of Steam, in accordance with the specifications set forth on Exhibit B.

“Condensate Delivery Point” means any physical point at which interconnection for delivery of Condensate is made, as set forth on Exhibit C.

“Condensate Flow Meter” means the fiscal grade Meter at the Condensate delivery point to determine the amount of Condensate delivered to the Condensate Delivery Point by County.

“Confidential Information” has the meaning set forth in Section 10.2A.

“Contract Administration Memorandum” or **“CAM”** has the meaning set forth in Section 3.18A.

“Contract Services” means everything required to be furnished and done for and relating to the Facilities by the Company pursuant to the terms of this Agreement, during the Term. Contract Services include the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery and other things and types of services necessary for the full performance of the Company’s operation, maintenance, repair, replacement, and related obligations under this Agreement, and all of the Company’s administrative, accounting, recordkeeping, reporting, notification and similar responsibilities of every kind whatsoever under this Agreement pertaining to such obligations. A reference to “Contract Services” shall mean “any part and all of the Contract Services” unless the context otherwise requires.

“Contract Standards” means the terms, conditions, methods, techniques, practices and standards imposed or required by: (1) Applicable Law; (2) the Design Requirements; (3) Prudent

Industry Practices; (4) the Operation and Maintenance Manual; (5) applicable Equipment manufacturers' specifications for recommended inspection and maintenance intervals; (6) applicable requirements of Required Operating Period Insurance; (7) the Performance Standards; and (8) any other standard, term, condition or requirement specifically provided in this Agreement to be observed by the Company.

"Contract Year" means each period of twelve (12) consecutive months during the Term, with the first Contract Year (the **"First Contract Year"**) commencing on the first day of the Term and the second Contract Year (the **"Second Contract Year"**) commencing on the first anniversary of the first day of the Term; any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365/366 days.

"Cost Substantiation" or **"Cost Substantiated"** means, with respect to any cost reasonably incurred or to be incurred by the Company which is directly or indirectly chargeable in whole or in part to the County hereunder, delivery to the County of a certificate signed by an authorized officer of the Company, setting forth the amount of such cost and the provisions of this Agreement under which such cost is properly chargeable to the County, stating that such cost is a fair market price for the service or materials supplied or to be supplied and that such services and materials are reasonably required pursuant to this Agreement, and accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been or will be paid or incurred. Such documentation shall include reasonably detailed information concerning (1) all Subcontracts, (2) the amount and character of materials furnished, the Persons from which purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property taxes, (3) a statement of the equipment used and any rental payable therefor, (4) Company and Subcontractor worker hours, duties, wages, salaries, benefits, assessments, Taxes and premiums (but in the case of any Subcontractor, only to the extent that such information is provided in invoices from such Subcontractor), and (5) Company and Subcontractor profit and overhead (as applicable), administration, bonds, insurance, and other expenses. The Company's entitlement to reimbursement of Cost Substantiated expenses of the Company shall be calculated in accordance with and subject to the limitations set forth in Appendix 6. Any cost substantiation required with respect to costs reasonably incurred by the County which are directly or indirectly chargeable in

whole or in part to the Company hereunder shall include information reasonably comparable to that required for Cost Substantiation from the Company, and shall be certified by an authorized officer of the County.

“County” has the meaning set forth in the first paragraph of this Agreement.

“County Credit Amounts” means the sum of those components of the Service Fee representing amounts to be credited to the County by the Company.

“County Engineer” means (1) any engineer employed by the County and designated by the County to the Company in writing, or (2) a nationally recognized consulting engineer or firm of consulting engineers licensed in the State of New York, having experience with respect to the design, construction, testing, operation and maintenance of thermal energy facilities, which is designated as the County Engineer for the purposes of this Agreement from time to time in writing by the County to the Company.

“County Indemnified Party” has the meaning set forth in Section 10.6.

“County Payment Amounts” means the sum of those components of the Service Fee representing amounts to be paid by the County to the Company.

“County Site” means the entire parcel of real property owned by the County in the Town of Uniondale and consists of the Facility Sites.

“County Transaction Costs” has the meaning set forth in Section 10.23.

“DEC” or **“NYSDEC”** means the Department of Environmental Conservation of the State of New York.

“Defaulting Party” has, with respect to the Company, the meaning set forth in Section 8.1, and with respect to the County, the meaning set forth in Section 8.2.

“Design Requirements” means the design requirements for a Facility Modification.

“Disclosing Party” has the meaning set forth in Section 10.2A(i).

“Dispute” has the meaning set forth in Section 10.13A.

“Effective Date” means the date set forth in the first paragraph of this Agreement, and more particularly described in Section 9.1, upon which the Company will commence operations of the Facilities pursuant to this Agreement.

“EHI” means ENGIE Holdings Inc., a Delaware corporation.

“Emergency” means any occurrence that requires immediate action in order to prevent or mitigate serious actual or potential hazard to the safety of Persons or property, or material interference with the safe, economical or environmentally sound operation of the Facilities, or violation of any Applicable Law or Permit or any directive by a Governmental Body.

“Encumbrances” means any lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Facilities.

“Environmental Law” means any Applicable Law governing, regulating or otherwise addressing (i) the use, handling, presence, transport, storage, discharge, emission, release, threatened release, spillage, leakage, migration, clean up, remediation or other handling or movement of any Hazardous Materials, (ii) facility siting, land use and environmental matters, (iii) the control of any pollutant, or protection of the air, water, or land, (iv) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation, and (v) the protection and enhancement of the environment or natural resources.

“Environmental Noncompliance” means any failure of the Company at any time during the Term to fully and timely comply with the requirements of any applicable Environmental Law.

“Equipment” means machinery (fixed and moveable), apparatus, articles and materials that are owned or leased by the County and that are either part of the Facilities as of the Effective Date or that are installed, replaced or modified during the Term.

“Event of Default” means, with respect to the Company, those items set forth in Section 8.1 and with respect to the County, those items set forth in Section 8.2.

“Exclusivity Discussion Period” has the meaning set forth in Section 10.20A.

“Exclusivity Negotiation Period” has the meaning set forth in Section 10.20A.

“Exclusivity Period” has the meaning set forth in Section 10.20A.

“Exclusivity Period Termination Date” has the meaning set forth in Section 10.20A.

“Existing Environmental Conditions” means any environmental conditions, circumstances or other matters of fact pertaining to, relating to or otherwise affecting the environment and in existence at the Facility Site prior to the Effective Date, including any environmental pollution, contamination, degradation, damage or injury caused by, related to, or arising from or in connection with (i) the presence, use, handling, storage, treatment, recycling, generation, transportation, release, spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, disposal (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials), dumping or threatened release of Hazardous Materials in connection with the ownership, possession, construction, improvement, use or operation of the Facility Site prior to the Effective Date, (ii) the offsite transport prior to the Effective Date of Hazardous Materials from the Facility Site, or the treatment, storage or disposal of Hazardous Materials transported from the Facility Site to another site prior to the Effective Date and (iii) the release prior to the Effective Date of Hazardous Materials from the Facility Site into the atmosphere or any water course or body of water not included in the Facility Site.

“Facilities” has the meaning set forth in the Recitals to this Agreement.

“Facility Manager” has the meaning set forth Section 3.16A.

“Facility Modification” means any replacement, change, alteration, improvement, upgrade or modification of any of the Facilities or any installation of new or replacement Equipment or systems.

“Facility Site(s)” means the real property described in Appendix 1 upon which the Facilities are located.

“First Contract Year” has the meaning set forth in the definition of Contract Year.

“Fitch” means Fitch, Inc.

“FOIL” means the New York State Freedom of Information Law (Article 6 of the New York State Public Officers Law).

“Governmental Body” means any national, state, provincial, local, tribal or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; *provided, however*, that “Governmental Body” will not in any event include any Party unless that Party is acting in a legislative or regulatory capacity as expressly authorized by Applicable Law.

“Guarantor” means EHI and its successors and assigns permitted under the Guaranty Agreement.

“Guaranty Agreement” means the Guaranty Agreement executed by the Guarantor in substantially the form attached as Exhibit D.

“Hazardous Materials” means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; and (3) future additional or substitute federal, state or local laws pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40; or (c) a chemical listed by the United States Environmental Protection Agency in accordance with Section 302(a) or Section

313(c) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §§ 11002(a), 11023(c) (Supp. 1993), in each case as the same may be amended, replaced, or superseded; or (d) a material or substance which may endanger health or safety, including any material or substance or combination of materials or substances which are explosive, volatile, radioactive, toxic, corrosive, flammable, reactive, an irritant, or a strong sensitizer, if such materials or substances may cause injury, illness or harm to humans, to domestic animals or livestock, or to wildlife; or (e) a material or substance that is treated as a hazardous waste, substance or material by any federal, state, or local law, regulation, or ordinance. With regard to materials or substances which are not Hazardous Materials as of the Effective Date, if any law shall subsequently declare, or if any Governmental Body having appropriate jurisdiction shall thereafter determine, that such materials or substances are Hazardous Materials, then such materials or substances shall be considered to be Hazardous Materials for the purposes of this Agreement as of the effective date of such governmental determination.

“Heated Water” means high temperature hot water meeting the specifications set forth on Exhibit B.

“Heated Water Delivery Point” means any physical point of interconnection between the Heated Water systems of the Facilities as set forth on Exhibit C.

“Heated Water Flow Meter” means the fiscal grade meter at the Heated Water Delivery Point to determine the amount of Heated Water delivered to the Heated Water Delivery Point by the Company.

“IFRS” means the International Financial Reporting Standards as in effect from time to time.

“Indemnified Party” has the meaning set forth in Section 10.6A.

“Indemnifying Party” has the meaning set forth in Section 10.6A.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day, on the most recent preceding day on which published); and, (b) the maximum rate permitted by Applicable Law.

“Lease Agreement” has the meaning set forth in the recitals to this Agreement.

“Legal Proceeding” means every action, suit, litigation, administrative proceeding, and other legal or equitable proceeding arising out of the obligations of the Parties under this Agreement.

“Letter of Credit” means an irrevocable, transferable, standby letter of credit, issued by a Qualified Institution, which letter of credit is reasonably acceptable in form and substance to the beneficiary thereof.

“Lien” means any and every lien against the Facilities or the Facility Sites or against any monies due or to become due from the County to the Company under this Agreement for or on account of the performance of the Contract Services, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Losses” has the meaning set forth in Section 10.6A.

“Make-Up Water” means raw water procured by the Company for the production of Steam, Heated Water, or Chilled Water under this Agreement.

“MEA” has the meaning set forth in the recitals to this Agreement.

“Meter” means any of the Steam Flow Meter, the Condensate Flow Meter, the Chilled Water Meter, or the Heated Water Flow Meter.

“Moody’s” means Moody’s Investor Services, Inc. and any successor thereto.

“Nassau Health Care Corporation” or **“NHCC”** means the public benefit corporation which owns the Nassau University Medical Center.

“Nassau University Medical Center” or **“NUMC”** means the hospital located at 2201 Hempstead Turnpike, East Meadow, New York.

“National Institute of Standards and Technology” means the United States Department of Commerce National Institute of Standards and Technology.

“Notice of Termination” has the meaning set forth in the recitals to this Agreement.

“NUMC Facilities” has the meaning set forth in the recitals to this Agreement.

“Operating Assets” means all Equipment, accessories, structures, items and appurtenances necessary for the Facilities to be complete and fully operational.

“Operating Period” means the period from and including the first day of the Term to and including the last day of the Term.

“Operation and Maintenance Fee” has the meaning set forth in Section 7.1B.

“Operation and Maintenance Manual” has the meaning set forth in Section 3.5.

“Operation and Maintenance Plan” or **“O&M Plan”** means the document outlining the operations and maintenance responsibilities of the Company and establishing procedures to fulfill those responsibilities, consistent with the provisions of this Agreement throughout the Term as incorporated into the Operation and Maintenance Manual.

“Operation Costs Mark-Up” has the meaning set forth in Section 7.1B.

“Operational Notices” has the meaning set forth in Section 10.18.

“OSHA” has the meaning set forth in Section 3.8A.

“Other Payments Balance” has the meaning set forth in Section 7.2A.

“Overdue Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day, on the most recent preceding day on which published), plus 2%; and, (b) the maximum rate permitted by Applicable Law.

“Party” or **“Parties”** means the County or the Company.

“Pass Through Charges” has the meaning set forth in Section 7.1C.

“Performance Security” means collateral in the form of cash, a Surety Bond, or a Letter of Credit, or any other security reasonably acceptable to the requesting Party.

“Performance Standards” means obligations of the Company (as opposed to the County) under this Agreement with respect to the specifications set forth in Exhibit B.

“Permit” means the written permission or authorization granted by a Governmental Body or other Person, including all licenses, permits, decrees, franchises, consents, authorizations, approvals, rulings, entitlements, ratifications, certifications, registrations, exemptions, variances, exceptions, waivers, extensions and similar consents of whatever kind and however described that are granted or issued by any Governmental Body or other Person.

“Permitted Transaction” means any of the following: (a) any transfer, sale, assignment, or subletting by the Company to any of its Affiliates, including in connection with any corporate reorganization, merger, combination, or similar transaction or transfer of assets or ownership interests involving the Company or its Affiliates, so long as the creditworthiness of the assignee or transferee Affiliate (taking into account any guaranty by a creditworthy guarantor of the obligations of such Affiliate or any Performance Security provided by or on behalf of such Affiliate) is equal to or greater than the creditworthiness of the Company; (b) any transfer, sale, pledge, mortgage, encumbrance, or assignment by the Company of this Agreement or the Company’s interest hereunder, the accounts, revenues, or proceeds hereof, for security purposes in connection with any financing or other financial arrangements (whether debt or equity), including any change of economic and voting rights in the Company’s organization documents that arises from the financing of this Agreement or the Company’s interest hereunder or the accounts, revenues, or proceeds hereof, and that does not result in the transfer of ownership or economic or voting rights in the Company to any Person that had no such rights immediately prior to such change; or (c) a merger or consolidation of the Company with or into, a recapitalization (in whole or in part, directly or indirectly) of the Company, or a sale by the Company of all or substantially all of its assets to, any other Person, *provided* that the creditworthiness of any such Person (taking into account any guaranty by a creditworthy guarantor of the obligations of such Person or any Performance Security provided by or on behalf of such Person) to which this Agreement or the interest of the Company hereunder is transferred or assigned is equal to or greater than the creditworthiness of the Company.

“Person” means and includes an individual, a partnership, a joint venture, a corporation, a union, a limited liability company, a trust, an unincorporated organization, a Governmental Body or any other separate legal entity recognized pursuant to law.

“Planned Outage” means a scheduled outage that may require removal of the Equipment, in whole or in part, from service in order to perform specified work on specific components of the Facilities. A Planned Outage has a pre-determined start date, an estimated duration, which may last for several weeks, and occurs as scheduled in a notice given by the Company. A Planned Outage will not include a minor reduction in the volume of Thermal Energy delivered to the relevant Thermal Energy Delivery Point in connection with unplanned maintenance or operational requirements.

“Pre--Effective Date Amounts” means the aggregate amount that is due and payable from the County to the Company for the period between October 1, 2022 and the Effective Date that would have been payable by the County to the Company with respect to the period between October 1, 2022 and the Effective Date if this Agreement had been in effect as of October 1, 2022, after subtracting any amounts that have been invoiced by the Company and paid by the County pursuant to the Lease Agreement and the MEA as of the date of the submission by the Company to the County of the Billing Statement for the first Billing Month of the Term.

“Proposed Transaction” has the meaning set forth in Section 10.20A.

“Proposed Transaction Proposal” has the meaning set forth in Section 10.20A.

“Prudent Industry Practices” means the practices, methods and acts generally engaged in or approved by the industry segment operating and maintaining facilities supplying thermal energy to institutional, commercial, or industrial customers in the northeastern United States for similar facilities during a particular time period, or any of such practices, methods, and acts, that, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with Applicable Law, reliability, safety, environmental protection, economy and expedition, and which practices, methods and acts are consistent with any applicable operation and maintenance standards and operational limits recommended by the Equipment suppliers and

manufacturers. Without limiting the foregoing, Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts, to the exclusion of all others, but rather to include a spectrum of practices, methods or acts generally acceptable in the region during the relevant period in light of the circumstances.

“Qualified Institution” means a major U.S. commercial bank or a U.S. branch office of a foreign bank having, in either case, (i) assets of at least USD \$10 billion and (ii) a Credit Rating from either or both of S&P and Moody’s, which Credit Rating is at least “A-” from S&P (in the event that such bank has a Credit Rating from S&P) and “A3” from Moody’s (in the event that such bank has a Credit Rating from Moody’s).

“Receiving Party” has the meaning set forth in Section 10.2A(i).

“Representatives” means, with respect to a Party, (i) the directors, officers, managers, employees, financial advisors, accountants, auditors, legal counsel, consultants, and other representatives of such Party or its Affiliates and (ii) such Party’s or its Affiliates’ current or potential lenders, sources of funding, or rating agencies.

“Required Credit Rating” means, in the case of any Person, that (i) such Person’s creditworthiness is substantially equivalent to or superior to that of EHI as of the Effective Date, or (ii) that Person’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) are rated by at least one of S&P, Moody’s, and Fitch, and that such Person has a Credit Rating of (i) if rated by only one of Moody’s, S&P, or Fitch, a Credit Rating of “Baa2” or higher by Moody’s, “BBB-” or higher by S&P, or “Baa2” or higher by Fitch or (ii) if rated by more than one of Moody’s, S&P, and Fitch, a Credit Rating of “Baa2” or higher by Moody’s, “BBB-” or higher by S&P, and “Baa2” or higher by Fitch.

“Required Operating Period Insurance” has the meaning set forth in Appendix 3.

“Returned Chilled Water” means the water that is supplied by the County to the Facilities, in accordance with the specifications set forth on Exhibit B, for use by the Company in the production of Chilled Water.

“Returned Chilled Water Delivery Point” means the physical point of interconnection between the Returned Chilled Water systems of the Facilities, as set forth on Exhibit C.

“Returned Chilled Water Interconnection Facilities” means those physical facilities for the receipt and delivery of Returned Chilled Water, including service stop valves, meter stop valves, meter supports, meter(s), pipe system(s), pipeline(s), and other facilities of a quality and type reasonably required to effectuate the purposes of this Agreement.

“Returned Heated Water” means the heated water that is supplied by the County to the Facilities, in accordance with the specifications set forth on Exhibit B, for use by the Company in the production of Heated Water.

“Returned Heated Water Delivery Point” means the physical point of interconnection between the Returned Heated Water systems of the Facilities, as set forth on Exhibit C.

“Returned Heated Water Interconnection Facilities” means those physical facilities for the receipt and delivery of Returned Heated Water, including service stop valves, meter stop valves, meter supports, meter(s), pipe system(s), pipeline(s), and other facilities of a quality and type reasonably required to effectuate the purposes of this Agreement.

“RFP” has the meaning set forth in the recitals to this Agreement.

“S&P” means Standard & Poor’s Ratings Services, Inc. or its successor.

“Safety Plan” means the safety plan that is prepared and submitted by the Company as part of the Operation and Maintenance Plan and that outlines and describes the Company’s procedures and protocols for ensured safety at the Facilities.

“Second Contract Year” has the meaning set forth in the definition of Contract Year.

“Senior Supervisor” has the meaning set forth in Section 3.16B.

“Service Fee” and each of the components thereof, have the meanings ascribed to such terms in Section 7.1.

“Staffing Plan” means the staffing plan that is prepared and submitted by the Company as part of the Operation and Maintenance Plan and that outlines and describes the Company’s proposed staffing at the Facilities, including the minimum number of staff at the Facilities, each position and its correlating responsibilities, as well as a Facilities staffing chart.

“Steam” means steam meeting the specifications set forth in Exhibit B.

“Steam Delivery Point” means any physical point of interconnection between the Steam systems of the Facilities as set forth on Exhibit C.

“Steam Flow Meter” means the fiscal grade meter at the Steam Delivery Point to determine the amount of Steam delivered to the Steam Delivery Point by the Company.

“Steam Interconnection Facilities” means those physical facilities of a quality and type reasonably required for the receipt and delivery of Steam, including service stop valves, meter stop valves, meter supports, meter(s), pipe system(s), pipeline(s), and other facilities of a quality and type reasonably required to effectuate the purposes of this Agreement.

“Subcontract” means an agreement between the Company and a Subcontractor, or between two Subcontractors, as applicable.

“Subcontractor” means any Person (other than employees of the Company) employed or engaged by the Company or by any Person directly or indirectly in privity with the Company (including every sub-subcontractor of whatever tier) for any portion of the services set forth in this Agreement, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

“Surety Bond” means a payment and performance bond, issued by a creditworthy surety bond company, that is reasonably acceptable in form and substance to the beneficiary thereof.

“Tax” means all present and future license, documentation, recording and registration fees, all taxes (including income, gross receipts, unincorporated business income, payroll, sales, use, privilege, personal property (tangible and intangible), real estate, excise and stamp taxes), levies, imports, duties, assessments, fees (customs or otherwise), charges and withholdings of any nature

whatsoever, and all penalties, fines, additions to tax, and interest imposed by any Governmental Body.

“Term” has the meaning set forth in Section 9.1.

“Thermal Energy” means, except where the context applies to heating only, both heating service (by means of Steam or Heated Water) and cooling service (by means of Chilled Water).

“Thermal Energy Delivery Point” means any Steam Delivery Point, Heated Water Delivery Point, Chilled Water Delivery Point, Condensate Delivery Point, Returned Heated Water Delivery Point, and Returned Chilled Water Delivery Point.

“Thermal Energy Interconnection Facilities” means any Steam Interconnection Facilities, Heated Water Interconnection Facilities, Chilled Water Interconnection Facilities, Condensate Interconnection Facilities, Returned Heated Water Interconnection Facilities, and Returned Chilled Water Interconnection Facilities.

“Tools” are the items listed in Appendix 5.

“Uncontrollable Circumstance” has the meaning set forth in Section 10.5A.

“Utilities” means any and all utility services and installations whatsoever (including fuel oil/propane, natural gas, water, sewer and electricity).

Section 1.2 INTERPRETATION. In this Agreement, unless the context otherwise requires:

A. References to Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement as a whole and not to a particular Article, Section, subsection, clause or other subdivision hereof, and the term “hereafter” means after the Effective Date and the term “heretofore” means before the Effective Date.

B. Gender and Plurality; Other Grammatical Forms. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words

importing the singular number mean and include the plural number and vice versa. Other grammatical forms of defined words or phrases have corresponding meanings.

C. Persons. Unless expressly stated otherwise, (i) reference to any Person includes such Person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, (ii) reference to a Person in a particular capacity excludes such Person in any other capacity or individuality, and (iii) reference to a Governmental Authority include any Person succeeding to its functions and capacities.

D. Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

E. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and nothing in this Agreement is intended to confer on any Person other than the Parties and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the Parties, including those contained in the RFP, the proposal of the Company submitted in response to the RFP, and any amendments and supplements to the RFP or the proposal.

F. Technical Standards and Codes. References in this Agreement to all professional and technical standards, codes, and design requirements are to the most recent published professional and technical standards, codes, and design requirements of the institute, organization, association, County or society specified, all as in effect as of the Effective Date.

G. Conflicts in Standards. In the event of a conflict between any provisions of this Agreement (including the Appendices) imposing any requirement, obligation, standard or guarantee on the Company, the higher or more stringent requirement, obligation, standard or guarantee shall apply.

H. Standards of Workmanship and Materials. Any reference in this Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, design requirements, schedules, or otherwise) shall be construed to require the Company to furnish the same in accordance with the grades and standards indicated in this Agreement. Where this Agreement does not specify any explicit quality or standard for materials or workmanship, the Company shall use only workmanship and new materials of a quality consistent with that of workmanship and materials specified elsewhere in the Facility Modifications are to be interpreted accordingly.

I. Causing Performance. A Party shall itself perform, or shall cause to be performed, the obligations affirmatively undertaken by such Party under this Agreement, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise.

J. Party Bearing the Cost of Performance. All obligations undertaken by each Party shall be performed at the cost of the Party undertaking the obligation, unless the other Party has explicitly agreed herein to bear all or a portion of the cost either directly or by reimbursement to the other Party or through an adjustment to the Service Fee.

K. Assistance. The obligations of a Party to cooperate with, to assist or to provide assistance to the other Party hereunder shall be construed as an obligation to use the Party's personnel resources to the extent reasonably available in the context of performing their normal duties, and not to incur material additional overtime or third party expenses unless requested and reimbursed by the assisted Party.

L. Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

M. Delivery of Documents in Digital Format. In this Agreement, the Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Company agrees that all such documents shall be submitted to the County both in printed form (in the number of copies indicated) and, at the County's request, in digital form. Electronic copies

shall consist of computer readable data submitted in any standard interchange format which the County may reasonably request to facilitate the administration and enforcement of this Agreement.

N. Drafting Responsibility. Notwithstanding the County's having assumed primary drafting responsibility for the main body and certain Appendices to this Agreement, or the Company's having assumed primary drafting responsibility for certain Appendices of this Agreement, neither Party shall be held to a higher standard than the other Party in the interpretation or enforcement of this Agreement as a whole or any portion hereof as a result of having assumed such drafting responsibility.

O. No Third Party Rights. Except as expressly indicated otherwise, this Agreement is exclusively for the benefit of the County and the Company and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

Q. References to "Including". Any reference to the words "include" and "including" will be interpreted to mean "including without limitation" and "including but not limited to."

R. References to "Or". References to "or" will be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or").

S. References to Days. Unless otherwise expressly provided for as set forth herein, the term "day" will mean a calendar day, and whenever an event is to be performed or payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such event will be performed and such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next succeeding Business Day.

T. References to Time Periods. Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."

U. References to Applicable Law. Where reference is made to an Applicable Law, such reference, to give meaning to the intent of the Parties hereto, will be deemed to include all prior and subsequent enactments, amendments, and modifications pertaining thereto.

V. Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

W. Defined Terms. The definitions set forth in Section 1.1 shall control in the event of any conflict with the definitions used in the recitals.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents and warrants that:

A. Existence and Powers. The County is a municipal corporation validly existing under the Constitution and laws of the State of New York, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

B. Due Authorization and Binding Obligation. The County has all requisite municipal corporation power and authority to execute and deliver this Agreement and any related agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the County of this Agreement and the related agreements to which County is a party, and the performance by the County of its obligations hereunder and thereunder, have, effective as of the Effective Date, been duly and validly authorized by all necessary municipal corporation action. This Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency, or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application.

C. No Conflict. To the best of the County's knowledge, neither the execution nor the delivery by the County of this Agreement nor the performance by the County of its obligations hereunder nor the consummation by the County of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any Applicable Law or governmental regulation applicable to the County or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree or any contract, agreement or instrument to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

D. No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body, or any approval of voters by referendum or otherwise, is required for the valid execution, delivery and performance by the County of this Agreement, except such as have been fully obtained or made.

E. No Litigation. To the best of the County's knowledge, there is as of the Effective Date no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body, pending or threatened against the County which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the County in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the County of its obligations hereunder or under any such other agreement or instrument.

F. Applicable Law Compliance. The County is not in violation of, or in default under, any Applicable Law, the effect of which, in the aggregate, would reasonably be expected to hinder, prevent or delay the County from performing its obligations under this Agreement.

G. Due Authorization and Approvals from NHCC. Effective as of the Effective Date, the County has received all grants of rights and all authorizations and approvals from NHCC as are necessary or appropriate for the County to act for and on behalf of NHCC (or to cause NHCC to act) under and in connection with this Agreement, and for the grant by the County and exercise by the Company of all rights and responsibilities, and the performance by the Company of all Contract Services, as are provided for in or contemplated by this Agreement with

respect to the NUMC, the NUMC Facilities and the Equipment and Facility Sites owned by or under the control of NHCC, and all such grants or rights and authorizations and approvals are in full force and effect.

Section 2.2 REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company hereby represents and warrants that:

A. Existence and Powers. The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

B. Due Authorization and Binding Obligation. The Company has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application.

C. No Conflict. To the best of the Company's knowledge, neither the execution nor the delivery by the Company of this Agreement nor the performance by the Company of its obligations hereunder (1) conflicts with, violates or results in a breach of any Applicable Law or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, or any contract, agreement, or instrument to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

D. No Litigation. To the best of the Company's knowledge, there is as of the Effective Date no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Body, pending or threatened against the Company which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the Company in connection with the transactions

contemplated hereby, or which would materially and adversely affect the performance by the Company of its obligations hereunder or under any such other agreement or instrument.

E. Applicable Law Compliance. The Company is not in violation of, or in default under, any Applicable Law, the effect of which, in the aggregate, would reasonably be expected to hinder, prevent or delay the Company from performing its obligations under this Agreement.

F. Patents and Licenses. The Company owns, or is expressly authorized to use under patents, licenses, trademarks or copyrights, the technology necessary for the performance by the Company of the Contract Services, without any known material conflict with the rights of others.

G. No Other Warranties. The representations and warranties of the Company in this Agreement are the only representations and warranties of the Company with respect to the Contract Services, and except as expressly set forth in this Agreement, the Company makes no warranty, express, implied or statutory, including any implied warranty of merchantability or fitness for a particular purpose, or any other or any affirmation of fact or promise with respect to the Contract Services or the Facilities or any portion thereof.

Section 2.3 KNOWLEDGE-BASED REPRESENTATIONS. Whenever a representation or warranty hereunder is made to the knowledge or the best of the knowledge of the County or the Company, such representation or warranty shall be deemed to be, in the case of the County, the knowledge of the County Executive, the Commissioner of the Department of Public Works, and with respect to litigation related matters, the County Attorney, and in the case of the Company, the knowledge of Seth Blumencranz and Shawn Madore, in each case that such individual had, or reasonably should have had, after the exercise of reasonable diligence and inquiry.

ARTICLE III

OPERATION AND MAINTENANCE

Section 3.1 OWNERSHIP AND USE OF THE FACILITIES AND FACILITY SITES.

A. County Ownership; Relationship of Parties; Allocation of Risks of Ownership. The Facilities, Facility Sites, and all Equipment, and all Facility Modifications are and shall throughout and following the Term be owned by the County or NHCC, as applicable, and the Company shall have no ownership interest therein. The Company shall perform the Contract Services as an independent contractor and shall not have any legal, equitable, beneficial or other ownership or leasehold interest in the Facility Sites, the Facilities or any Facility Modification. The Facilities are owned and managed by the County or NHCC, as applicable, and the role of the Company with respect to the Facilities under this Agreement is limited to providing operation and maintenance services on behalf of the County and NHCC. The County acknowledges and agrees, on its own behalf and on behalf of NHCC, that the Company is not acting in any manner under this Agreement that would constitute the Company as a steam corporation with respect to the Facilities under the New York Public Service Law or any other laws of the State of New York. Without limiting any other provision of this Agreement, the County acknowledges and agrees, on its own behalf and on behalf of NHCC, that the retention under this Agreement of the Company by the County to perform operation and maintenance services with respect to the Facilities shall not be construed to transfer from the County or NHCC to the Company either the benefits or the risks of ownership of the Facilities, which shall at all times remain with the County and NHCC. Consequently, the Company shall be responsible for Losses with respect to any of the Facilities only as and to the extent expressly provided in this Agreement.

B. Company Right to Enter Upon, Occupy and Use Facilities for Contract Services. During the Term, and at such other times as are permitted under this Agreement, the Company may enter upon, occupy and use the Facilities to operate, maintain, repair, and replace the Facilities, and to design, construct, install, start-up and test any Facility Modifications, all for and in connection with the Contract Services in accordance herewith, and for no other purpose. With due consideration for the age and condition of the Facilities as of the Effective Date, the Company shall keep the Facilities and Facility Sites in good working order and condition in light of their intended use hereunder. The Company shall not use or permit the use of the Facilities for any purpose other than those contemplated by this Agreement.

C. Company Right to Use Equipment for Contract Services. The Company shall have the right to use, in the performance of the Contract Services, the Equipment.

D. Liens and Encumbrances. At all times during the Term, the Company shall keep the Facilities free from any and all Liens and Encumbrances arising out of or in connection with (1) the Contract Services, or (2) any acts, omissions or debts of the Company, the Guarantor, their Affiliates and their Subcontractors, other than Liens arising by operation of law, which shall be promptly bonded or discharged.

E. County Grant of License to Enter and Use Facilities and Facilities Site. The County, on its own behalf and on behalf of NHCC, hereby grants to the Company a license to enter, access, and use the Facilities and the Facilities Site, and all other required rights and permissions that are required by the Company, to perform the Contract Services and to exercise the other rights and responsibilities of the Company under and in connection with this Agreement, including to deliver to, station at, and remove from the Facilities and the Facilities Site personal property of the Company for use in connection with the performance of the Contract Services.

Section 3.2 COMPANY OPERATION RESPONSIBILITIES.

A. Operation Generally. Commencing on the Effective Date, the Company shall operate and maintain the Facilities in accordance with the requirements of this Agreement, including in compliance with the Contract Standards. During the Term, the Company shall not use or permit the use of the Facilities for any purposes other than those contemplated by this Agreement.

B. Transfer and Application of Industry Experience. The Company shall use all reasonable efforts to transfer to and apply at the Facilities the benefit of the advances and improvements in technology, management practices and operating efficiencies which are developed by the Company and its Affiliates through the operation of their worldwide energy services businesses and industry research and development activities conducted over the Term, and which are useful and appropriate in the good faith judgment of the Company for carrying out the Contract Services in a manner which improves upon the Contract Standards.

Section 3.3 COUNTY OBLIGATIONS GENERALLY. The County, in addition to the obligations it has accepted and agreed to perform elsewhere in this Agreement, shall, at its own cost and expense:

(i) Make available to the Company upon request all information relating to the Facilities and Facility Sites which is in the possession of the County and necessary for or useful in the performance of the Contract Services and the other responsibilities of the Company hereunder;

(ii) Grant and assure the Company access to the Facilities and the entire Facility Site for the performance of its obligations hereunder;

(iii) Make available for the Company's use hereunder all Equipment and Tools in inventory at or for the Facilities as of the Effective Date, and provide, or authorize procurement by the Company of, solely to the extent recommended by the Company and approved by the County, Tools and Equipment in sufficient quantity, of sufficient quality, and in sufficient time to avoid disruptions in generation of Thermal Energy by the Facilities;

(iv) Obtain and maintain in effect, and provide to the Company copies of, all Permits that are necessary for the operation and maintenance of the Facilities other than Permits that are required to be obtained by the Company to perform its obligations hereunder;

(v) Review in a timely fashion and not unreasonably withhold its approval of all items submitted by the Company for the County's approval;

(vi) Obtain and maintain in effect all insurance coverage required of the County by this Agreement;

(vii) Agree with the Company a suitable security plan for the Facilities;

(viii) Comply with all Applicable Laws pertaining to the County or NHCC as owner and manager of the Facilities;

(ix) Keep in effect, and amend as necessary from time to time, the ordinances, rules and regulations which are required in order for the County to comply with Applicable Laws;

(x) Pay the Service Fee and any other amounts due to the Company in accordance with the terms and conditions of this Agreement;

(xi) Furnish such other information, assistance and materials which may be reasonably requested by the Company from time to time in order to allow the Company to perform the Contract Services in accord with the terms of this Agreement and to otherwise fulfill its obligations hereunder; and

(xii) Deliver to the Company a letter attesting to the County's governmental status and exemption from sales taxes imposed by the State of New York and local governments in the State of New York.

Section 3.4 FACILITY CONDITION CONFIRMATION. The Company acknowledges that, on the basis of its review and inspections of the Facilities, the institutional and historic knowledge that it has gained through the lease, operation, management and maintenance of the Facilities during the term of the Lease Agreement and the MEA, and other inquiries and investigations made by the Company prior to the Effective Date, (1) the Company's agents and representatives are familiar with the Facilities and the Facilities' design and physical condition relevant to the obligations of the Company pursuant to this Agreement, including structural and operating conditions, roads, Utilities, topographical conditions and historical data; (2) the Company is familiar with all current local conditions which may be material to the Company's performance of its obligations under this Agreement (including transportation, seasons, climate and ambient air; access, availability, handling, storage and disposal of fuel supply and other materials, supplies and equipment; and availability and quality of labor and Utilities); (3) the Company has received, reviewed and independently verified the background documents and all other records and information pertaining to the Facilities that the Company has deemed necessary to receive, review and verify for the purposes of entering into and performing this Agreement; and (4) based on the existing condition of the Facilities and the foregoing, the Company is capable of operating, maintaining, and repairing the Facilities in accordance with the Contract Standards and the other terms and conditions of this Agreement without, to the knowledge of the Company as of the Effective Date, the need for any Capital Repairs or Facility Modifications at the Facilities except as set forth in Appendix 10.

Section 3.5 OPERATION AND MAINTENANCE MANUAL.

A. Development. Within 90 days following the Effective Date, the Company shall prepare a draft Operation and Maintenance Manual for the Facilities to reflect the Company's performance of the Contract Services. The Operation and Maintenance Manual shall be a single manual encompassing the Central Utility Plant Facilities and the NUMC Facilities. The content of the draft Operation and Maintenance Manual shall be consistent with the terms of this Agreement, shall contain the topics addressed in the Operation and Maintenance Plan, and shall otherwise be sufficiently detailed to permit the Facilities to be operated and maintained by a third party reasonably experienced in Prudent Industry Practices and in operating and maintaining facilities similar to the Facilities.

B. County Review and Comment. The Company shall review and discuss in good faith with the County any aspect of the draft Operation and Maintenance Manual, and shall deliver to the County the final version of the revised Operation and Maintenance Manual within 30 days following completion of review and discussion with the County. During the Term, the Company shall keep the Operation and Maintenance Manual current and shall supply the County with appropriate updates, supplements or revisions annually or at any earlier time that a material change to the Operation and Maintenance Manual is made, to be reviewed and approved in accordance with the procedures described in this Section. Such updates shall preserve the standards set forth in the initial Operation and Maintenance Manual. Notwithstanding any such review and comment by and discussion with the County, the Operation and Maintenance Manual shall remain at all times the responsibility of the Company. Neither the review of or comment upon, nor the failure of the County to comment upon, the Operation and Maintenance Manual shall: (1) relieve the Company of any of its responsibilities under this Agreement; (2) be deemed to constitute a representation by the County that operating the Facilities pursuant to the Operation and Maintenance Manual will cause the Facilities to be in compliance with this Agreement or Applicable Law; or (3) impose any liability upon the County.

C. Supplements for Facility Modifications. The Company shall prepare supplements and revisions to the Operation and Maintenance Manual which are required due to the design, construction and installation of any Facility Modifications. Such supplements and revisions shall be provided, reviewed and approved in the same manner as provided in this Section with respect to the initial Operation and Maintenance Manual. The cost and expense of all such

supplements and revisions shall be borne by the Company, except with respect to supplements and revisions necessitated by Facility Modifications directed by the County or required by a Change in Law or other Uncontrollable Circumstance.

D. Delivery of Manual on Termination. At the end of the Term, or upon the termination of this Agreement if this Agreement is terminated prior to the expiration of the Term, the Company shall deliver to the County the Operation and Maintenance Manual, with all revisions and updates made to date, for use in connection with the operation and maintenance of the Facilities and shall not attempt to restrict the use of the information contained therein.

E. Emergency Response Manual. The Company shall prepare and deliver to the County, concurrently with the preparation and delivery of the Operation and Maintenance Manual, and regularly update an Emergency response manual for the Facilities relating to fire, weather, environmental, health, safety, and other potential Emergency conditions. The Emergency response manual shall set forth appropriate notifications to be made to all Governmental Bodies having jurisdiction with respect to the Emergency, and appropriate actions to be taken by the Company, any Subcontractors and such Governmental Bodies in response to such Emergency.

Section 3.6 STAFFING AND PERSONNEL TRAINING.

A. Staffing. The Company shall staff the Facilities during the Term with the appropriate number of hourly and salaried employees consistent with Prudent Industry Practices and other Contract Standards. The Company shall discipline or replace, as appropriate, any employee of the Company or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Company shall not make any material change in staffing levels without the County's written approval.

B. Reduced Staffing Levels. Notwithstanding the foregoing, at any time during the Term the Company may submit a proposal to the County to reduce staffing levels provided such reductions are consistent with safe and efficient operation of the Facilities, setting forth the cost savings that will result from such staffing reductions, and representing that such staffing reductions will not impair the safe and efficient operation of the Facilities in compliance with all the terms of this Agreement. If the County consents in writing to such staffing reduction, the

Company may implement such reduced staffing levels in accordance with such proposal. Any County approval given pursuant to this Section shall neither be a representation by the County that the cost savings will be realized by the Company nor that the reduced staffing levels will be adequate to perform the obligations of the Company under this Agreement. Nothing in this Section shall be deemed to excuse the Company from any obligations of the Company under this Agreement. If the Company, in its sole discretion, determines that the reduced staffing levels are no longer appropriate, or adversely affect the ability of the Company to comply with the provisions of this Agreement, the Company may increase the staffing levels.

C. Training. The Company shall be responsible for training the Facility Manager, operations supervisors and all other Company personnel. Within 90 days following the Effective Date, the Company shall submit to the County for its review and comment a personnel training program which the Company proposes to institute in order to ensure that the Facilities are operated and maintained in accordance with this Agreement. Such personnel training program shall include any personnel training guidelines, policies or procedures set forth as of the Effective Date in (1) any Permit required for the performance of the Contract Services, and (2) any other Applicable Law, and shall include standards for operator and supervisor background, training and experience; instruction on identifying potential Hazardous Materials; safety and Emergency response training; general security procedures; and, if applicable, requirements for operator certification. All costs of complying with the personnel training program shall be borne by the Company. Concurrently with the training of its operating staff, the Company at its cost and expense shall train County designated personnel so that such personnel will have the ability to operate and maintain the Facilities in the event of the termination or expiration of the Agreement. Six months prior to the expiration of the Term of the Agreement, the Company shall provide a second training course (at the Company's expense) to designated County personnel which training will enable such personnel to properly operate and maintain the Facilities.

D. Prevailing Wage. As applicable, the Company shall comply with the Prevailing Wage Law as provided under Articles 8 and 9 of the New York State Labor Law. The Company shall pay the prevailing wages, including any future increases, to its employees who are providing the Contract Services and required to receive the prevailing wages.

Section 3.7 ENERGY SUPPLY AND CONSUMPTION. The Company shall have the exclusive right and the responsibility to arrange for the supply of Utilities to the Central Utility Plant Facilities pursuant to the limited agency appointment under Section 3.27, and to negotiate and establish Utilities rates for the Central Utility Plant Facilities with the applicable supplier. The County shall cooperate with and assist the Company in making such arrangements, and the Company shall give reasonable consideration to any requests and recommendations made by the County as to the terms and conditions of Utilities supply. The Company shall pay all charges for the supply of Utilities to the Central Utility Plant Facilities, subject to reimbursement by the County of all such charges as part of the Pass Through Charge included in the Service Fee. If at any time the County reasonably believes that the Company is not performing its Utility procurement responsibilities under this Section in accordance with the Contract Standards, the County will be entitled to require that a Company representative meet with a County representative to discuss the Company's performance under this Section and potential improvements to the Company's Utility procurement practices. Notwithstanding the foregoing, in the event that the County determines that it can purchase or supply any Utility for the Central Utilities Plant Facilities at a lower cost than can the Company, the Parties will negotiate in good faith the terms of an amendment to this Agreement to transfer the responsibility for the purchase or supply of such Utility to the County. The Parties acknowledge and agree that NUMC purchases and supplies all Utilities for the NUMC Facilities.

Section 3.8 SAFETY AND SECURITY.

A. Safety. The Company shall maintain the safety of the Facilities at a level consistent with the requirements of Applicable Law, including the Occupational Safety and Health Act ("OSHA") and all applicable requirements of Required Operating Period Insurance. Without limiting the foregoing, the Company shall at its cost and expense: (1) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Facilities to, (a) all employees working at the Facilities and all other persons who may be involved with the operation or maintenance of the Facilities, (b) all visitors to the Facilities, (c) all machinery, materials and equipment under the care, custody or control of the Company on the Facility Sites, and (d) other property on the Facility Sites, including trees, shrubs, lawns, walks, pavements, roadways, structures and Utilities; (2)

establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the Facilities whose duty shall be the supervision of plant safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with federal, state and county officials; (5) operate all Equipment in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movement; and (7) develop and carry out a site-specific safety program, including employee training and periodic inspections, designed to implement the requirements of this Section; (8) take all reasonable precautions to ensure that the Facilities are secured from unauthorized entry and/or vandalism during and after normal working hours; (9) require all employees to wear safety garments in accordance with Applicable Law, including applicable OSHA requirements; and (10) require all employees to comply with site safety rules and regulations, including observance of the no smoking rule.

B. Safety Inspections. The Company shall perform its obligations hereunder in accordance with the Safety Plan. The County shall have the right, upon reasonable prior notice to the Company, to inspect the Facility Sites at any time to conduct safety inspections. The County and its employees and agents must follow the Company's written safety rules and procedures. The Company shall cooperate reasonably with the County's representative during any such inspection, including in providing copies of any memoranda, notes, letters or reports documenting loss control or safety inspections performed by the Company or on its behalf, and in providing access to the Facilities and furnish information requested related to the Company's safety program. The Company shall promptly correct any safety hazards that may be identified during the inspections.

C. Security. The Company shall be responsible for maintaining suitable fences, gates and locks at the Facilities in order to protect against damage or injury to the Facilities caused by trespass, negligence, vandalism or malicious mischief of third parties.

Section 3.9 COMPLIANCE WITH APPLICABLE LAW.

A. Compliance. The Company shall operate and maintain the Facilities and otherwise perform all of its obligations hereunder in accordance with Applicable Law, including

the payment of prevailing wage, as applicable, and shall cause all Subcontractors to comply with Applicable Law, including the payment of prevailing wage, as applicable. The Company shall comply with all applicable requirements of all Permits with respect to the Contract Services notwithstanding that the Company may not be a permittee or co-permittee to certain such Permits. The Company shall provide the County (1) promptly upon receipt thereof, a true, correct and complete copy of any written notice of non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body, and (2) prompt written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such non-compliance, or of any Legal Proceeding alleging such non-compliance. In the event that the Company or any Subcontractor fails at any time to comply with Applicable Law with respect to the Contract Services, the Company shall promptly remedy or cause its Subcontractor to remedy such failure at its cost and expense and without reimbursement by the County, make all changes in the Company's operating and maintenance practices that are necessary to comply with any corrective action plan filed with or mandated by any Governmental Body or otherwise to remedy and prevent a recurrence of the non-compliance with Applicable Law, and indemnify and hold harmless the County in accordance with the provisions of Section 10.6 from and against any Losses, including all damages, fines, assessments, levies, impositions, penalties or other charges, resulting from such failure.

B. Investigations of Non-Compliance. In connection with any actual or alleged event of noncompliance with Applicable Law, the Company shall, in addition to any other duties which Applicable Law may impose: (1) fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body; (2) attend all meetings and hearings required by any Governmental Body; (3) provide all corrective action plans, reports, submittals and documentation required by any Governmental Body; (4) in conjunction with the County, communicate in a timely and effective manner with the general public as to the nature of the event, the impact on the public, and the nature and timetable for the planned remediation measures; and (5) provide the County with a true, correct and complete copy of any written notice of violation or noncompliance with Applicable Law, and true and accurate transcripts of any oral notice of noncompliance with Applicable Law, issued or given by any Governmental Body promptly upon receipt thereof. The Company shall furnish the County with

prompt written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or noncompliance to the extent the Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such noncompliance.

C. No Nuisance Covenant. The County and the Company acknowledge that a substantial objective of the County is for the Contract Services to be supplied in an economically and environmentally sound manner and, accordingly, the Company shall keep the Facilities and Facility Sites neat, clean and litter-free at all times, ensure that the operation of the Facilities and Facility Sites does not create any odor, litter, noise, fugitive dust, vector or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law. Should any such nuisance condition occur as a result of any failure of the Company to comply with its obligations under this Agreement, the Company shall promptly remedy the condition, pay any fines or penalties relating thereto, make all changes in the Company's operating and maintenance practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless the County in accordance with the provisions of Section 10.6 from and against any Losses resulting from such failure.

Section 3.10 OPERATING/CONSTRUCTION APPROVALS AND GRANTS.

A. Applications and Submittals. If necessary, the County and the Company, each at the County's cost and expense, shall make any filings, applications and reports necessary to obtain and maintain all Permits required to be made, obtained or maintained by each under Applicable Law in order to operate the Facilities and build any Facility Modification, to the extent that the Company acts as County's agent for the Facility Modification or is selected in accordance with applicable provisions of GML 103 to perform the Facility Modifications, as approved by the County.

B. Data and Information. The Company shall on a timely basis supply all data and information and take all action required to be supplied or taken by the Company in connection with the Permits required for the Contract Services. The County shall, and shall cause NHCC to, on a timely basis supply all data and information and take all action required to be supplied or taken by the County or NHCC in connection with the Permits required for the Contract Services

considering the requirements of Applicable Law and the responsibilities of the County or NHCC, as appropriate, as the legal and beneficial owner of the respective Facilities and primary permittee. The Company shall indemnify and hold harmless the County in accordance with the provisions of Section 10.6 from and against any Losses resulting from the submission by the Company under this Section of materially incorrect or incomplete information.

C. Non-Compliance and Enforcement. The Company shall report to the County, promptly upon obtaining knowledge of any violations of the terms and conditions of any Permit or Applicable Law pertaining to the Facilities. The County will be entitled to enforce compliance with any Permit regardless of whether a regulatory enforcement action has been undertaken.

D. Reports to Governmental Bodies. The Company shall prepare all periodic and annual reports, make all information submittals and provide all notices to all Governmental Bodies that are required by all Permits and under Applicable Law with respect to the Facilities and that are the responsibility of the Company under this Agreement. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for the County, if such are acceptable to the Governmental Body. The Company shall, to the extent reasonably practicable, provide the County with copies of such regulatory reports for review, comment and signature, as applicable, at least ten Business Days before their filing with the Governmental Body.

E. Potential Regulatory Change. The Company shall keep the County regularly advised as to potential changes of which the Company obtains knowledge in regulatory requirements affecting the operation and maintenance of the Facilities, and provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the County should a Change in Law actually occur.

F. State Grants. The County may apply for grants from the State of New York in connection with funding for costs related to the Contract Services. The Company shall, at the County's cost and expense, provide reasonable assistance to the County in compiling all data, information and action required to be supplied or taken in connection with such grants.

Section 3.11 REQUIRED OPERATING PERIOD INSURANCE.

A. Insurance Required to Be Obtained and Maintained by Company. Commencing with the Effective Date and continuing throughout the remainder of the Term, the Company shall obtain and maintain the Required Operating Period Insurance for which the Company is responsible, as specified in Appendix 3, and shall comply with all applicable requirements of such Required Operating Period Insurance. Insurance coverage required pursuant to this Section shall be maintained with generally recognized financially responsible insurers reasonably acceptable to the County and qualified and licensed to insure risks in the State of New York. The cost of the Required Operating Period Insurance that the Company is responsible for obtaining and maintaining shall be paid by the Company, and shall be included as part of the Operation and Maintenance Fee. The Company shall be responsible for paying all the deductibles under any such Required Operating Period Insurance, subject to the inclusion of the amount of such deductibles in the Operation and Maintenance Fee except in the case of any such deductible that is payable with respect to a Loss caused by or resulting from Company Fault. In addition, if a peril occurs which is an insurable event but the costs incurred due to such peril are less than the Required Operating Period Insurance deductibles amounts set forth in Appendix 3, the Company shall be responsible for paying the costs as it would pay if such costs were a deductible amount, subject to the inclusion of such costs in the Operation and Maintenance Fee except in the case of any such costs that are payable with respect to a Loss caused by or resulting from Company Fault. The Company shall include the County as a named insured on all Operating Period Insurance policies. The Company shall promptly provide the County with copies of all inspection reports prepared by the Company's insurance carrier.

B. Insurance Required to Be Obtained and Maintained by County. During the Term, the County shall obtain and maintain the Required Operating Period Insurance for which the County is responsible, as specified in Appendix 3, and shall comply with all applicable requirements of such Required Operating Period Insurance. Insurance coverage required pursuant to this Section shall be maintained with generally recognized financially responsible insurers licensed to insure risks in the State of New York. The County shall include the Company as a named insured on all Operating Period Insurance policies. The County shall promptly provide the Company with copies of all inspection reports prepared by the County's insurance carrier.

C. County Self-Insurance. Notwithstanding anything in this Agreement to the contrary, the County may elect not to carry the insurance coverage required by the provisions of Section 3.11B and instead to self-insure (or maintain any deductible amount) pursuant to any plan of self-insurance maintained by the County. If the County elects to self-insure, all of the provisions relating to insurance required to be maintained by the County under Section 3.11B shall apply to the County as if the County had in fact maintained such policies of insurance in lieu of self-insurance, and if an event or claim occurs for which a defense and/or coverage would have been available from an insurance company, the County shall undertake the defense of such claim, at the County's sole cost and expense, and use the County's own funds to pay any claim or otherwise provide the funds which would have been available from insurance proceeds but for such election by the County to self-insure. In the event the County elects to procure insurance coverage rather than to self-insure, the County shall so advise the Company.

D. Optional Company Insurance. The Company has the right, but not the obligation, to provide property insurance, at its sole discretion, on all or a portion of the Facilities or Facility Sites. The Company may, in its sole discretion, exclude from such optional insurance coverage such items or events as the Company or its insurance carrier deems appropriate. Any such optional insurance will neither expand the Company's obligations under this Agreement nor limit any obligation of the Company under this Agreement to provide the Required Operating Period Insurance. The Company shall provide any such optional insurance at the Company's sole cost and expense and without reimbursement or payment of such cost or expense by the County.

Section 3.12 COUNTY ACCESS, INSPECTION AND VISITATION.

A. Access. The County and its representatives shall, upon reasonable advance notice to the Company in each instance, have (1) the right to access the Facilities for any reason, and (2) the right during normal business hours to take visitors through such portions of the Facilities as are suitable for such visitation. The Company shall permit and facilitate access to the Facilities for such purposes, and the Company will be entitled to have a representative present at all times during any such access. Keys or passwords, as applicable, shall be provided by the Company in accordance with the Company's physical security plan and key control program. Tours shall be scheduled on no more than five days per week, except as special circumstances

require. Such access to the Facilities shall be made available, and such visitation of the Facilities shall be conducted, in a manner which does not interfere with the Company's performance of its obligations hereunder and the County and its representatives and all visitors shall comply with the Company's reasonable written operating and safety and security procedures. The Company shall obtain in advance permission from the County to take Company visitors on Facility tours or to distribute any literature regarding the Facilities. In addition, the Company will refer all direct requests for information regarding the Facilities initiated by the media or the general public to the County's designated representative for such purposes.

B. Visitors' Log. The Company shall maintain a visitors' log during the Term and shall require that all visitors (other than visitors on organized tours) to the Facilities including visiting County and Company personnel, Subcontractors and agents, sign in and sign out in the visitors' log.

Section 3.13 ASSET AND FINANCIAL RECORDS.

A. Facility Records. The Company shall on and after the Effective Date establish and maintain a computerized information system (including specialty software for scheduling and tracking preventive maintenance and histories and document all repairs and maintenance performed at the Facilities) for operations and maintenance data, process control, including all information necessary to verify calculations made pursuant to this Agreement. The Company shall promptly provide the County, upon reasonable request, with copies of all operations and maintenance data and other information kept by the Company in its performance of the Contract Services.

B. Availability of Facility Records to County. The Company shall make available to the County all operations, maintenance, performance, personnel, and marketing data, documents and records relating to the Facilities, any Special Project, and any Facility Modifications as are available to the Company.

C. Financial Records. The Company shall prepare and maintain proper, accurate, complete and current financial books, records and accounts, in accordance with IFRS. These financial records shall be in form and substance sufficient to support all financial reporting,

including Cost Substantiation, required hereunder. In the event the Company fails to prepare or maintain any books, records or accounts as required under this Section, the Company shall not be entitled to any requested payments or adjustments for which Cost Substantiation was required hereunder to the extent such failure prevented Cost Substantiation. The Company shall keep the relevant portions of the books, records and accounts maintained with respect to each Contract Year until at least the seventh anniversary of the last day of each Contract Year (or such longer period as may be appropriate to account for any Dispute then pending). For those circumstances that require Cost Substantiation the Company shall make such books and records available to the County for inspection, audit and copying upon reasonable notice during business hours to the extent necessary to allow the County to determine to its reasonable satisfaction the accuracy, completeness, currency and propriety of any charge or request for payment hereunder. The Company shall not be required to provide to the County any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the County through the Cost Substantiation process. The provisions of this Section shall survive the termination of this Agreement.

D. Inspection, Audit and Adjustment. The County shall have the right to perform or commission an inspection or an independent audit of the financial information required to be kept under this Section, subject to possible reimbursement as provided in this Section. If an inspection or audit contemplated by this Section discloses a Billing Statement that either (i) overstates County Payment Amounts by more than 1% of the proper amount or (ii) understates County Credit Amounts by more than 1% of the proper amount during the period audited, then the Company shall, in addition to the reimbursement or credit of such overstated (or understated) County Payment Amounts or County Credit Amounts, as applicable, with respect to such Billing Statement, with interest at the Overdue Rate, reimburse the County for any and all reasonable costs and expenses incurred by the County in connection with the inspection or audit.

Section 3.14 PERIODIC REPORTS.

A. Monthly Reports. The Company shall provide the County with monthly operations reports as set forth in Appendix 4 no later than 15 days after the end of each month. The County shall have the opportunity to review and comment on the contents of the monthly

operations reports prior to the same being deemed complete. The Company shall correct all errors or omissions identified by the County. All errors and omissions not corrected in a timely manner shall not be subject to reimbursement until reconciled.

B. Annual Operation and Maintenance Reports. The Company shall furnish to the County, within 30 days after the end of each Contract Year, an annual operation and maintenance report with an annual summary of the information and statistical data provided in the monthly reports, as well as all other data required to be furnished to the County pursuant to Appendix 4 on completed compliance monitoring forms. The Company shall also perform and report to the County, as part of its annual operation and maintenance report, the results of a comprehensive performance evaluation which reviews and analyzes the administrative, operational and maintenance practices employed in the operation and maintenance of the Facilities.

C. Notice of Default Reports. The Company shall provide to the County, promptly after the receipt thereof, copies of any written notice of a material default breach or non-compliance received under or in connection with any Permit, material contract entered into by the Company in connection with the Contract Services.

Section 3.15 COUNTY CORRECTIVE ACTION. The County shall have the right, but not the obligation, to perform any operating obligation of the Company that relates to health, safety, environmental quality or aesthetics that the Company fails to promptly perform after receipt of reasonable notice by the County. If the County exercises such right, it shall be entitled, subject to cost substantiation by the County comparable to the Cost Substantiation that would be applicable to the Company under equivalent circumstances, to recover from the Company the reasonable costs and expense incurred by the County in the performance of such corrective action.

Section 3.16 SERVICE COORDINATION AND CONTRACT ADMINISTRATION.

A. Company's Facility Manager. The Company shall appoint and train a manager for the Facilities (the "**Facility Manager**") who is experienced and proficient in the operation and maintenance of facilities comparable to the Facilities. The Company acknowledges that the performance of the individual serving from time to time as the Facility Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation

between the County and the Facility Manager will be essential to effectuating the intent and purposes of this Agreement. Accordingly, the Company shall provide the County with the name of the person serving from time to time as Facility Manager, and the telephone and fax numbers and other means by which the Facility Manager may be contacted at the Facility Site, together with the contact information for a responsible Company official to be contacted in the event of an Emergency. The Company shall replace the Facility Manager at the request of the County, after notice and a reasonable opportunity for corrective action, in the event the County reasonably determines that the relationship between the Facility Manager and the County has become unworkable.

B. Company's Senior Supervisors. The Company shall appoint and inform the County of the identity of the corporate officials of the Company with senior supervisory responsibility from time to time for the Facilities and the performance of this Agreement (the "**Senior Supervisors**"). The Company shall promptly notify in writing to the County of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the County in any reviews of the performance of the Facility Manager which the County may undertake from time to time, and shall give full consideration to any issues raised by the County in conducting such performance reviews.

Section 3.17 COMMUNICATIONS AND MEETINGS. On or before the Effective Date, the Company shall inform the County of the telephone, fax and beeper numbers, e-mail address and other means by which the Facility Manager and Senior Supervisors may be contacted. The County shall furnish to the Company comparable communications information with respect to the Contract Administrator. The Company shall meet with the County each month to review the contents of the operations reports required to be prepared pursuant to Section 3.14. The Facility Manager and, if requested by the County, the Senior Supervisors each shall personally attend the monthly operations meetings with the County, and all public County meetings which the County may reasonably request from time to time, to review operational, maintenance, performance and planning matters arising with respect to the Facilities and this Agreement.

Section 3.18 ADMINISTRATIVE COMMUNICATIONS. The Parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters

will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, either through direct communications between the Parties or via the Dispute resolution process described in Section 10.13, can be formally reflected in the common records of the Parties so as to permit the orderly and effective administration of this Agreement.

A. Contract Administration Memoranda. The principal formal tool for the administration of matters arising under this Agreement between the Parties shall be a “**Contract Administration Memorandum**.” A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the County and the Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder.

B. Procedures. Either Party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the County reflecting the resolution. The Contract Administration Memorandum shall be numbered, dated, and signed on behalf of each Party. The County and the Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from all other documents relating to the administration and performance of this Agreement.

C. Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and performance of this Agreement. Any material change, alteration, revision or modification of this Agreement, however, shall be effectuated only through a formal Agreement amendment authorized, approved or ratified by resolution of the County and properly authorized by the Company.

Section 3.19 COST REDUCTION AND SERVICE IMPROVEMENT. In the event either Party offers the other Party any idea, approach or concept for lowering the Company’s cost, reducing the Service Fee or total costs, or improving the Company’s service, the other Party shall reasonably consider and explore the development and implementation of the concept. Neither

Party shall be obligated to negotiate or to agree to amend this Agreement to effectuate any such idea, approach or concept except in its sole discretion and upon terms and conditions acceptable to it.

Section 3.20 CALIBRATION AND RECALIBRATION; CONFIGURATION REPORTS.

A. Components Requiring Calibration. The Company shall ensure that all components of the Facilities requiring calibration or recalibration at any point during the Term, including (1) the Steam Flow Meter and Steam Flow Meter totalizer, (2) the Heated Water Flow Meter and Heated Water Flow Meter totalizer, (3) the Chilled Water Flow Meter and Chilled Water Flow Meter totalizer, and (4) the Condensate Flow Meter and Condensate Flow Meter totalizer, are appropriately and accurately calibrated and recalibrated throughout the Term as provided herein.

B. Recalibration; Configuration Reports. Without limiting the generality of Section 3.20A above, the Company will re-calibrate all such Facility components after any adjustment to their respective configuration, and in any event not less frequently than once every twelve (12) months during the Term. The Company shall also produce and deliver to the County a configuration report with respect to each such re-calibration within seven (7) Business Days of any re-calibration. In addition, the Company will re-calibrate any and all Facility components promptly upon any request by the County and will produce and deliver to the County a configuration report with respect to any such re-calibration within seven (7) Business Days thereof; provided, however, that the County may not, unless the County has reasonable grounds for doubting the accuracy of the measurements, request a re-calibration of Facility components more often than once every six (6) months during the Term.

C. Calibration Following Replacement. If any component(s) of the Facilities requiring calibration is replaced for any reason at any point during the Term, the Company shall calibrate all such replacement components within seven (7) Business Days of installation. The Company shall prepare and deliver a configuration report for calibrations of all replacement components within seven (7) Business Days of initial calibration. Thereafter, all replacement components shall be recalibrated as set forth in Section 3.20B.

Section 3.21 METER TESTING; COMPANY ACCESS TO METERS.

A. Meter Testing; Retesting. The Company is responsible for reading, testing, servicing and maintaining all Meters at or serving the Facilities. The Meters will conform to Prudent Industry Practices at all times throughout the Term, and the Company will cause the Meters to be tested and calibrated no less often than twice each Contract Year by representatives of the applicable manufacturer in accordance with Prudent Industry Practices and any applicable standards of the National Institute of Standards and Technology. The Company will provide the County with not less than fourteen (14) days' prior written notice of such tests as well as with copies of all test reports and results as soon as they are available, and County will have the right to have a representative present during any such test. Either Party may at any time request a retest of any Meter if such Party has reasonable cause to believe that the accuracy of such Meter is not within 2.0% fast or 2.0% slow. The Party requesting any such retest will pay for such retest and will provide the other Party with reasonable prior written notice of such retest. Such other Party will have the right to have a representative present during such retest.

B. Company Access to Meters. The County will provide the Company with reasonable access to all Meters for the purpose of monitoring and verifying the accuracy of measurements made by such Meters and for purposes of calibration and recalibration. The Company will provide the County with reasonable advance notice of any access by the Company to any Meter, and the Company and the County will coordinate such access so as to minimize interruption to the County's business activities. The County will be entitled to have a representative accompany the Company at all times during any such access.

Section 3.22 SUPPLY OF CONDENSATE, MAKE-UP WATER, AND RETURNED WATER.

D. Return of Condensate. The County will, at its sole cost and expense, return Condensate to the Company during the Term at the Condensate Delivery Point, solely for use at the Facilities in the production of Steam. If the County fails to deliver the required quantity of Condensate to the Company, the County will be responsible for the costs and expenses reasonably incurred by the Company in producing and chemically treating Condensate in an amount equal to the amount of Condensate not delivered by the County to the Condensate Delivery Point. The

County will ensure that the Condensate supplied by the County to the Company under this Agreement meets the specifications set forth in Exhibit B, and is not contaminated with oil, excess rust, or other foreign substances that would make the Condensate unsuitable for production of Steam at the Facilities. If any component of the Condensate becomes contaminated prior to return to the Company, the County will notify the Company promptly of such contamination and correct the source or cause of such contamination as quickly as practicable at the County's sole cost and expense. The County will pay any cost reasonably incurred by the Company to treat Condensate until such required corrections or modifications are made. If the cost of treating the Condensate exceeds its monetary value, the Company will, at its option, either dispose of such Condensate or require that the County dispose of such Condensate, in each case at County's sole cost and expense.

E. Supply of Make-Up Water. The Company will be responsible for the procurement of any required quantities of Make-Up Water for the Central Utility Plant Facilities, subject to the inclusion of the cost of any such quantities of Make-Up Water in the Operation and Maintenance Fee.

F. Supply of Returned Heated Water. The County will, at its sole cost and expense, make Returned Heated Water available to the Company during the Term at the Heated Water Delivery Point, solely for use at the Facilities in the production of Heated Water. If the County fails to deliver Returned Heated Water to the Company for the production of Heated Water, the County will be responsible for the costs and expenses reasonably incurred by the Company in procuring and chemically treating Make-Up Water in an amount equal to the amount of Returned Heated Water not delivered by the County to the Heated Water Delivery Point. The County will ensure that the Returned Heated Water supplied by the County to the Company under this Agreement meets the specifications set forth in Exhibit B and is not contaminated with oil, excess rust, or other foreign substances that would make the Heated Water unsuitable for production of Steam at the Facilities. If any component of the Returned Heated Water becomes contaminated prior to return to the Company, the County will notify the Company of such contamination and correct the source or cause of such contamination as quickly as practicable at the County's sole cost and expense. The County will pay any cost reasonably incurred by the Company to treat Returned Heated Water until such required corrections or modifications are made. If the cost of treating the Returned Heated Water exceeds its monetary value, the Company will, at its option,

either dispose of such Returned Heated Water or require that the County dispose of such Returned Heated Water, in each case at the County's sole cost and expense. The County will obtain and maintain, at its sole cost and expense, any and all Permits required for the supply and delivery of Returned Heated Water under this Agreement. The Company will reasonably cooperate with and assist the County, at the County's cost and expense, in obtaining and maintaining such Permits.

G. Supply of Returned Chilled Water. The County will, at its sole cost and expense, make Returned Chilled Water available to the Company during the Term at the Chilled Water Delivery Point, solely for use at the Facilities in the production of Chilled Water. If the County fails to deliver Returned Chilled Water to the Company for the production of Chilled Water at the Central Utilities Plant, the County will be responsible for the costs and expenses reasonably incurred by the Company in procuring and chemically treating Make-Up Water in an amount equal to the amount of Returned Chilled Water not delivered by the County to the Chilled Water Delivery Point. The County will ensure that the Returned Chilled Water supplied by the County to the Company under this Agreement meets the specifications set forth in Exhibit B and is not contaminated with oil, excess rust, or other foreign substances that would make the Returned Chilled Water unsuitable for production of Steam at the Facilities. If any component of the Returned Chilled Water becomes contaminated prior to return to the Company, the County will notify the Company of such contamination and correct the source or cause of such contamination as quickly as practicable at the County's sole cost and expense. The County will pay any cost reasonably incurred by the Company to treat Returned Chilled Water until such required corrections or modifications are made. If the cost of treating the Returned Chilled Water exceeds its monetary value, the Company will, at its option, either dispose of such Returned Chilled Water or require that the County dispose of such Returned Chilled Water, in each case at the County's sole cost and expense. The County will obtain and maintain, at its sole cost and expense, any and all Permits required for the supply and delivery of Returned Chilled Water under this Agreement. The Company will reasonably cooperate with and assist the County, at the County's cost and expense, in obtaining and maintaining such Permits.

Section 3.23 FLOW METER INTERVAL DATA. The Company will provide on a monthly basis, at no cost to the County, 15 minute interval data from flow totalizers in the Heated

Water Flow Meter, Chilled Water Flow Meter and the Condensate Flow Meter to enable the County to monitor their respective flows on a regular basis.

Section 3.24 DISCLOSURE OF ENVIRONMENTAL MATTERS. The Company will, promptly after obtaining knowledge of (i) any violation of any Environmental Law arising out of the operation of the Facilities, or (ii) any Environmental Noncompliance at or about the Facilities, or (iii) any claim or action relating to any of the same by any Governmental Body having jurisdiction over any of the same, or (iv) the existence of any present enforcement, legal, or regulatory action or proceeding relating to such alleged Environmental Noncompliance or alleged presence of any Hazardous Materials, disclose such information to the County and provide all other notifications required under Applicable Law.

Section 3.25 COMPLIANCE WITH PERFORMANCE STANDARDS. If the Company fails at any time during the Term to comply with the Performance Standards, the Company shall provide the County with prompt written notice of such non-compliance. In the event that such non-compliance is caused by or results from any Company Fault, the Company shall promptly remedy such non-compliance at the Company's cost and expense (and without reimbursement by the County) and make all changes in the Company's operating and maintenance practices that are necessary to remedy and prevent a recurrence of such non-compliance. The Company shall also in such event provide alternative Thermal Energy service satisfying the requirements of this Agreement (and if the Company fails to do so within a reasonable period after the commencement of any such interruption, the County will be entitled to secure such alternative Thermal Energy service during the period of such interruption), and the Company will be responsible for any costs and expenses of such alternative service that are in excess of the costs and expenses that would have been incurred by the County for the Contract Services had such interruption not occurred.

Section 3.26 SALES AND BUSINESS TAXES. It is the intent of the Parties that the supplies, Utilities, and any other items or services purchased pursuant to the limited agency arrangement under Section 3.27 shall not be subject to any sales or business Taxes, including New York State and County sales or business Tax. Therefore, pursuant to Section 3.27, the County confers limited agency status to the Company and to the Company's subagents responsible for the performance of the Contract Services, for the purpose of purchasing items required for the

operation and maintenance of each of the Facilities, as applicable; including the purchase of supplies, equipment and Utilities. The Parties agree that if (a) any claim is made against the Company by New York State or another taxing authority for such sales or business Taxes, (b) any claim is made against the Company by a materialman or a Subcontractor on account of a claim against such materialman or Subcontractor by New York State or other taxing authority for such sales or business Taxes, or (c) the Company incurs any other expense or liability as a result of or arising out of the Company's acting as an agent for the County for said purposes, then the County shall be responsible for all amounts required to be paid arising out of such Tax, claim, expense or liability, including all fines and penalties. The Parties agree that:

- i. The Company shall afford the County the opportunity, before any payment of any such Tax is made by the Company, to contest said claim in the manner and to the extent that the County may choose and to settle or satisfy said claim, and to designate an attorney who is authorized to act for the purpose of contesting, settling and satisfying said claim; and
- ii. The Company shall give prompt notice to the County of any such claim, cooperate reasonably with the County and its designated attorney in contesting or settling said claim and furnish promptly to the County and said attorney all information and documents that are reasonably necessary for contesting or settling said claim, and will preserve all such information and documents for six (6) years after the date such claim is settled or a final determination is rendered with respect to such claim by an administrative body or court of competent jurisdiction of such claim.

The County agrees to take all reasonable steps to secure and maintain the sales and business Tax exemption under the principal-agent relationship with the Company and the Company agrees to cooperate reasonably in the defense of any adverse claim brought against the County as set forth above or in any adverse proceeding by a taxing authority relating to any such claim, including by making its employees reasonably available to the County and providing such testimony and access to the Company's books and records as shall be reasonably necessary to support the defense of such claim or proceeding. The County shall pay or reimburse the Company for any and all costs incurred by the Company resulting from or arising out of the Company's obligations pursuant to this Section 3.26 and shall indemnify and hold harmless the Company Indemnitees from and

against any and all Losses resulting from or arising out of the principal-agent relationship. In the event that a successful claim is made by New York State or another taxing authority which renders the limited agency status conferred upon the Company ineffective, the County will pay all costs and fines associated with such determination, and the Parties shall work together to determine a mutually agreeable solution for the treatment of sales or business Tax associated with supplies, and Utilities from such date forward, and this Agreement shall be amended accordingly.

Section 3.27 LIMITED AGENCY RELATIONSHIP.

D. Agency Status. The County hereby confers agency status, for the purpose of purchasing items required for the performance of operation and maintenance of the Facilities, which includes supplies, Equipment or Utilities, to the Company and to the Company's subagents responsible for the performance of the Contract Services, including all necessary maintenance and repairs related to the Facilities.

E. Application. The Company acknowledges that any sales or business Tax exemption resulting from the delegation set forth above applies solely to purchases of items including but not limited to supplies, equipment or Utilities, for use in performing the Contract Services.

F. Appointment. In accordance with New York State Department of Taxation and Finance Publication 765, entitled "Sales and Fuel Excise Tax Information for Properly Appointed Agents of New York Governmental Entities," and Technical Services Bureau Memorandum TSB-M-05(6)S, entitled "Purchases by New York Governmental Entities through Properly Appointed Agents," the County shall within five (5) Business Days following the Effective Date deliver to the Company a fully completed and properly executed Form DTF-122, Certification of Agency Appointment by a New York Governmental Entity.

G. Exempt Purchase Certificate. The County hereby authorizes the Company to issue Form ST-122, Exempt Purchase Certificate for an Agent of a New York Governmental Entity, along with the Form DTF-122 that it receives from the County, to any and all vendors of tangible personal property (other than motor fuel, diesel motor fuel and residual petroleum products) and services on behalf of the County, in furtherance of the Company's purchases as agent on behalf of the County.

H. Fuel Tax Exempt Purchase Certificate. The County also hereby authorizes the Company to issue Form FT0122, Fuel Tax Exempt Purchase Certificate for an Agent of a New York Governmental Entity, along with the Form DTF-122 that it receives from the County, to any and all vendors of motor fuel, diesel motor fuel and residual petroleum products on behalf of the County, in furtherance of the Company's purchases as agent on behalf of the County.

I. Disclosure. The County and the Company agree that immediately prior to the Company making any purchases of any items as agent of the County, the Company shall disclose to the vendor that the funds to be paid shall be deemed to have been paid by the County using the County's funds. The Company shall arrange for delivery of all such items purchased to the location of the Facilities, as applicable.

J. Accounts. All accounts opened by the Company with third party providers (e.g., public utilities) that are within the scope of the agency relationship established under this Agreement shall be opened by the Company as agent of the County (the governmental entity) and shall be identified accordingly on any bill, invoice, and other documentation relating to such account.

K. Invoices. Any invoice issued to the Company by a vendor of property or services that are covered by the agency relationship established under this Agreement shall be issued to the Company and shall state on its face that such invoice is being issued to the Company as agent for the County (the governmental entity). Each such invoice shall also list the place of delivery and the Company shall certify by endorsement that such property or services have been, are being or will be used in the performance of its obligations under this Agreement.

ARTICLE IV

MAINTENANCE AND REPAIR

Section 4.1 MAINTENANCE AND REPAIR GENERALLY.

A. Ordinary Maintenance and Repair. The Company shall perform all normal and ordinary maintenance of the machinery, Equipment, structures, and improvements at the Facilities and shall keep the Facilities in good working order, condition and repair, in a neat and orderly condition (including providing janitorial services and the clean-up of litter and debris on a daily basis or more frequently as required) and in accordance with the Contract Standards, and the

Operation and Maintenance Plan as incorporated in the Operation and Maintenance Manual, subject to the limitations set forth in (C) below, and shall maintain the aesthetic quality of the Facilities. Without limiting the generality of the foregoing, the Company shall, in consideration for payment of the Operation and Maintenance Fee as otherwise described hereunder, so maintain and repair (i) the Steam Flow Meter and Steam pressure and Steam temperature measure instruments; (ii) the Heated Water Flow Meter, the Heated Water temperature instrument, and the Returned Heated Water temperature instrument; (iii) the Chilled Water Flow Meter, the Chilled Water temperature instrument, and the Returned Chilled Water temperature instrument; (iv) the Condensate Flow Meter; (v) all Thermal Energy Interconnection Facilities; (vi) the Nassau University Medical Center boilers; and (vi) any and all other Meters at or serving the Facilities. The Company shall provide or make provisions for all labor, materials, supplies, equipment, Tools, consumables and services which are necessary for the normal and ordinary maintenance of the Facilities and shall conduct predictive, preventive and corrective maintenance of the Facilities as required by the Contract Standards and the Operation and Maintenance Manual. The Operations and Maintenance Manual is intended to establish minimum standards by which to measure the Company's performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or substandard maintenance, repair and replacement occurs. The Company shall adhere to the Operation and Maintenance Plan as incorporated in the Operation and Maintenance Manual. The Company shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards. The timing and extent of maintenance and repair activities performed by the Company hereunder with respect to the Facilities shall equal or exceed the standard set for those activities as incorporated in the Operation and Maintenance Manual. The Company shall keep maintenance logs in accordance with the Operation and Maintenance Plan incorporated in the Operation and Maintenance Manual.

B. Maintenance and Repair of Facility Sites. Except as otherwise set forth in this Section, the Company shall, in accordance with the Contract Standards, keep the grounds of the Facility Sites in a good working order and repair and in neat and orderly condition according to the Operation and Maintenance Manual and the Contract Standards. The Company shall also maintain and repair all fences and signs on the Facility Sites. In addition, the Company shall provide (i) lawn mowing, (ii) leaf raking, (iii) brush and sapling removal, (iv) winter maintenance

(snow and ice removal) for all parking lots, roadways, walk-ways, and building entrances and exits at the Facility Sites, (v) drain cleanout and (vi) debris clean up.

C. Capital Repairs . Capital Repairs shall be the responsibility of the County and shall be procured through application of Applicable Law. The Company may, at the County's request, act as the County's agent for procurement of the Capital Repair, and, if the Company otherwise seeks to self-perform the work, may propose or bid as otherwise required pursuant to GML 103. The Company shall be responsible to notify the County of the need for any Capital Repair associated with preventative or predictive maintenance consistent with Prudent Industry Practices.

Section 4.2 PERIODIC MAINTENANCE INSPECTIONS.

A. Annual Maintenance Inspection. The County may perform an inspection of the Facilities and relevant records of the Company at any time during the term hereof upon not less than five (5) days' prior written notice to the Company to review the state of repair, working condition and performance capability of the Facilities and to determine compliance with the Contract Standards. At the County's option, such inspections may include a concurrent review of all relevant data, records and reports, performed by or on behalf of the County by the County Engineer at the County's expense. The inspections shall take place at such time determined by the County as set forth in the aforementioned notice. The Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Company's performance of the Contract Services. Without limiting the generality of the foregoing, the Company acknowledges and agrees that the County may perform a final inspection of the Facilities and relevant records of the Company in accordance with this Section 4.2 upon the expiration of the term hereof. All covenants and other obligations of the Company set forth in this Section 4.2 and elsewhere in this Agreement concerning interim inspections shall apply to such final inspection. The provisions of this Section 4.2 shall survive the expiration or earlier termination of this Agreement.

B. Unscheduled Inspections. Without limiting the provisions of Section 4.2A above, the County has the right, on an unscheduled basis, to inspect the Facilities and relevant records of the Company to determine compliance with this Article.

C. Remediation. Based on the annual operation and maintenance reports submitted by the Company pursuant to Section 3.14B or the inspections and reviews conducted pursuant to this Section or any unscheduled inspections conducted by the County, the County may submit a statement to the Company detailing any deficiencies found and requiring the Company to submit a plan of remediation. The remediation plan shall be sufficient to reasonably demonstrate that, if implemented, the Facilities will be promptly brought into compliance with the requirements of this Article. If the County accepts the remediation plan, the Company shall thereupon correct all deficiencies noted in the remediation plan in accordance therewith. Failing such corrective action by the Company within a reasonable period, the County shall be entitled to correct any remaining deficiencies in accordance with the remediation plan, and in such event the actual documented costs incurred by the Company in performing such remediation shall be credited to the County as a County Off-Sets Credit in accordance with the provisions of Section 7.1F. Any disputes with respect to the cause or amounts specified in the County's statement, not resolved to the mutual satisfaction of the Parties, shall be determined as provided in Section 8.10.

Section 4.3 REMOVAL OF EQUIPMENT OR DISPOSAL OF SURPLUS EQUIPMENT. The Company shall not remove any Equipment from the Facilities without the prior written approval of the County.

Section 4.4 WARRANTIES. During the Term, the Company shall be responsible for meeting the County's maintenance obligations under all manufacturers' warranties on new Equipment purchased and installed in the Facilities by the County or by the Company, and shall provide reasonable assistance and support to the County in enforcing Equipment warranties and guarantees. The Company shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion, at the County's cost and expense, upon approval of the County. The Company shall reasonably cooperate with and assist the County, at the County's cost and expense, if the County seeks to enforce warranties and guarantees through litigation.

Section 4.5 LOSS, DAMAGE OR DESTRUCTION TO THE FACILITIES.

A. Prevention and Repair. The Company shall use reasonable care and diligence and shall take all appropriate precautions, all in accordance with Prudent Industry

Practices, to protect the Facilities from loss, damage or destruction. The Company shall report to the County and the insurers, promptly upon obtaining knowledge thereof, any loss, damage or destruction to the Facilities and as soon as practicable thereafter shall submit a full report to the County. The Company shall also submit to the County within 24 hours of receipt copies of all accident and other reports filed with, or given to the Company by, any insurance company, adjuster or Governmental Body. The Parties shall cooperate so as to promptly commence and proceed with due diligence to complete the repair, replacement and restoration of the Facilities to at least the character and condition thereof existing immediately prior to the loss, damage or destruction, in accordance with and subject to the procedures set forth in Article VI. The County shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Company as if such work constituted a Facility Modification hereunder.

B. Insurance and Other Third Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each Party shall assist the other in exercising such rights as it may have to effect such recovery. Each Party shall provide the other with copies of all relevant documentation at no cost to the other Party, and shall reasonably cooperate with and assist the other Party upon request by participating in conferences, negotiations and litigation regarding insurance claims.

C. Facility Restoration. Except as otherwise expressly provided in this Agreement, the County shall be responsible for and shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Facilities in accordance with this Section, and all insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Facilities shall be for the account of the County.

D. Damages to County Property Resulting from Company Fault. The Company shall promptly repair or replace, at the Company's sole cost and expense and without reimbursement from the County, all County Property and all private property damaged as a result of any Company Fault in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements, to the maximum extent reasonably practicable,

shall restore the damaged property to its character and condition existing immediately prior to the damage.

ARTICLE V
INTERRUPTIONS OR CURTAILMENT OF THERMAL ENERGY, SCHEDULING AND
NOTICE OF PLANNED OUTAGES.

Section 5.1 PLANNED AND UNPLANNED OUTAGES.

A. Notice of Unplanned Outages. The Company will provide notice to the County promptly of any outages of or relating to the Facilities that are not Planned Outages and, as soon as practicable and when reliable information becomes available, provide the County with a schedule (date and hour of day) setting forth when the affected Facilities are expected to return to service. During any such outage, the Company will provide the County with updates as to the status and changes in the expected schedule of the resumption of service to the affected Facilities as soon as such information becomes available in a reliable form.

B. Planned Outages. Not later than thirty (30) days after the Effective Date, the Company will submit to the County a proposed schedule of Planned Outages for the first Contract Year. Not later than ninety (90) days prior to the end of the first Contract Year and each subsequent Contract Year, the Company will submit to the County a proposed schedule of Planned Outages for the immediately following Contract Year. The County will within thirty (30) days of receipt of each such proposed schedule of planned outages notify the Company of any objections that the County may have to the schedule, and the Company will use commercially reasonable efforts to accommodate any such objections. The Company will, to the maximum extent practicable, minimize the number and duration of Planned Outages, and will use commercially reasonable efforts to prevent any interruption or curtailment of supply of Thermal Energy to the County during any Planned Outage. The Company will provide notice to the County of any additional Planned Outages of or relating to the Facilities that the Company reasonably determines are necessary in order to operate and maintain the Facilities in accordance with Prudent Industry Practices and that will interfere with or reduce the provision of Thermal Energy to the County, provided that (i) the Company will give as much prior notice as is possible under the circumstances, and in any event at least ninety (90) days' prior notice, of any such Planned Outage,

and (ii) such interference or reduction will be only to the extent and for the duration reasonably required by such outage or overhaul.

Section 5.2 EMERGENCIES. Notwithstanding anything to the contrary contained herein, the Company will take immediate and diligent actions in accordance with the Emergency response manual and all Applicable Law as necessary in the case of an Emergency to prevent any threatened damage, injury and loss or to counteract or otherwise mitigate the effects of such Emergency. The Company will provide the County with telephonic notice of any Emergency as soon as practicable following the occurrence thereof, and will follow up such telephonic notice promptly with written notice. Such written notice will include detail with respect to any action being taken by the Company in response to the Emergency and any expenditures incurred, or expected to be incurred, by the Company in connection with such Emergency. The Company will take all reasonable steps to minimize the cost of the Emergency to the County, having due regard to the circumstances and the need to act promptly. At the request of the County, the Parties will promptly after such written notice discuss further actions that should reasonably be taken as a result of the Emergency and the estimated expenditures associated therewith.

Section 5.3 INTERRUPTIONS. If any interruption of the Contract Services occurs, including as a result of any Emergency, the Company will restore normal service or provide temporary replacement service as quickly as practicable. If any such interruption is attributable to any failure by the Company to comply with any of its obligations under this Agreement or any negligence or intentional misconduct on the part of the Company, the Company shall provide alternative Thermal Energy service satisfying the requirements of this Agreement (and if the Company fails to do so within a reasonable period after the commencement of any such interruption, the County will be entitled to secure such alternative Thermal Energy service during the period of such interruption), and the Company will be responsible for any costs and expenses of such alternative service that are in excess of the costs and expenses that would have been incurred by the County for the Contract Services had such interruption not occurred. If the interruption is attributable to any failure by the County to comply with any of its obligations under this Agreement, or any negligence or intentional misconduct on the part of the County, the County will be responsible for all of the costs and expenses of any such alternative Thermal Energy service

and all of the costs and expenses incurred by the Company in restoring Thermal Energy service under this Agreement.

Section 5.4 FAULTY OR NON-FUNCTIONING EQUIPMENT. The County will notify the Company if the County has any concerns about the quantity or quality of Thermal Energy received, or about the proper functioning of any Equipment at the Facilities. If after inspection the Company determines that any of the same is not functioning properly or not delivering Thermal Energy in accordance with the requirements of this Agreement, the Company will promptly repair or replace the faulty Equipment in accordance with the provisions of this Agreement. The County will be entitled to prior notification of and the right to attend and witness such inspection, and will further be entitled to conduct its own inspection of such Equipment at the same time, or at some other mutually convenient time when representatives of the Company are present. If any Dispute arises between the Parties with respect to whether any Equipment is functioning properly or delivering Thermal Energy in accordance with the requirements of this Agreement, the Parties will retain a mutually acceptable independent third-party engineer to perform an inspection of the same. Such engineer will conduct its inspection and deliver to the Parties a report of its findings and conclusions, which findings and conclusions will be binding on the Parties. The costs and expenses of such engineer will be borne by the Party that is not the Party whose position in such Dispute is predominantly upheld by such findings and conclusions.

ARTICLE VI FACILITY MODIFICATIONS

Section 6.1 FACILITY MODIFICATIONS GENERALLY.

A. Purpose. The Parties acknowledge that it may be necessary or desirable to make Facility Modifications. Facility Modifications may be desirable, for example, to improve the performance or increase the capacity of the Facilities, to address or anticipate the obsolescence of portions of the Facilities, or to reduce the cost of performing this Agreement. The selected contractor, or if selected to self-perform after a compliant procurement under GML 103, the Company shall complete the Facility Modifications in accordance with the Contract Standards.

B. Party Responsible for Costs. The County shall bear the cost and expense of all Facility Modifications and related operation, maintenance, repair and replacement costs unless otherwise agreed to herein or by the Parties in writing or unless the need for the Facility Modification, major maintenance, replacement or repair is a result of the Company's failure to operate and maintain the Equipment in accordance with the Contract Standards, in which case the Company shall be responsible for such costs and expenses without reimbursement by the County.

Section 6.2 FACILITY MODIFICATIONS AT COUNTY ELECTION. The County may initiate any Facility Modification necessary or beneficial for the operation of the Facilities. All such Facility Modifications shall be made at the County's sole cost and expense and without reimbursement by the Company.

Section 6.3 FACILITY MODIFICATIONS AT COMPANY REQUEST.

A. General. The Company may recommend, initiate, or request, subject to County approval and funding, any Facility Modification necessary or beneficial for the operation of the Facilities. The Company shall give the County written notice of, and reasonable opportunity to review and comment upon, any Facility Modification proposed to be made at the Company's request. Any Facility Modification proposed to be made at the election of the Company shall be subject to the County's prior written approval, which approval may be withheld in the County's sole discretion. All such Facility Modifications shall be made at the County's sole cost and expense.

B. Cost Savings. In the event that any such Facility Modification is reasonably expected to result in a net cost savings to the Company, the Parties shall negotiate in good faith the extent to which the cost of the Facility Modification may be shared with the County. The County shall have the express right to reject or condition its approval of a Facility Modification upon the sharing of net cost savings expected to result therefrom.

Section 6.4 FACILITY MODIFICATION DUE TO UNCONTROLLABLE CIRCUMSTANCE. Upon the occurrence of an Uncontrollable Circumstance, the Company shall promptly proceed, subject to the provisions of Section 6.1, Section 6.5 and Section 10.5 hereof, to make or cause to be made all Facility Modifications reasonably necessary to permit the Company

to perform its obligations under this Agreement. Facility Modifications under this Section shall also be performed in accordance with GML 103.

Section 6.5 PROCEDURES FOR IMPLEMENTING FACILITY MODIFICATIONS.

A. Notice, Proposals and Authorization to Proceed. In the event a Facility Modification is proposed or required under this Article, the Parties shall proceed as follows:

(i) Primary Implementation Procedure. Unless the County determines that an alternative implementation procedure be employed, the implementation procedure set forth in this Section shall apply with respect to all Facility Modifications.

(ii) Preliminary Company Plan and County Review. At the request of the County and the cost and expense of the Company, the Company shall prepare and deliver to the County a preliminary plan for the implementation of the Facility Modifications. The preliminary plan shall include recommendations as to technology, design, construction, Equipment, materials, and operating and performance impacts. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The preliminary plan shall specifically evaluate reasonable alternatives to the mix of Facility Modifications and changed operating and maintenance practices which the Company is recommending. The County shall review the Company's preliminary plan and recommendations, and undertake discussions with the Company in order to reach agreement on a basic approach to the Facility Modification.

(iii) Company Implementation Proposal. Following agreement on a basic approach to the Facility Modifications, at the request of the County the Company shall submit a formal implementation proposal to the County for its consideration. The implementation proposal shall contain (1) a Company services element, to be implemented through an amendment to this Agreement, and (2) a third party construction services element, to be implemented through third party contracting. The Company services element shall contain (a) the Company's offer to perform management services for the delivery, design, construction and implementation of the Facility Modifications and acceptance test services with respect to the Facility Modifications, the proposed price for such services, and either a good faith estimate of total construction costs or a guaranteed maximum construction price, if so requested by the County and agreed to by the Company, and

(b) the Company's offer to operate, maintain, repair, and replace the Facility Modification following construction and acceptance for a fixed fee or a fixed and variable fee to be added to the Service Fee. The third party construction services element shall be a proposal by the Company to conduct, on behalf of and in the name of the County and as allowed by Applicable Law, a bidding process or a competitive proposal process for the construction work or the alternative project delivery work involved in completing the Facility Modification. The bidding process shall include an advertisement for bids and a construction contract award to the lowest responsible bidder, and shall be conducted in accordance with the requirements of Applicable Law which govern construction projects undertaken by the County. A competitive proposal process shall include a request for proposals and an alternative project delivery contract award to the most advantageous proposer. The County shall be the counterparty to all such construction contracts or alternative project delivery contracts.

(iv) Negotiation and Finalization of Company Implementation Proposal. The Parties shall proceed, promptly following the County's review of the Company's submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this Agreement. Any final negotiated agreement for the implementation of a Facility Modification under this Section shall address, as applicable, (1) design requirements, (2) construction management services, (3) acceptance tests and procedures, (4) a guarantee of completion and acceptance, (5) Performance Standards, (6) any changes to the Contract Standards to take effect as a consequence of the Facility Modification, (7) a payment schedule for the construction management-related services, (8) provisions for County Engineer review, (9) any adjustments to the Service Fee resulting from the Facility Modification, including any related operation, maintenance, repair and replacement costs, (10) a financing plan, and (11) any other appropriate amendments to this Agreement. The Company shall not be obligated to undertake any Facility Modification except following agreement as to such negotiated adjustments, unless otherwise required on an Emergency basis.

(v) The County shall be under no obligation to utilize the primary implementation procedure for Facility Modification set forth, and may instead, in its sole discretion, utilize any other implementation procedure available to it or required under the Applicable Law. Alternative implementation procedures may include, to the extent permissible

under Applicable Law, (1) contracting with the Company on a sole source basis to implement the Facility Modification on an alternative project delivery basis; (2) contracting with the Company to manage a competition for alternative project delivery services to implement the Facility Modification; and (3) contracting with third parties for the implementation of the Facility Modification on a traditional design/bid/build basis, with the County rather than the Company responsible for the design and construction of the Facility Modification, so long as any such design or construction undertaken or overseen by the County does not either interfere unreasonably with the Company's performance of the Contract Services or cause an increase in the Company's cost of performance of the Contract Services, or with the Company acting as the County's agent in the design/bid/build process. At all times, the Company shall comply with all Applicable Law governing the procurement of County contracts, including Nassau County Charter Section 702 (Office of Purchasing Duties: Competitive Bids), Nassau County Charter Section 2206 (Execution of contracts), Nassau County Administrative Code Section 7-1.0 (Purchases involving less than five hundred dollars), Executive Order No. 1 of 1993 – in relation to personal services contracts and the Nassau County Procurement Policy Procedure adopted pursuant to Section 104-b of the General Municipal Law. Any contract entered into pursuant to this Section shall be subject to approval by the Nassau County Legislature and Nassau County Interim Finance Authority, as applicable. While it is the intention of the County to have the Company operate, maintain, repair, and replace Facility Modifications on an integrated basis with the Facilities, the County is not obligated to do so and may contract for such services with a third party, so long as any such third party contract does not impair the Company's rights or the Company's performance of the Contract Services, or cause the Company to incur additional costs to perform the Contract Services. The County may determine to proceed with an alternative implementation procedure for Facility Modification at any time, whether before or after entering into negotiations with the Company under the primary implementation procedure specified above, but in such an event subject to reimbursement by the County of the Company's costs incurred to date in developing the Facility Modification.

(vi) Any Facility Modification made hereunder shall be owned by the County. Where the Company acts as the County's agent for procurement of the Facility Modification or is selected, after competitive procurement in accordance with GML 103 to perform the Facility

Modification the Company shall deliver to the County record drawings of any Facility Modification.

B. Insurance and Other Third Party Payments. To the extent that the costs of any Facility Modification incurred pursuant to this Article can be recovered by either Party from any insurer providing the Required Operating Period Insurance, or from another third party, such Party shall exercise with due diligence such rights as it may have to effect such recovery. Such Party shall give prompt written notice to the other Party of the receipt of any such recovery, shall provide such other Party with copies of all documentation, and shall afford such other Party a reasonable opportunity to participate in all conferences, negotiations and litigation, regarding insurance claims which materially affect such other Party's interest under this Agreement. Any such insurance recovery shall be applied as appropriate to the restoration or reconstruction of such Facility Modification(s).

ARTICLE VII

SERVICE FEE

Section 7.1 SERVICE FEE.

A. Formula. Starting on the first Billing Month after the Effective Date and for each Billing Month thereafter, the County shall pay the Company (or its designee) a Service Fee for the services provided by the Company under the terms of this Agreement in accordance with the following formula:

$$SF = OMF + PTC + APD + CTC - COC + UC \pm SFA$$

Where

- APD = Payment of Pre-Effective Date Amounts in accordance with Section 7.1D
- COC = County Off-Sets Credit
- CTC = Reimbursement in accordance with Section 7.1E of County Transaction Costs reimbursed or paid by the Company in accordance with the provisions of Section 10.23
- OMF = Operation and Maintenance Fee
- PTC = Pass Through Charge
- SF = Service Fee
- SFA = All Other Service Fee Adjustments
- UC = Uncontrollable Circumstance Charge

Each component of the Service Fee shall be computed in accordance with this Article and may be adjusted from time to time as provided in this Agreement. Although calculated by components, the Service Fee is and shall be considered to be a single fee. The County shall pay the Company the Service Fee with respect to each Billing Month, as adjusted pursuant to this Agreement, including those Billing Months during which an Uncontrollable Circumstance has occurred or is occurring.

B. Operation and Maintenance Fee. The “**Operation and Maintenance Fee**” for any Billing Month (or part thereof) shall be calculated monthly and, for each month, shall be an amount equal to actual operating costs as described in Appendix 4 for the prior month (the “**Actual Operation Costs**”) plus an allowable mark-up to the Actual Operation Costs in the amount of ten percent (10%) (the “**Operation Costs Mark-Up**”). No mark-up shall be applied to any Pass Through Charge. The Actual Operation Costs shall include labor, materials, Equipment repair, cost of general conditions and are more particularly itemized in Appendix 4.

C. Pass Through Charges. “**Pass Through Charges**” for any Billing Month shall be an amount equal to costs and expenses paid by the Company which are the responsibility of the County hereunder, to the extent paid or incurred by the Company in such Billing Month and to the extent the Company provides Cost Substantiation therefor. It is specifically understood and agreed that operation, maintenance, repair and replacement costs and expenses incurred with

respect to the Facilities not expressly payable by the County as a Pass Through Charge will be included in the Operation and Maintenance Fee in Paragraph B and shall not constitute Pass Through Charges.

D. Payment of Pre--Effective Date Amounts . Starting on the first Billing Month after the Effective Date and for each Billing Month thereafter during the Term, each invoice for the Service Fee will include, and the County will be required to pay as part of such invoice, an amount equal to the quotient obtained by dividing (a) the Pre-Effective Date Amounts and (b) the number of Billing Months in the Term. The Parties acknowledge and agree that no interest shall accrue on the Pre-Effective Date Amounts except as otherwise set forth in Section 10.9.

E. Reimbursement of County Transaction Costs. Starting on the first Billing Month following reimbursement or payment by the Company of the County Transaction Costs in accordance with the provisions of Section 10.23, and each Billing Month thereafter during the Repayment Period (as defined bellow), each invoice for the Service Fee will include, and the County will be required to pay as part of such invoice, an amount equal to (1) the quotient obtained by dividing (a) the amount of the County Transaction Costs reimbursed or paid by the Company in accordance with the provisions of Section 10.23 and (b) the number of Billing Months remaining in the repayment period determined by the County (the “**Repayment Period**”) following reimbursement or payment by the Company of the County Transaction Costs invoice in accordance with the provisions of Section 10.23 and (2) if the Repayment Period is longer than 12 months, interest on such amount at the Interest Rate for the Repayment Period. The Parties acknowledge and agree that the County shall notify the Company in writing before the Effective Date whether the Repayment Period shall be either (i) the 12 month period constituting the First Contract Year or (ii) the 24 month period constituting the First Contract Year and the Second Contract Year.

F. County Off-Sets Credit. The County Off-Sets Credit shall be an amount equal to the actual documented cost that the Company is required to reimburse to the County under this Agreement in the event that the County performs any work that is the responsibility of the Company but that the Company or any Subcontractor fails to perform in accordance with the provisions of this Agreement. The County Off-Sets Credit shall be without duplication of any amounts for which the County is indemnified by the Company under Section 10.6.

G. Uncontrollable Circumstance Charge. The Uncontrollable Circumstance Charge in each Contract Year shall be the net amount of any amounts payable by the County for increased operation and maintenance costs incurred during such Billing Month on account of Uncontrollable Circumstance which are chargeable to the County hereunder.

H. All Other Service Fee Adjustments. All Other Service Fee Adjustments shall be the amount of any other adjustments to the Service Fee required by this Agreement.

Section 7.2 BILLING OF THE SERVICE FEE.

A. Billing Statements. For each Billing Month the Company shall render a statement (a “**Billing Statement**”) to the County by the 15th day of the following Billing Month, which shall set forth each component of the Service Fee. Each Billing Statement shall also include, for such Billing Month, (1) all other amounts payable by the County to the Company hereunder, (2) all amounts payable by the Company to the County hereunder, and (3) with respect to items (1) and (2) above, the balance due to or from the County (the “**Other Payments Balance**”). The Company shall provide all information required pursuant to Section 3.14A (Monthly Reports) and all appropriate Cost Substantiation with each Billing Statement. The County shall pay the undisputed and Cost Substantiated amounts of the Service Fee and any Other Payments Balance due to the Company within forty-five (45) days of receipt of the Billing Statement. If the Service Fee is a negative number, or if there are any other Payments Balance due to the County by the Company, such amounts shall be paid by the Company to the County within 15 days following the County’s receipt of the Billing Statement showing such balance due.

B. Billing Estimates and Adjustments. To the extent that the actual value of any item in any Billing Statement cannot be accurately determined at the Billing Statement date, such item shall be billed on an estimated basis and an adjustment shall be made to reflect the difference between such estimated amount and the actual amount of such item on the Billing Statement following the date on which the Company is able to accurately determine the exact amount of such item.

C. Annual Estimates. Ninety (90) days prior to the end of each Contract Year, the Company shall provide the County with a non-binding written statement setting forth its reasonable estimate of the aggregate Service Fee for the next Contract Year.

Section 7.3 PURCHASE AND PAYMENT FOR COMPANY FUEL OIL. The Company hereby agrees to supply for use at the Facilities, and the County hereby agrees to pay for, at the Company's actual FIFO cost (in \$/gallon), the supply of fuel oil utilized at the Central Utility Plant Facilities during the Term. The Billing Statements beginning with the first Billing Month following the Effective Date shall include, and the County shall pay, as a Pass Through Charge on such Billing Statements, the cost of such fuel oil. If the Parties have not agreed prior to the end of the Term to enter into the Proposed Transaction, the Company will at the end of the Term sell to the County, and the County will purchase and pay for, at the then fair market price, any supply of fuel oil then remaining at the Central Utility Plant Facilities.

ARTICLE VIII BREACH, DEFAULT, TERMINATION FOR CAUSE AND DISPUTE RESOLUTION

Section 8.1 EVENTS OF DEFAULT WITH RESPECT TO THE COMPANY. The occurrence at any time with respect to the Company of any of the following events constitutes an event of default (an “**Event of Default**”) with respect to the Company (the “**Defaulting Party**”):

A. Failure to Make Required Payment. The failure by the Company to make, when due, any undisputed payment required pursuant to this Agreement, if such failure is not remedied within 30 days after written notice;

B. Breach of Representation or Warranty. Any representation or warranty made by the Company in this Agreement is false or misleading in any material respect when made or when deemed made or repeated and such false or misleading representation or warranty has a material adverse impact on the County's ability to fulfill its commitments under this Agreement, if such breach is not remedied within 45 days after written notice; *provided*, that if such breach is curable but such 45-day period is not sufficient to enable the remedy or cure of such breach, the Company will, so long as it promptly after receipt of such notice commences, and thereafter

diligently continues, to remedy such failure, have a reasonable additional period of time (which additional period of time will not, however, exceed an additional 90 days) in which to remedy or cure such failure;

C. Breach of Covenant. The failure by the Company to perform any material covenant or obligation set forth in this Agreement (other than to the extent constituting a separate Event of Default), if such failure is not remedied within 45 days after written notice; *provided*, that if such failure is curable but such 45-day period is not sufficient to enable the remedy or cure of such failure in performance, the Company will, so long as it promptly after receipt of such notice commences, and thereafter diligently continues, to remedy such failure, have a reasonable additional period of time (which additional period of time will not, however, exceed an additional 90 days) in which to remedy or cure such failure;

D. Failure to Maintain Required Performance Security. The Company fails to provide or maintain any Performance Security in accordance with the requirements of this Agreement, if such failure is not remedied within 30 days after written notice; or

E. Bankruptcy. The Company becomes Bankrupt.

Section 8.2 EVENTS OF DEFAULT WITH RESPECT TO THE COUNTY. The occurrence at any time with respect to the County of any of the following events constitutes an event of default (an “**Event of Default**”) with respect to the County (the “**Defaulting Party**”):

A. Failure to Make Required Payment. The failure by the County to make, when due, any undisputed payment required pursuant to this Agreement, if such failure is not remedied within 30 days after written notice;

B. Breach of Representation or Warranty. Any representation or warranty made by the County in this Agreement is false or misleading in any material respect when made or when deemed made or repeated and such false or misleading representation or warranty has a material adverse impact on the Company’s ability to fulfill its commitments under this Agreement, if such breach is not remedied within 45 days after written notice; *provided*, that if such breach is curable but such 45-day period is not sufficient to enable the remedy or cure of such breach, the County will, so long as it promptly after receipt of such notice commences, and thereafter

diligently continues, to remedy such failure, have a reasonable additional period of time in which to remedy or cure such failure;

C. Breach of Covenant. The failure by the County to perform any material covenant or obligation set forth in this Agreement (other than to the extent constituting a separate Event of Default), if such failure is not remedied within 45 days after written notice; *provided*, that if such failure is curable but such 45-day period is not sufficient to enable the remedy or cure of such failure in performance, the County will, so long as it promptly after receipt of such notice commences, and thereafter diligently continues, to remedy such failure, have a reasonable additional period of time in which to remedy or cure such failure; or

D. Bankruptcy. The County becomes Bankrupt.

Section 8.3 REMEDIES FOR AN EVENT OF DEFAULT If an Event of Default occurs and is continuing, the Non-Defaulting Party will, subject to the terms and conditions of this Agreement, have the right (but not the obligation) to pursue any or all of the following remedies: (A) suspend performance of the Non-Defaulting Party's obligations under this Agreement; (B) receive from the Defaulting Party direct damages incurred by the Non-Defaulting Party as a result of or in connection with such Event of Default (including during any applicable cure period, whether or not the Non-Defaulting Party has elected to suspend performance during such cure period); and (C) exercise all other remedies available to the Non-Defaulting Party at law or in equity.

Section 8.4 TERMINATION FOR AN EVENT OF DEFAULT. If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in Section 8.1 or Section 8.2, the Non-Defaulting Party will have the right, at any time when such Event of Default is continuing, and in addition to the remedies available to the Non-Defaulting Party under this Agreement or Applicable Law, to designate by notice to the Defaulting Party a day, effective immediately in the case of a Bankruptcy Event of Default and no earlier than 60 days after the day such notice becomes effective in the case of any other Event of Default, on which this Agreement will terminate.

Section 8.5 CERTAIN OBLIGATIONS OF THE COMPANY UPON TERMINATION.

A. Obligations on Default Termination . Upon a termination of the Company's right to perform this Agreement under Section 8.4, the Company at its cost and expense shall:

(i) stop the Contract Services on the date and to the extent specified by the County;

(ii) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;

(iii) promptly remove from the Facility Sites all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the Company (including sheds, trailers, workshops and toilets), and repair any damage caused by such removal;

(iv) clean the Facility Sites and Facilities, and leave the same in a neat and orderly condition;

(v) promptly remove all employees of the Company and any Subcontractors and vacate the Facility Sites;

(vi) promptly deliver to the County Engineer copies of all Subcontracts, together with a statement of:

(a) the items ordered and not yet delivered pursuant to each agreement;

(b) the expected delivery date of all such items;

(c) the total cost of each agreement and the terms of payment;

and

(d) the estimated cost of cancelling each agreement;

(vii) deliver to the County Engineer promptly a list of:

(a) all special order items previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated into the Facilities; and

(b) all other supplies, materials, machinery, equipment and other property previously delivered or fabricated by the Company or any Subcontractor but not yet incorporated in the Facilities;

(viii) advise the County promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(ix) unless the County directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors;

(x) as directed by the County, transfer to the County by appropriate instruments of title, and deliver to the Facility Sites (or such other place as the County may specify), all special order items;

(xi) promptly transfer to the County all warranties given by any manufacturer or Subcontractor with respect to particular components of Equipment;

(xii) notify the County promptly in writing of any Legal Proceedings against the Company by any Subcontractor relating to the termination of the Contract Services (including work done by any Subcontracts);

(xiii) take such other actions, and execute such other documents, as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the County's costs, and take no action which will increase any amount payable by the County under this Agreement; and

(xiv) upon the request of the County, assign and transfer any Equipment or vehicle leases that are assignable without cost to the Company.

B. Additional Obligations. Upon termination of the Company's right to perform this Agreement under Section 8.1, the Company at its cost and expense shall, subject to any applicable confidentiality provisions of this Agreement, provide, and use all reasonable efforts to cause its Subcontractors to provide, technological and design advice and support to the County (or, at the request of the County, any replacement operator designated by the County) in order to assist the County or any such replacement operator to carry out and complete the Contract Services. Such advice and support shall be for a period of three months and shall include providing any plans, drawings, renderings, blueprints, operating manuals, specifications or other information useful or necessary for the County or any replacement operator designated by the County to carry out and complete the Contract Services.

Section 8.6 CERTAIN OBLIGATIONS OF THE COUNTY UPON TERMINATION.

A. Obligations on Default Termination. Upon a termination of this Agreement under Section 8.4 as a result of any Event of Default with respect to the County, the Company shall be relieved of any obligation to perform any further Contract Services, and the County at its cost and expense shall:

(i) promptly (a) pay to the Company (1) any and all Service Fee amounts that are payable by the County for or with respect to any Contract Services performed by the Company prior to the effectiveness of such termination of this Agreement and (2) any and all amounts that were due and payable from the County to the Company during the period prior to the delivery by the Company of the Notice of Termination and that have not been paid to the Company under Section 7.1D, and (b) reimburse to the Company any and all County Transaction Costs that have been reimbursed or paid by the Company in accordance with the provisions of Section 10.23 and that have not been reimbursed to the Company under Section 7.1E.

(ii) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property of the Company located at any Facility Site or any other property of the County;

(iii) permit and provide reasonable access to the Company to remove from the Facility Sites all equipment, implements, machinery, tools, temporary facilities of any kind and

other property owned or leased by the Company (including sheds, trailers, workshops and toilets); and

(iv) take such other actions, and execute such other documents, as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the Company's costs, and take no action that will increase any amount payable by the Company under or in connection with this Agreement.

B. Additional Obligations. Upon termination of this Agreement under Section 8.4 as a result of any Event of Default with respect to the County, the Company at the County's cost and expense shall, subject to any applicable confidentiality provisions of this Agreement, provide, and use all reasonable efforts to cause its Subcontractors to provide, for a period not to exceed three months from the date of termination, technological and design advice and support to the County (or, at the request of the County, any replacement operator designated by the County) in order to assist the County or any such replacement operator to carry out and complete the Contract Services.

Section 8.7 REMEDIES CUMULATIVE. Subject to the terms and conditions of this Agreement, each right or remedy of the Parties provided for in this Agreement will be cumulative of and will be in addition to every other right or remedy provided for in this Agreement. A Party's exercise of any one or more of the rights or remedies provided for in this Agreement will not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Agreement.

Section 8.8 NO WAIVERS. No action of the County or Company pursuant to this Agreement (including any investigation or payment), and no failure to act, shall constitute a waiver by either Party of the other Party's compliance with any term or provision of this Agreement. No course of dealing or delay by the County or Company in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such Party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or Company under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 8.9 NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either Party be liable to the other or obligated in any manner to pay to the other, except with respect to indemnification for Losses arising from third party claims for which one Party is obligated to indemnify the other pursuant to the provisions of this Agreement, any special, incidental, consequential, punitive or similar damages (but not actual or direct damages) based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

Section 8.10 LIMITATION ON COMPANY LIABILITY UNDER AGREEMENT; EFFECT OF AGREEMENT ON COMPANY LIABILITY UNDER LEASE AGREEMENT AND MEA.

A. Limitation on Company Liability Under Agreement. The aggregate liability of the Company to the County under or in connection with this Agreement in any Contract Year shall not exceed the amount of the Service Fee payable with respect to such Contract Year; *provided, however*, that such limitation of liability shall not apply to or include the following: (i) any proceeds of insurance received by the Company, (ii) any costs, liabilities or obligations that arise from the willful misconduct or actual fraud of the Company, (iii) any fines or penalties required to be paid by the Company to any Governmental Body, (iv) any claims, losses or penalties that the Company is required to pay to any third party in any Legal Proceedings and for which the Company is responsible under this Agreement; or (v) indemnification for third party claims as provided in Section 10.6. Without in any way limiting the provisions of Section 10.6D, any insurance proceeds paid to the County by any of the Company's insurers under any of the Required Operating Period Insurance will not count towards the liability cap provided for under this Section 8.10.

B. Effect of Agreement on Company Liability Under Lease Agreement and MEA. Nothing in this Agreement is intended to, or does, relieve the Company from any liability, including any liability for any violation of any Environmental Law or any other Applicable Law, that the Company may have under the Lease Agreement or the MEA.

Section 8.11 COUNTY TAKEOVER OF FACILITIES. Should the Company, due to Uncontrollable Circumstance or any other reason whatsoever other than any Event of Default with respect to the County, fail, refuse or be unable to provide the Contract Services, and the County, or County Health Inspector, or the DEC, finds that such failure has created an Emergency, then, in any of those events, the County shall have the right, upon reasonable prior notice to the Company, during the period of such Emergency, to take possession of any or all of the Operating Assets necessary to provide such Contract Services. The Company agrees that in such event it will cooperate reasonably with the County to effect such a transfer of possession of the Operating Assets for the County's use of the same. The Company agrees that, in such event, the County may take possession of and use all of the Operating Assets for the above-mentioned purposes without paying the Company or any other Person any rental or any other charges or compensation whatsoever for such possession. The County may in such circumstances operate the Operating Assets with County employees, or cause the Operating Assets to be operated by subcontractors to the County. It is further agreed that the County may at any time, at its discretion, relinquish possession of any or all of the Operating Assets to the Company and thereupon demand that the Company resume the operations as provided in the Agreement. It is specifically understood and agreed that the County's exercise of its rights under this Section does not constitute a taking of private property for which payment must be made. The County's right to retain temporary possession of the Operating Assets, and to operate the Facilities, shall terminate at the earlier of: (1) the time when such Contract Services can reasonably be resumed by the Company, or (2) the time when the County no longer reasonably requires such Operating Assets, as determined by the County.

ARTICLE IX

TERM

Section 9.1 TERM OF AGREEMENT. This Agreement shall become effective as of the Effective Date, which shall be the first day of the calendar month in which this Agreement is executed on behalf of the County. The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall continue in effect until the second (2nd) anniversary of the Effective Date, unless earlier terminated in accordance with this Agreement's terms, in which event the Term shall be deemed to have expired as of the date of such termination. All rights, obligations

and liabilities of the Parties (other than as provided in Article VIII hereof) shall commence on the Effective Date, subject to the terms and conditions hereof.

Section 9.2 SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION. The rights and obligations of the Parties pursuant to Article VII (Representations and Warranties), Section 3.13 (Asset and Financial Records), this Section, Article VIII (Breach, Default, Termination for Cause and Dispute Resolution; Dispute Resolution), Section 10.6 (Indemnification), Section 10.18 (Notices) and all other provisions of this Agreement that so provide shall survive the termination of this Agreement. No termination of this Agreement shall (i) limit or otherwise affect the respective rights and obligations of the Parties accrued prior to the date of such termination or expiration, or (ii) preclude either Party from impleading the other Party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

Section 9.3 PROCEDURES PRIOR TO TERMINATION.

A. Maintenance and Repairs. Not later than 120 days prior to the expiration of the Term, the Company shall, in accordance with the provisions of Appendix 9, prepare and deliver to the County a report evidencing that all necessary Facility maintenance, repairs and replacements have been undertaken and that the Facilities and Facility Sites are in substantially the same working order, condition and repair as when the Facilities were accepted on the Effective Date, with any subsequent Facility Modifications in good working order. The report shall also contain a certification from the Company that the Equipment installed or used in the Facilities has been maintained in accordance with the requirements of the manufacturer's maintenance manuals and that the Tools identified in Appendix 5 have been maintained and such Tools and any spare parts shall be available at the Facilities at the end of the Term for purchase by the County at the Company's cost, if the County has not previously reimbursed the Company for the cost of such Tools or spare parts. If the County so requests, the Company shall demonstrate to the County on a walk-through tour of the Facilities that all of the requirements of this subsection have been met.

B. Drawings. Not later than 120 days prior to the expiration of the Term, the Company shall provide a set of drawings which accurately depict the current status of the Equipment installed at the Facilities.

ARTICLE X
GENERAL

Section 10.1 COMPANY’S BUSINESS ACTIVITIES. The Company agrees that during the Term it will remain an Affiliate of the Guarantor.

Section 10.2 CONFIDENTIALITY.

A. Confidential Information. The term “**Confidential Information**” as used in this Agreement means:

(i) any information constituting a trade secret under Applicable Law and any other information or data of any nature whatsoever, including engineering, environmental, economic, financial, legal, regulatory, operational, commercial, marketing, and business information, projections, customer information, samples, data, technology, and designs, in each case that has been, or in the future is, provided by or on behalf of one Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) or its Representatives in connection with this Agreement, or that are derived by the Receiving Party from information obtained from the Disclosing Party and that if disclosed would cause substantial injury to the competitive position of the Disclosing Party; and

(ii) any notes, analysis, compilations, studies, interpretations, memoranda, or other documents and writings prepared by the Receiving Party or its Representatives that contain, reflect, or are based upon, in whole or in part, any information described in clause (a) above;

provided, however, that Confidential Information will not include:

- a. information already lawfully in the Receiving Party’s possession at the time of its receipt from the Disclosing Party;
- b. information that is lawfully obtained by the Receiving Party from a third party subsequent to its receipt from the Disclosing Party, if the third party is free from any obligation of confidentiality to the Disclosing Party or its Affiliates with respect to such information;

c. information that (A) at the time of disclosure by the Disclosing Party to the Receiving Party, is available to the public, or (B) after disclosure by the Disclosing Party to the Receiving Party, becomes available to the public, except where such availability arises out of the breach of this Agreement by the Receiving Party;

d. information independently developed by the Receiving Party without violating its obligations under this Agreement; and

e. information that the Disclosing Party, in writing, specifically authorizes the Receiving Party to disclose prior to such disclosure.

B. Disclosure and Use of Confidential Information. The Receiving Party:

(i) will hold in strict confidence all Confidential Information and, without the prior written consent of the Disclosing Party, will not disclose any Confidential Information to any Person (other than the Receiving Party's Representatives), using at a minimum the same degree of care to avoid disclosure of such Confidential Information as the Receiving Party uses with respect to its own confidential information, but in any event not less than a reasonable degree of care;

(ii) will use the Confidential Information solely in connection with this Agreement; and

(iii) will not disclose any Confidential Information to the Receiving Party's Representatives unless, in the sole judgment of the Receiving Party, such individuals have a need to know such Confidential Information for a purpose specifically allowed under this Agreement, have been informed of this Agreement and the terms hereof, and have agreed to be bound by such terms, provided that the Receiving Party will be liable for any breach of the confidentiality provisions of this Agreement by its Affiliates or Representatives.

C. Records Access. The Company acknowledges that Confidential Information provided by the Company and in the County's possession may be subject to disclosure under FOIL. In the event that such a request for disclosure is made, the County will make reasonable efforts to notify the Company of such request prior to disclosure of the Information so that the Company may take such action as it deems appropriate.

D. Notice of Confidential Information. The Company and the County acknowledge that certain information furnished by the Company to the County in accordance with the terms of this Agreement (including, without limitation, plans, reports and financial statements) may contain trade secrets or other Confidential Information, the disclosure of which could cause harm to the Company's competitive position. Subject to all legal requirements, including FOIL, the County will use reasonable efforts to maintain the confidentiality of all information provided by the Company to the County pursuant to the terms of this Agreement; *provided, however*, that the foregoing will not restrict the County from making any disclosure of such information as the County deems necessary or desirable to provide to its elected officials, employees, legal, financial and other professional advisors or to comply with any applicable legal requirements, *provided* that the County will in each case inform the Person to which such disclosure is made that such information is confidential and of the confidentiality provisions of this Agreement. In the event that the Receiving Party is required by subpoena, court order or other similar process to disclose such information or if the Receiving Party receives any written FOIL or other request seeking disclosure of the materials described in this section, the Receiving Party will, prior to complying with such subpoena, court order or similar process or FOIL or other request, provide the Disclosing Party with written notice (unless the Receiving Party is prevented from doing so under the subpoena, court order or similar process) so that the Disclosing Party will have an opportunity to seek, at the Disclosing Party's sole cost and expense, a protective order or other appropriate remedy. If the Disclosing Party does not obtain a protective order or other remedy to preclude the disclosure of the requested materials, the Disclosing Party acknowledges that the Receiving Party may disclose such requested materials as and to the extent required by any such subpoena, court order, similar process or FOIL or other request as advised by the Receiving Party's legal counsel and the Governmental Body requiring such compliance. The Company further acknowledges that the County may, given the deadlines and response requirements under FOIL, be obliged to disclose the requested materials even though the Company is attempting at such time to obtain a protective order or other appropriate remedy to prevent the disclosure of such information.

E. Specific Performance; Injunctive Relief. The Receiving Party acknowledges and agrees that, because of the sensitive and confidential nature of the Confidential Information, the breach by the Receiving Party of the terms of this Agreement with regard to disclosure of Confidential Information may cause the Disclosing Party irreparable harm and

damage and that a monetary remedy for any such breach will be inadequate and will be impracticable and extremely difficult to prove. Therefore, the Receiving Party agrees that, in the event of such breach, the Disclosing Party will have the right to seek all remedies available at law and equity, including specific performance and temporary and permanent injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting a bond or making any undertaking in connection therewith and without the necessity of proving actual damages. Any such requirement of a bond or undertaking is hereby waived by the Receiving Party, and the Receiving Party acknowledges that in the absence of such a waiver, a bond or undertaking might be required by the court. The Receiving Party hereby submits to the subject matter jurisdiction of any New York State court granting such relief.

F. Survival of Obligations. The confidentiality obligations of the Receiving Party under this Agreement will remain in full force and effect for a period of two years from the termination or expiration of this Agreement.

G. Public Announcements. Neither Party may issue or make any public announcement, press release or statement regarding this Agreement unless the public announcement, press release or statement is issued jointly by the Parties or, before the release of the public announcement, press release or statement, the Party furnishes the other Party with a copy of such announcement, press release or statement, and obtains the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. However, no Party will be prohibited from issuing or making any such public announcement, press release or statement, without obtaining approval from the other Party, if it is necessary to do so to comply with Applicable Laws, legal proceedings or rules and regulations of any stock exchange having jurisdiction over such Party or if it is necessary to do so in connection with such Party's or its Affiliates' financial statements.

H. Proposed Transaction. Without in any way limiting the provisions of any separate confidentiality agreement that may be entered into between the Parties relating to the Proposed Transaction referenced in Section 10.20, the provisions of this Section 10.2 shall not apply to any information provided by the Company to the County in connection with the Proposed

Transaction or the use of any information relating to the Proposed Transaction in any future procurement conducted by the County with respect to the Facilities.

Section 10.3 GUARANTY AGREEMENT; PERFORMANCE SECURITY.

A. Guaranty Agreement. The Company shall cause the Guaranty Agreement to be provided and maintained by the Guarantor during the Term in the form attached hereto as Exhibit D.

B. Guarantor Financial Reports. During the Term, the Company will, promptly after any request from the County and in any event as soon as available after the end of any fiscal year, deliver to the County a copy of EHI's annual report containing audited, consolidated financial statements for such fiscal year; *provided, however*, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay will not be an Event of Default so long as the Company diligently pursues the preparation, certification and delivery of the statements. In all cases, the statements will be prepared in accordance with IFRS.

C. Material Adverse Change to Financial Condition of Guarantor. If at any time during the Term, the Guarantor does not satisfy the Required Credit Rating, the Company will, within 10 days after demand by the County, post or issue, or cause to be posted or issued, in favor of the County Performance Security in an amount equal to \$1,000,000 to secure the Company's obligations under this Agreement for so long as the Guarantor fails to meet the Required Credit Rating. The County may not call or act on the Performance Security unless (i) the County has delivered notice of default to the Company in accordance with the requirements of this Agreement and (ii) the Company has failed to cure the applicable default within the applicable cure period provided under this Agreement.

D. Requirements for Letter of Credit. Any Letter of Credit provided by the Company will (i) be for a minimum period of one year; (ii) be renewed or replaced by the applicant not less than 20 days before its expiration; and (iii) provide that the Letter of Credit may be drawn if it is not renewed or replaced. If the Letter of Credit is drawn due to a failure of the applicant to renew or replace the Letter of Credit not less than 20 days before its expiration, the proceeds of

any such draw will constitute collateral provided to the beneficiary in the form of cash. If the County draws on the Letter of Credit as provided in the preceding sentence, the cash will be maintained in a custodial account at a national bank reasonably acceptable to the applicant. The County may withdraw funds from such account to pay any amount due and owing by the applicant under this Agreement that has not been paid within the time provided under this Agreement.

E. Determination of Type of Performance Security. The determination of the type of Performance Security to be provided by the Company will be at the option of the Company in each instance.

F. Security Interest. To secure its obligations under this Agreement, the Company hereby grants to the County a first priority, present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash obtained by the County resulting from a draw on the Performance Security, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of the County, and the Company agrees to take such action as the County reasonably requires in order to protect the County's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; *provided, however*, that the County may exercise its rights as a secured party (including the right of setoff granted pursuant to this sentence) against such cash collateral only upon the terms and conditions of this Agreement. If the County receives cash proceeds from a Letter of Credit pursuant to a drawing made in accordance with this Agreement, then the County will use commercially reasonable efforts to deposit such proceeds in a depository account with a Qualified Institution under terms and conditions that allow the proceeds to be disbursed to the County and provide for disbursement to the Company upon the terms and conditions of this Agreement. Such cash collateral will constitute Performance Security for all purposes of this Agreement.

G. Drawing of Performance Security. If an Event of Default has occurred and is continuing, the County will be entitled to draw upon Performance Security for any damages arising from (i) such Event of Default or (ii) any prior Event of Default to the extent that damages arising therefrom have not yet been paid in full to the County. In the case of Performance Security in the form of a Letter of Credit, the County may draw the full amount of such Letter of Credit

within 20 days before the expiration of such Letter of Credit if, as of the date of such drawing, the County does not receive replacement Performance Security meeting the requirements of this Agreement.

H. Release Upon Termination. If, on any security release date set forth in this Agreement, there are outstanding any claims that (i) were validly made prior to such date against Performance Security then being released and (ii) in the case of any Performance Security being released because it is being replaced, are not fully secured by the replacement Performance Security, then, on such scheduled release date, (a) the amount of the applicable Performance Security will be deemed reduced to the amount of such outstanding claims, (b) such release date will be extended until the final resolution and (if applicable) full payment of such outstanding claims and (c) at the election of the Company, the scope of such security may be reduced to secure only such outstanding claims. In the event of a reduction in the amount or scope of any Performance Security in accordance with clauses (a) or (c) of the immediately preceding sentence, the County will promptly execute any documents and take any other actions reasonably requested by the Company to effect or confirm such reduction in amount or scope, including by executing and delivering an amendment to such Performance Security, by exchanging such Performance Security or by other reasonable means.

Section 10.4 COST OF PROVIDING GUARANTY AGREEMENT AND PERFORMANCE SECURITY. The cost and expense of obtaining and maintaining the Guaranty Agreement and any Performance Security required under this Article as security for the performance of the Company's obligations hereunder shall be borne solely by the Company, and shall not be included as part of the Service Fee.

Section 10.5 UNCONTROLLABLE CIRCUMSTANCE GENERALLY.

A. Uncontrollable Circumstance. **"Uncontrollable Circumstance"** means any act, event, condition, or circumstance that (i) is not a consequence or result of the willful or negligent act or omission of the affected Party or its Affiliates, (ii) cannot, despite the exercise of commercially reasonable efforts by the affected Party, be controlled, prevented, avoided, or removed, and (iii) prevents in whole or in part performance of the obligations of the affected Party under this Agreement. The following events, the list of which is not exhaustive, will be considered

to be an Uncontrollable Circumstance to the extent they satisfy the requirements of the foregoing sentence: (a) lightning, earthquake, hurricane, storm, wind, drought, abnormal weather condition, or other similar natural calamities or acts of God; (b) fire, explosion, or chemical contamination; (c) epidemic, quarantine restriction, or plague; (d) act of war (declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, economic sanction, or embargo, revolution, sabotage, riot, insurrection, civil unrest or disturbance, military or guerilla action, banditry, terrorist activity, or a threat of terrorist activity, or tribal, religious, or sectarian unrest; (e) radioactive contamination (and associated clean-up activities); (f) the presence on any Facility Site of Hazardous Materials, archaeological or cultural artifacts, or other materials that, under Applicable Law, prevent or delay the operation or maintenance or repair or replacement of the Facilities; (g) material damage to any Facility Site or any Facilities or failure of any Facilities caused by a Person other than the affected Party; (h) strikes, work stoppages, or other labor disputes or disturbances; (i) the failure or delay of any Governmental Body to issue any legal entitlements or Permits that are required for the Company's performance under this Agreement; and (j) any adoption, promulgation, modification of, or change in interpretation of any Applicable Law after the Effective Date that prevents the performance of the affected Party's obligations under this Agreement. Uncontrollable Circumstance expressly excludes: (w) a Party's financial inability to perform, (x) changes in market prices for products or services produced by a Party, (y) any failure to perform, and the effects of such failure, that could have been prevented, overcome, or remedied by the exercise of commercially reasonable efforts by the Party claiming excused performance by reason of an Uncontrollable Circumstance, or (z) global economic or financial market conditions. Notwithstanding anything to the contrary set forth in this Section 10.5, the County and the Company acknowledge and agree that in no event whatsoever will the occurrence of an Uncontrollable Circumstance excuse, delay, or result in a suspension of (i) the payment of any sums otherwise due and owing by either Party under this Agreement, or (ii) the required performance by either Party of any obligation under this Agreement not affected by the occurrence of such Uncontrollable Circumstance.

B. Performance Excused. Except as otherwise specifically provided in this Agreement, neither the County nor the Company shall be liable to the other for any failure or delay in performance of any obligation under this Agreement (other than any payment at the time due and owing) if such failure is solely due to the occurrence of an Uncontrollable Circumstance.

C. Notice, Mitigation. The Party experiencing an Uncontrollable Circumstance shall notify the other Party by hardcopy telecommunication or telephone and in writing, on or promptly after the date the Party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 15 days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such Party's obligations hereunder will be delayed, (3) the estimated amount, if any, by which the Service Fee may need to be increased as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such Party under this Agreement and (5) potential mitigating actions which may reasonably be taken by the Company or County and any areas where costs might be reduced and the approximate amount of such cost reductions. The Party claiming excuse due to such Uncontrollable Circumstance shall provide prompt written notice of the cessation of such Uncontrollable Circumstance to the other Party. Whenever such act, event or condition shall occur, the Party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use all reasonable efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. While the delay continues, the Company or County shall give notice to the other Party with a copy to the County Engineer, before the first day of each succeeding month, updating the information previously submitted. The Company shall furnish promptly (if and to the extent available to the Company) any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the County Engineer or the County.

D. Conditions to Service Fee and Schedule Relief. If and to the extent that any Uncontrollable Circumstance interferes with, delay or increase the cost of the Company's performing the Contract Services in accordance herewith, and the Company has given timely notice as required by Section 10.5C, the Company will be entitled to an increase in the Service Fee or extension in the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. In the event that the Company believes it is entitled to any Service Fee or schedule relief on account of any Uncontrollable Circumstance, it shall furnish the County written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to Section 10.5C. Within 30 days after receipt of such a timely submission from the Company, the County shall issue a written determination as

to the extent, if any, it concurs with the Company's claim for Service Fee or schedule relief, and the reasons therefor.

Section 10.6 INDEMNIFICATION.

A. Company and County Indemnification. To the fullest extent permitted by Applicable Law, each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party (the "**Indemnified Party**") from and against all claims, demands, damages, losses, liabilities, fines, penalties, judgments, amounts paid in settlement, deficiencies, charges, Taxes, obligations, demands, fees, interest, costs, and expenses (including attorneys' and other professionals' fees) ("**Losses**") to the extent caused by, resulting from, or arising out of any breach or violation of this Agreement by the Indemnifying Party, any Event of Default with respect to the Indemnifying Party under this Agreement, or any negligence or intentional misconduct by or of the Indemnifying Party, its Affiliates, its directors, officers, employees, subcontractors, or agents. To the fullest extent permitted by Applicable Law, the County further agrees to indemnify, defend and hold harmless the Company from and against all Losses caused by, resulting from, or arising out of any Existing Environmental Condition not caused by or resulting from any fault or negligence by or of the Company or its Affiliates, directors, officers, employees, subcontractors, or agents and which condition did not arise during the term of the Lease Agreement and any extensions thereto. Nothing in this Section 10.6A will affect any liability of either Party to the other for any breach of this Agreement or for any event or occurrence for which any specific remedy is provided hereunder. The indemnification obligations under this Agreement will not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of any insurance policy.

B. Notice of Claims; Procedure. The Indemnified Party will, with reasonable promptness after obtaining knowledge of a third party claim, provide the Indemnifying Party with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification; *provided, however*, that failure to give prompt notice will not adversely affect any claim for indemnification hereunder except to the extent the Indemnifying Party's ability to contest any claim by any third party is materially adversely affected as a result thereof. The notice will include (i) a statement of the basis of the claim for indemnification, including a summary of

the facts or circumstances that form the basis for the claim, (ii) a good faith estimate of the amount of Losses, and (iii) copies of any pleadings or demands from the third party. The Indemnifying Party will have 30 days after its receipt of the claim notice to notify the Indemnified Party in writing whether or not the Indemnifying Party agrees that the claim is subject to this Section 10.6 and, if so, whether the Indemnifying Party elects to undertake, conduct and control, through counsel of its choosing and at its sole risk and expense, the settlement or defense of the claim. If within 30 days after its receipt of the claim notice, the Indemnifying Party notifies the Indemnified Party that it elects to undertake the settlement or defense of the claim, the Indemnified Party will cooperate with the Indemnifying Party in connection with the settlement or defense of the claim, including by making available to the Indemnifying Party all relevant information and the testimony of employees and agents material to the defense of the claim. The Indemnifying Party will reimburse the Indemnified Party for reasonable out-of-pocket costs incurred in connection with such cooperation. If the Indemnifying Party exercises its right to undertake the settlement or defense of the claim in accordance with the provisions of this Section 10.6 and the Indemnified Party notifies the Indemnifying Party that the Indemnified Party desires to retain separate counsel in order to participate in or proceed independently with such contest, defense or litigation, the Indemnified Party may do so at its own expense. The Indemnified Party will have the right to pay or settle any claim at any time without the consent of the Indemnifying Party; *provided, however*, that if the Indemnifying Party is contesting the claim in good faith and with diligence and the Indemnified Party pays or settles the claim without the Indemnifying Party's consent, the Indemnified Party will be deemed to have waived any right to indemnification with respect to such claim. If the Indemnifying Party does not provide a responsive notice within the 30-day period set forth in this Section 10.6B the Indemnified Party will have the right to contest, settle or compromise the claim at its exclusive discretion, at the Indemnifying Party's sole cost and expense, and the Indemnifying Party will be deemed to have waived any claim, defense or argument that the Indemnified Party's settlement or defense of such claim is in any respect inadequate or unreasonable.

C. Survival; Limitations. The indemnity obligations and rights of the Parties set forth in this Section 10.6 will survive the termination of this Agreement.

D. Insurance Proceeds. If the Indemnifying Party is obligated to indemnify the Indemnified Party under this Section 10.6, the amount payable to the Indemnified Party will be the amount of the Indemnified Party's Losses net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

Section 10.7 RELATIONSHIP OF THE PARTIES. Neither Party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other Party, and nothing in this Agreement shall be deemed to constitute either Party a partner, joint venturer, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

Section 10.8 ASSIGNMENT AND TRANSFER.

A. Restrictions on Assignment or Transfer by Company. The Company will not assign, transfer, convey, sell, lease, encumber or otherwise dispose of this Agreement, its right to execute the same, or its right, title or interest in all or any part of this Agreement or any monies due hereunder whatsoever prior to their payment to the Company, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the County. Any such approval given in one instance will not relieve the Company of its obligation to obtain the prior written approval of the County to any further assignment. Any such assignment of this Agreement which is approved by the County will require the assignee of the Company to assume the performance of and observe all obligations, representations and warranties of the Company under this Agreement, and no such assignment will relieve the Guarantor of any of its obligations under the Guaranty Agreement. The approval by the County of any assignment, transfer or conveyance will not operate to release the Company in any way from any of its obligations under this Agreement unless such approval specifically provides otherwise.

B. Permitted Transfers. Notwithstanding the provisions of Section 10.8A, the Company may assign, pledge, sell, transfer or assign this Agreement on notice to the County, but without the County's consent, if such sale, transfer or assignment is in connection with a Permitted Transaction. To the extent of the obligations and liabilities accepted and assumed in writing by

the applicable transferee or assignee in connection with any such Permitted Transaction, the transferring or assigning Party will be relieved of its obligations under this Agreement.

Section 10.9 INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued. Notwithstanding the foregoing, any Pre-Effective Date Amounts shall not accrue interest unless and until the County fails to pay such amounts when due after invoicing of such amounts under this Agreement.

Section 10.10 NO DISCRIMINATION. The Company shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex, sexual orientation or, with respect to otherwise qualified individuals, handicap. The Company will take all actions reasonably necessary to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, sexual orientation, national origin or, with respect to otherwise qualified individuals, handicap. Such action shall include recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Company shall impose the non-discrimination provisions of this Section by contract on all Subcontractors hired to perform work related to the Facilities and shall take all reasonable actions necessary to enforce such provisions. The Company will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Company agrees to comply with the requirements of the County's Equal Employment Opportunities for Minorities and Women set forth in Appendix EE.

Section 10.11 COUNTY APPROVAL OF SUBCONTRACTORS.

A. Required Subcontractor Information. The Company shall, unless waived by the County, supply the County with the information requested in Appendix 7 for each proposed Subcontractor who will undertake work related to the Facilities in excess of \$100,000.

B. Subcontractor Approval. Except the Subcontractors listed in Appendix 8, the County shall have the right to approve all Subcontractors engaged to perform any work related to the Contract Services. The Company shall furnish the County written notice of its intention to request proposals or bids from such Subcontractors, together with all information requested by or otherwise available to the Company pertaining to the proposed Subcontractor and Subcontract pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest, (2) any record of felony criminal convictions or pending felony criminal investigations, (3) any final judicial or administrative finding or adjudication of illegal employment discrimination, and (4) any final judicial or administrative finding or adjudication of non-performance in contracts with the County. In the event the County fails to respond to any such notice of intention within ten (10) Business Days of receipt thereof, the County shall be deemed to have approved the proposed Subcontractor. The approval or withholding thereof by the County of any proposed Subcontractor shall not create any liability of the County to the Company, to third parties or otherwise. In no event shall any subcontract be awarded to any Person debarred, suspended or disqualified from contracting with the State of New York or the County for any services within the scope of the Contract Services.

Section 10.12 ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY. Nothing in this Agreement shall be interpreted as limiting the rights and obligations of the County in its governmental or regulatory capacity, or as limiting the right of the Company to bring any legal action against the County, not based on this Agreement, arising out of any act or omission of the County in its governmental or regulatory capacity.

Section 10.13 RESOLUTION OF DISPUTES.

A. Notice of Dispute. If any dispute (including payment dispute), controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the Parties (a “**Dispute**”), the Party wishing to declare a Dispute will deliver to the other Party a written notice identifying the disputed issue.

B. Informal Dispute Resolution Proceedings. Following delivery and receipt of a notice of Dispute, executives of both Parties will meet at a mutually acceptable time and place within 10 days after receipt of such notice and thereafter as often as they reasonably deem

necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a Party will have the right to designate as confidential any information that such Party offers. If the matter has not been resolved in the aforementioned manner within 30 days after delivery of the notice of the Dispute by a Party, or if the Parties fail to meet within 10 days as required above, either Party may initiate any legal action, suit or other proceeding available to it to resolve such Dispute.

Section 10.14 GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL.

A. Governing Law. This Agreement and the rights and duties of the Parties hereunder will be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without regard to principles of conflicts of law that would result in the application of the law of any other state.

B. Venue. In any action or proceeding arising out of or relating to this Agreement or the subject matter hereof or for recognition or enforcement of any judgment, each Party irrevocably and unconditionally submits to the jurisdiction of the state courts of the State of New York, and each of the Parties irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding will, so long as (i) the County remains the legal owner of the Facility Sites and (ii) such claims are not subject to the exclusive jurisdiction of any federal court, including the United States Bankruptcy Court, be filed, tried, adjudicated, and remain in the state courts of the State of New York. Each Party irrevocably and unconditionally waives, and agrees not to assert, by way of motion, as a defense, or otherwise, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have (i) that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the suit, action, or proceeding is brought in an inconvenient forum, that the venue of the suit, action, or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (ii) to the laying of venue of any action or proceeding arising out of or relating to this Agreement in any New York state court. Each of the Parties hereby irrevocably and unconditionally, knowingly, and voluntarily waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each Party further hereby irrevocably

and unconditionally, knowingly, and voluntarily waives its right of removal of any such action or proceeding to federal court.

C. Waiver of Jury Trial. Each Party hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated by this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

Section 10.15 SEVERABILITY If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the Parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the Parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the Parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

Section 10.16 BINDING EFFECT. This Agreement shall bind and inure to the benefit of the Parties and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 10.8.

Section 10.17 AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both Parties.

Section 10.18 NOTICES. Any notices or communications hereunder related to routine operational matters arising under the Agreement and related day-to-day operations issues (“**Operational Notices**”) may be delivered by email or facsimile, or by telephone followed promptly by email or facsimile confirmation, to the addresses and persons specified in Exhibit E.

All notices, requests, statements or payments made pursuant to the terms of this Agreement, other than Operational Notices, shall be given in writing and shall be delivered to the addresses and persons specified in Exhibit E by hand delivery, overnight delivery, facsimile, or email (so long as the sender of such email requests and receives a read receipt for such email). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by email will be deemed to have been received effective upon the sender's receipt of a read receipt for such email; *provided* that no such read receipt will be required for Operational Notices regarding urgent operational matters such as an Emergency or Uncontrollable Force. In the case of Operational Notices regarding urgent operational matters such as an Emergency, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 10.18.

Section 10.19 FURTHER ASSURANCES. Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement. Specifically, upon reasonable request of the County, the Company shall supply an affidavit that the Facilities are free of all Liens and Encumbrances, including Liens for any Taxes which are due and required to be paid by the Company (other than Liens required or contemplated by this Agreement).

Section 10.20 GRANT TO COMPANY OF EXCLUSIVE RIGHTS TO PURSUE PROPOSED TRANSACTION.

. During the Exclusivity Period (as hereinafter defined), the Company and the County hereby agree to discuss on an exclusive basis a potential arrangement for the proposed on-site production and provision to the County, NHCC, and their tenants on a long-term basis of thermal and electric energy by the Company (the “**Proposed Transaction**”). Such discussions shall commence on the Effective Date and continue until the submission of a formal proposal by the Company to the County regarding the Proposed Transaction (the “**Proposed Transaction Proposal**”) (such period

of time, the “**Exclusivity Discussion Period**”) and subsequent negotiations shall continue until the Exclusivity Period Termination Date (such period of time, the “**Exclusivity Negotiation Period**” and, together with the Exclusivity Discussion Period, the “**Exclusivity Period**”). Following the submission of the Proposed Transaction Proposal and continuing for a reasonable time period (i.e., not less than two (2) months) (the “**Initial Exclusivity Negotiation Period**”), the County shall review and consider the Proposed Transaction Proposal, discuss such proposal with one or more of the entities that will receive thermal or electric energy from the Facilities and discuss the terms of the Proposed Transaction Proposal with the Company. In the event that the County does not agree to continue negotiations with the Company following the Initial Exclusivity Discussion Period, the County shall provide notice to the Company of its decision to terminate discussions in writing and the Exclusivity Period shall terminate on such date as further described below. In the event that the County agrees to continue negotiations with the Company following the Initial Exclusivity Discussion Period, the County shall notify the Company of its decision and the Company and the County shall use commercially reasonable good faith efforts to prepare and negotiate mutually acceptable definitive documentation regarding such Proposed Transaction, with it being acknowledged that neither Party shall have any obligation to agree to any particular terms and conditions (such period, the “**Final Exclusivity Negotiation Period**”, and collectively with the Initial Exclusivity Negotiation Period, such periods shall constitute the two phases of the Exclusivity Negotiation Period). If, after a reasonable time period (i.e., not less than three (3) months following the commencement of the Final Exclusivity Negotiation Period), the Parties have not prepared and negotiated and executed and delivered mutually acceptable definitive documentation regarding the Proposed Transaction, either Party may terminate the Exclusivity Period by providing the other Party with written notice of such termination (the earlier of the date of execution and delivery of such definitive documentation or the date of any of the aforementioned termination notices, the “**Exclusivity Period Termination Date**”). The Parties shall conduct such discussions and negotiations during the Exclusivity Period in accordance with the schedule set forth in Appendix 11.

. In consideration of the time, effort and expenses to be undertaken by the Company in connection with the pursuit of the Proposed Transaction, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County hereby agrees that, during the Exclusivity Period, the County shall not, and shall not authorize or permit any of its officers,

employees, agents, attorneys, accountants, consultants, advisors or other representatives to, directly or indirectly: (i) solicit, initiate or take any action to facilitate or encourage any inquiries or the making of any proposal from any Person other than the Company and its Affiliates that may constitute, or could reasonably be expected to lead to, an Alternative Transaction (as defined below); (ii) enter into or participate in any discussions or negotiations with any Person other than the Company and its Affiliates regarding an Alternative Transaction; or (iii) enter into an Alternative Transaction or any agreement, arrangement or understanding, including, without limitation, any letter of intent, term sheet or other similar document, relating to an Alternative Transaction. For purposes of this Section 10.20, the term “**Alternative Transaction**” means any arrangement for the proposed on-site production and provision to the County, NHCC, and their tenants on a long-term basis of thermal or electric energy, or both, in each case where such transaction is to be entered into with any Person other than the Company or its Affiliates.

. The Parties hereto acknowledge that a breach of this Section 10.20 would cause irreparable harm for which monetary damages would be an inadequate remedy. Accordingly, the County hereby agrees that the Company may seek equitable relief in the event of any breach or threatened breach of this Section 10.20, including injunctive relief against any breach thereof and specific performance of any provision thereof, in addition to any other remedy to which the Company may be entitled.

. The Parties acknowledge that the execution and delivery of Agreement does not create any legally binding obligations between the Parties relating to the Proposed Transaction except those specifically set forth in this Section 10.20. Each Party acknowledges and agrees that this Agreement expresses the Parties’ interests in continuing discussions regarding the Proposed Transaction and is not intended to, and does not, create any legally binding obligation on any Person to consummate the Proposed Transaction. Any such obligation will arise only upon the execution and delivery of final definitive agreements relating to the Proposed Transaction.

Section 10.21 COMPANY SIGNAGE. The Company will be entitled during the Term to maintain in effect any Company signage that is, as of the Effective Date, in existence at and in the vicinity of the Facilities and, subject to the approval of the County, which approval will not be unreasonably withheld, conditioned, or delayed, to post additional signage at and in the vicinity of

the Facilities identifying the Company as the provider of the Contract Services and as a member of the ENGIE family of companies.

Section 10.22 NO OBLIGATION TO DISMANTLE AND REMOVE COGENERATION FACILITY STACK. As a result of the termination of the Lease Agreement and the MEA, the Company is obligated under the Lease Agreement to dismantle and remove from the Facility Site the cogeneration facility that the Company owned and operated under the Lease Agreement and the MEA. The Parties acknowledge that the stack to the cogeneration facility remains in good operating condition and repair, and agree that, in light of the condition and repair of the stack, the Company will, notwithstanding any provisions of the Lease Agreement or the MEA, not have any obligation to dismantle or remove from the Facility Site the cogeneration facility stack. Notwithstanding the foregoing, in the event that it is determined by the County during the Term or within two years following the Term that the cogeneration facility stack is no longer necessary or required for its purposes, the County and the Company agree to share equally in the cost of the dismantlement and removal of the cogeneration facility stack from the Facility Site. Accordingly, in the event that the County has determined that the cogeneration facility stack is no longer necessary or required, it shall provide written notice to the Company and the Parties agree to meet and confer in good faith to determine the most cost-effective and efficient manner in which to dismantle and remove the stack and the Parties shall develop a plan for the payment for such dismantlement and removal with the final payments from the Parties to be made within a reasonable time after the completion of such removal and the submission of cost-substantiated invoices by the associated contractors. This provision shall survive the termination or expiration of the Agreement.

Section 10.23 REIMBURSEMENT OF COUNTY TRANSACTION COSTS. Subject to reimbursement by the County to the Company in accordance with the provisions of Section 7.1E, following execution of this Agreement the Company shall, at the County's option, either (1) reimburse the County, (2) pay the County directly or (3) pay third-party legal or other consultants directly for out-of-pocket fees, costs and expenses incurred by the County in connection with the procurement, negotiation, approval, and administration of this Agreement through the Effective Date (such fees, costs and expenses, "**County Transaction Costs**"). Subject to receipt by the Company from the County of documentation substantiating the County Transaction Costs, the

Company shall reimburse or pay the amount of the County Transaction Costs that are provided on invoices approved by the County, which amount shall in no event exceed One Million Two Hundred Fifty Thousand and 00/100 Dollars (\$1,250,000.00) in the aggregate, within forty-five (45) days after receipt of such invoices by the Company.

Section 10.24 CERTIFICATE OF COMPLIANCE. The Company shall comply with the terms of and execute the Certificate of Compliance set forth in Appendix L.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

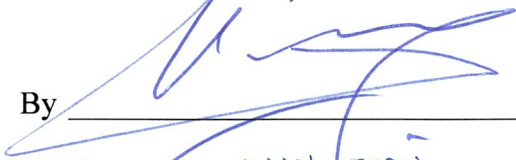
NASSAU COUNTY

By: _____

Name: _____

Title: _____

NASSAU ENERGY, LLC

By:  _____

Name: STEFAN JERCU

Title: PRESIDENT

EXHIBIT A
DESCRIPTION OF FACILITIES MAJOR EQUIPMENT

Central Utility Plant Facilities

Description	Manufacturer	Model No.	Capacity	Horsepower	Year Installed
Oil Supply pump	Delaval	S401F		10	1974
Oil Supply pump	Delaval	S401F		10	1974
Watertube Boiler	Murray		50,000lb/h @ 250psig		1971
Watertube Boiler	Murray		50,000lb/h @ 250psig		1973
Watertube Boiler	Murray		110,000lb/h @ 250psig		1976
Turbine Drive Centrifugal Chiller	York		2,500 tons		1971
Turbine Drive Centrifugal Chiller	York		2,500 tons		1971
Turbine Drive Centrifugal Chiller	York		3,000 tons		1976
Cooling tower	Lilly-Hoffman		8,000 tons		1971/ 1976
Condenser Water Pump	Allis- Chalmers	VT	7,500gpm @ 40ft	250	1971
Condenser Water Pump	Allis- Chalmers	VT	7,500gpm @ 40ft	250	1971
Condenser Water Pump	Allis- Chalmers	VT	7,500gpm @ 40ft	250	1971
Condenser Water Pump	Allis- Chalmers	VT	9,500gpm @ 40ft	350	1976
Chilled Water Pump	Allis- Chalmers	14 x 10 x 20	4,000gpm @ 250ft	350	1971
Chilled Water Pump	Allis- Chalmers	14 x 10 x 20	4,000gpm @ 250ft	350	1971
Chilled Water Pump	Allis- Chalmers	14 x 10 x 20	4,000gpm @ 250ft	350	1971
Chilled Water Pump	Allis- Chalmers	14 x 16 x 20	4,500gpm @ 250ft	450	1976
HTHW pump	Curling		1,900gpm	200	1971
HTHW pump	Curling		1,900gpm	200	1971
HTHW pump	Curling		1,900gpm	200	1971
Boiler Feedpump	Grundfos		80gpm @ 700ft	50	2006
Boiler Feedpump	Grundfos		80gpm @ 700ft	50	2015

Boiler Feedpump	Goulds		160gpm @ 700ft	75	1998
Electric Switchgear					
GE AM 13.8-500-6H	GE	0224A829 3		1,200A	1971
GE AM 13.8-500-6H	GE	0224A829 3		1,200A	1971
GE AM 13.8-500-7H	GE	269A5240		1,200A	1976
GE AM 13.8-500-7H	GE	269A5240		1,200A	1976
Electric Transformer					
G-859942A	GE		13.8-480 Y/277V		
G-859942B	GE		13.8-480 Y/277V		
H-885677A	GE		13.2-480 Y/277V		
H-885677B	GE		13.2-480 Y/277V		
22.5kVA	GE		480-277/110		
45kVA	GE		480-277/110		
45kVA	GE		480-277/110		

NUMC Facilities

Description	Manufacturer	Model No.	Capacity	Horsepower	Year Installed
Watertube Boiler	Erie City		70,000lbs @ 150psig		1973
Watertube Boiler	Erie City		70,000lbs @ 150psig		1973
Watertube Boiler	Erie City		70,000lbs @ 150psig		1973
Watertube Boiler	Erie City		70,000lbs @ 150psig		1973
Fan (turbine-and motor driven)	Clarage Fan/Worthington Turbine	Type AFI		50	1973
Fan (turbine-and motor driven)	Clarage Fan/Worthington Turbine	Type AFI		50	1973

Fan (turbine-and motor driven)	Clarage Fan/Worthington Turbine	Type AFI		50	1973
Fan (turbine-and motor driven)	Clarage Fan/Worthington Turbine	Type AFI		50	1973
2-Stage Horizontal Split Case (motor driven)	Ingersoll-Rand	3GT	420gpm @ 500ft	100	1973
2-Stage Horizontal Split Case (turbine driven)	Ingersoll-Rand (Worthington Turbine)	3GT	420gpm @ 500ft		1973
2-Stage Horizontal Split Case (turbine driven)	Ingersoll-Rand	2GT	210gpm @ 500ft		1973
2-Stage Horizontal Split Case (motor driven)	Ingersoll-Rand	2GT	210gpm @ 500ft	50	1973
Turbine Driven Centrifugal Chiller	York - Murray Turbine	1840S	1,800 Tons		1973
Turbine Driven Centrifugal Chiller	York - Murray Turbine	1840S	1,800 Tons		1973
Turbine Driven Centrifugal Chiller	York - Murray Turbine	1840S	1,800 Tons		1973
Turbine Driven Centrifugal Chiller	York - Murray Turbine	1840S	1,800 Tons		1985
Horizontal Split Case pump	Ingersoll-Rand	10-SD	550gpm@140ft	250	1973
Horizontal Split Case pump	Ingersoll-Rand	10-SD	550gpm@140ft	250	1973
Horizontal Split Case pump	Ingersoll-Rand	10-SD	550gpm@140ft	250	1973
Horizontal Split Case pump	Ingersoll-Rand	10-SD	550gpm@140ft	250	1973
Horizontal Split Case pump	Ingersoll-Rand	8SE	3,800gpm @275ft	350	1973

Horizontal Split Case pump	Ingersoll-Rand	8SE	3,800gpm @275ft	350	1973
Horizontal Split Case pump	Ingersoll-Rand	8SE	3,800gpm @275ft	350	1973
Horizontal Split Case pump	Ingersoll-Rand	8SE	3,800gpm @275ft	350	1973
Horizontal Split Case pump	Ingersoll-Rand	8SE	3,800gpm @275ft	350	1985
Horizontal Split Case pump	Ingersoll-Rand				
Horizontal Split Case pump	Ingersoll-Rand	3SA	420gpm @ 125ft	25	1973
Horizontal Split Case pump	Ingersoll-Rand (Worthington Turbine)	3SA	420gpm @ 125ft		1973
Horizontal Split Case pump	Ingersoll-Rand (Worthington Turbine)	3SA	210gpm @ 125ft		1973
Horizontal Split Case pump	Ingersoll-Rand	3SA	210gpm @ 125ft	15	1973
Horizontal Split Case pump	Ingersoll-Rand				
Cooling Tower	Marley		1800 ton		1973
Cooling Tower	Marley		1800 ton		1973
Cooling Tower	Marley		1800 ton		1973
Cooling Tower	Marley		1800 ton		1985

EXHIBIT B
SPECIFICATIONS FOR STEAM, HEATED WATER, CHILLED WATER, CONDENSATE,
RETURNED HEATED WATER, AND RETURNED CHILLED WATER

Steam: Saturated steam will be provided at 150 psig. All boiler water additives used in the production of steam and condensate return will be approved for food contact by the Federal Food and Drug Administration and used within their listed safe limits.

Heated Water: Provided at a temperature between 225°F and 270°F at 100 psig. Hot water from the Facilities will be treated with corrosion inhibitors.

Chilled Water: Provided at a temperature between 42°F and 44°F at 100 psig. Chilled water from the County's Central Utility Plant Facilities will be treated with corrosion inhibitors.

Condensate: Provided with less than 30 micromho/cm ($\mu\text{mho/cm}$) conductivity and not contaminated with oil, excess rust, other foreign substances, waste products, or treatment chemicals not approved by the Company.

Returned Heated Water: Provided, in the case of each customer, at the same temperature as in effect for such customer as of the Effective Date; *provided, however*, that if the temperature of Returned Heated Water supplied by any customer causes operational or maintenance problems for any Facilities, the Company will be entitled to require that such customer make such adjustments to its facilities or equipment that are required in order to alleviate such problems.

Returned Chilled Water: Provided, in the case of each customer, at the same temperature as in effect for such customer as of the Effective Date; *provided, however*, that if the temperature of Returned Chilled Water supplied by any customer causes operational or maintenance problems for any Facilities, the Company will be entitled to require that such customer make such adjustments to its facilities or equipment that are required in order to alleviate such problems.

EXHIBIT C
POINTS OF INTERCONNECTION

Company does not perform in-building work at customer sites serving hot and Chilled water customers. Company only tests and calibrates flow meters along with associated pressure and temperature instrumentation.

Nassau Veterans' Memorial Coliseum: Where thermal piping enters into Coliseum.

Nassau Community College: Valve just past metering stations before going underground

Cradle of Aviation Museum: Valve station just before meters in Cradle basement

Long Island Children's Museum: Valve station just before metering station in HVAC equipment room.

Marriott Hotel: Underground distribution from Coliseum HVAC space to where pipe enters the Marriott basement

Technical Services building: 1st valve after metering station for steam service

Nassau University Medical Center: Steam transfers at valve inlet on main headers. Chilled water transfers at first valve before the metering station

EXHIBIT D
FORM OF GUARANTY AGREEMENT

GUARANTY

This is a guaranty (the “Guaranty”), dated as of _____ given by **ENGIE Holdings Inc.**, a Delaware corporation (the “Guarantor”), in favor of **Nassau County**, a municipal corporation of the State of New York (the “Beneficiary”).

1. Guaranty

In consideration of the Beneficiary entering into the Operation and Maintenance Agreement between County of Nassau and Nassau Energy, LLC dated _____ (hereinafter referred to as the “Guaranteed Agreement(s)”), the Guarantor, an affiliate of the Company, unconditionally guarantees, to the Beneficiary, its permitted successors and assigns, from the Effective Date until the termination of the obligations of the Guarantor under this Guaranty as set forth in Section 8 below, the prompt payment when due, of all present and future obligations and liabilities of all kinds of the Company to the Beneficiary arising out of the Guaranteed Agreement(s), including those arising or in existence prior to the effective date of this Guaranty (hereinafter referred to as the “Obligations”) and all reasonable costs and expenses relating to the enforcement of this Guaranty, including reasonable attorneys’ fees; provided, however, that the Guarantor shall not be liable for any such costs or expenses of the Beneficiary if no payment under this Guaranty is due. To the extent that the Company shall fail to pay any Obligations, Guarantor shall promptly pay to the Beneficiary the amount due, or cause such payment to be made, subject to any applicable grace period and upon demand in writing from the Beneficiary to the Guarantor (without prejudice to Section 7 hereof). Any demand for payment shall reasonably and briefly specify in what manner and what amount the Company has failed to pay and an explanation of why such payment is due, with a specific statement that the Beneficiary is calling upon Guarantor to pay under this Guaranty. Notwithstanding anything contained in this Guaranty to the contrary, the maximum aggregate liability of the Guarantor to the Beneficiary, whether in principal, interest, costs, expenses, attorneys’ fees or other sums due, shall not exceed under any circumstances one million dollars (\$1,000,000).

2. Nature of Guaranty

It is understood and agreed that this Guaranty shall only be in respect of the Obligations and shall not pertain to any other obligations whatsoever of the Company to the Beneficiary. This Guaranty constitutes a guaranty of payment when due and not of collection or of performance. The Guarantor's obligations hereunder shall not be affected by (a) the existence, validity, enforceability, perfection, or extent of any collateral for the Obligations, (b) the dissolution, liquidation, reorganization or other change regarding the Company or the Company seeking protection, or having a case or proceeding commenced against it, under any law for the protection of debtors or creditors or (c) any other event, occurrence or circumstance which might otherwise constitute a legal or equitable discharge or defense to a guarantor or surety. The Guarantor agrees that the Beneficiary may resort to the Guarantor for payment of any of the Obligations, whether or not the Beneficiary shall have resorted to any collateral security, or shall have proceeded against the Company with respect to any of the Obligations. If any payment of the Company in respect of

the Obligations is rescinded or must otherwise be returned for any reason whatsoever, the Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Beneficiary of any right, remedy or power hereunder preclude any other future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to the Beneficiary or allowed to it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Beneficiary from time to time.

3. Consents, Waivers and Renewals

The Guarantor agrees that the Beneficiary may at any time and from time to time, either before or after maturity thereof, without notice to or further consent of the Guarantor, extend the time of payment of, exchange or surrender any collateral for, or renew any of the Obligations, and may also make any agreement with the Company for the extension, renewal, payment, compromise, discharge or release of any of the Obligations, in whole or in part, or for any modification of the terms thereof or of any agreement between the Beneficiary and the Company, without in any way impairing or affecting this Guaranty. The Guarantor waives notice of dishonor, presentment and demand, except as set forth in Section 1, notice of any sale of collateral security and all other notices whatsoever.

4. Subrogation

The Guarantor will not exercise any rights which it may acquire by way of subrogation until all Obligations to the Beneficiary shall have been paid in full. Subject to the foregoing, upon payment of all the Obligations, the Guarantor shall be subrogated to the rights of the Beneficiary against the Company, and the Beneficiary agrees to take at the Guarantor's expense, such steps as the Guarantor may reasonably request to implement such subrogation.

5. Representations and Warranties

- (a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty.
- (b) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene any provision of law or the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets.
- (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles and public policy.

6. Limitations

The liability of Guarantor under this Guaranty shall be and is specifically limited to payments expressly required to be made under the Guaranteed Agreement(s) or this Guaranty without regard to any of the events referred to in clauses (a), (b) or (c) of Section 2 of this Guarantee. EXCEPT TO THE EXTENT DUE FROM THE COMPANY UNDER THE TERMS OF THE AGREEMENT, IN NO EVENT SHALL THE GUARANTOR BE SUBJECT TO ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, EQUITABLE, LOSS OF PROFITS, PUNITIVE, TORT OR ANY OTHER DAMAGES, COSTS OR EXPENSES.

7. Setoff and Counterclaims

Without prejudice to any other right or remedy not expressly waived hereunder, Guarantor hereby reserves to itself and may, to the fullest extent permitted by law, apply all setoffs, and assert all counterclaims and other defenses, to which the Guarantor or the Company is or may be entitled arising from or out of the Guaranteed Agreement(s), except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of the Company.

8. Term and Termination

This Guaranty shall automatically terminate on the earlier of: (i) the date on which all Obligations have been fully paid, subject to the limitations herein, or (ii) the date on which the Obligations expire under the terms of the Guaranteed Agreement(s) (the “Guaranty Termination Date”). Notwithstanding the foregoing, such termination shall not affect the Guarantor’s liability with respect to any Obligations incurred under the Guaranteed Agreement(s) prior to the Guaranty Termination Date, which liabilities shall remain continuing and guaranteed pursuant to the terms of this Guaranty.

9. Attorneys’ Fees

In the event suit or action is brought upon or in connection with the enforcement of this Guaranty, the Guarantor shall pay reasonable attorneys' fees and all court costs incurred by the Beneficiary if the Beneficiary is the prevailing party.

10. Assignment

Guarantor may assign this Guaranty to an affiliate who succeeds Guarantor as the upstream North American holding company for Company and other North American affiliated companies. This Guaranty is freely assignable by Beneficiary to any affiliate of the Beneficiary in accordance with the terms and conditions of the Guaranteed Agreement(s).

11. Notices

All notices or other communications in respect of this Guaranty shall be in writing, shall be given by facsimile (except for a demand for payment or a termination notice), hand delivery or certified mail (return receipt requested) and addressed or directed as follows:

If to the Guarantor:

ENGIE Holdings Inc.
1360 Post Oak Blvd, #400
Houston, TX 77056
Attn: Credit Mgr.
Fax: 713-636-1695

If to the Beneficiary:

Nassau County Department of Public
Works
1194 Prospect Avenue
Westbury, New York 11590
Attn: Commissioner
Phone: (516) 571-9604
Email: karnold@nassaucountyny.gov

or such other address as the Guarantor or the Beneficiary shall from time to time specify.

13. Governing Law and Jurisdiction

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK. The Guarantor and the Beneficiary, by their execution hereof, submit to the exclusive jurisdiction of the courts of the state and federal courts located in the Borough of Manhattan of the City of New York in connection with any action or proceeding relating to this Guaranty.

14. Waiver of Jury Trial

The Guarantor and the Beneficiary hereby waive all rights to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Guaranty.

15. Entire Agreement

This Guaranty constitutes the entire agreement, and supersedes all prior written agreements, including prior guaranties, and understandings, and oral agreements, between Guarantor and Beneficiary with respect to the subject matter hereof. No amendment or waiver of any provision of this Guaranty shall be effective unless the same shall be in writing and signed by the Guarantor and the Beneficiary.

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IN WITNESS WHEREOF, the Guarantor and the Beneficiary have caused their duly authorized officers to execute this Guaranty on the respective dates specified below with effect from the Effective Date. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Any facsimile or electronically transmitted copies hereof or signature hereon shall, for all purposes, be deemed originals.

ENGIE Holdings Inc.

By: _____
Name:
Title:
Date:

Nassau County

By: _____
Name:
Title:
Date:

EXHIBIT E
ADDRESSES FOR NOTICES

Company:	County:
<p>All Notices (including any notice of a Potential Event of Default or an Event of Default, <i>but not including</i> operational notices, invoices, and payments):</p> <p>Nassau Energy, LLC 185 Charles Lindbergh Blvd. Garden City, NY 11530 Attn: Plant Manager Phone: (516) 222-2884 Facsimile: (516) 794-1928 Email: NassauPM@engie.com</p>	<p>All Notices (including any notice of a Potential Event of Default or an Event of Default, <i>but not including</i> operational notices, invoices, and payments):</p> <p>Nassau County Department of Public Works 1194 Prospect Avenue Westbury, New York 11590 Attn: Commissioner Phone: (516) 571-9604 Email: karnold@nassaucountyny.gov</p> <p>and to:</p> <p>Nassau County Attorney's Office One West Street Mineola, New York 11501 Attn: County Attorney Phone: (516) 571-3056 Email: TAAdams@nassaucountyny.gov</p>
<p>Operational Notices:</p> <p>Nassau Energy, LLC 185 Charles Lindbergh Blvd. Garden City, NY 11530 Attn: Plant Manager Phone: (516) 222-2884 Facsimile: (516) 794-1928 Email: NassauPM@engie.com</p>	<p>Operational Notices:</p> <p>Nassau County Department of Public Works 1194 Prospect Avenue Westbury, New York 11590 Attn: Commissioner Phone: (516) 571-9604 Email: karnold@nassaucountyny.gov</p>
<p>Invoices:</p> <p>Nassau Energy, LLC 185 Charles Lindbergh Blvd. Garden City, NY 11530 Attn: Site Administrator Phone: (516) 222-2884 Facsimile: (516) 794-1928 Email: NassauSA@engie.com</p>	<p>Invoices:</p> <p>Nassau County Department of Public Works 1194 Prospect Avenue Westbury, New York 11590 Attn: Commissioner Phone: (516) 571-9604 Email: karnold@nassaucountyny.gov</p>

<p>Payments:</p> <p>Nassau Energy, LLC 1360 Post Oak Blvd., Suite 400 Houston, TX 77056 Attn: Project Accountant Phone: (713) 636-1067 Facsimile: (713) 636-1604 Email: Marcie.cardenas@engie.com</p>	<p>Payments:</p> <p>Nassau County Department of Public Works 1194 Prospect Avenue Westbury, New York 11590 Attn: Commissioner Phone: (516) 571-9604 Email: karnold@nassaucountyny.gov</p>
<p>Notices of a Potential Event of Default or an Event of Default:</p> <p>Nassau Energy, LLC 1360 Post Oak Blvd., Suite 400 Houston, TX 77056 Attn: Vice President, Commercial Operations – ENGIE Generation North America Inc. Phone: (713) 636-0000 Facsimile: (713) 636-1858 Email: darin.hawkins@engie.com</p> <p>and to:</p> <p>Nassau Energy, LLC 1360 Post Oak Blvd., Suite 400 Houston, TX 77056 Attn: Vice President, Assistant General Counsel – ENGIE Generation North America Inc. Phone: (713) 636-0000 Facsimile: (713) 636-1858 Email: john.boatwright@engie.com</p>	<p>Notices of a Potential Event of Default or an Event of Default:</p> <p>Nassau County Attorney's Office One West Street Mineola, New York 11501 Attn: County Attorney Phone: (516) 571-3056 Email: TAAadams@nassaucountyny.gov</p> <p>and to:</p> <p>West Group Law PLLC 81 Main Street, Suite 510 White Plains, NY 10601 Attn: Josh J. Meyer, Esq. Phone: (914) 898-2400 Email: jmeyer@westgrouplaw.com</p>

APPENDIX 1

FACILITIES AND FACILITY SITES GENERAL DESCRIPTION

The core of the current District Energy System (“DES”) is the Central Utility Plant (“CUP”), comprising boiler and chiller equipment and distribution systems for steam, high-temperature hot water (“HTHW”) and chilled water (“CHW”). There is also a boiler and chiller plant (the “Medical Plant”), located at Nassau University Medical Center (“NUMC”). Electricity is purchased from Long Island Power Authority (“LIPA”) and supplied to Nassau Community College (“NCC”) and the Long Island Marriott Hotel.

The boiler and chiller plants at the CUP and NUMC, as well as the distribution infrastructure, comprise the Facilities. Steam was previously supplied through a 3.5-mile-long, below-grade pipeline from the co-generation facility to NUMC, the Nassau County Aquatic Center and the County’s Department of Public Works Technical Services Building. The steam-driven chillers at NUMC currently service the CHW loads in the facility and at the Correctional Facility. The Aquatic Center and Technical Services Building are supplied with steam from this pipeline from the boilers at NUMC. HTHW and CHW are distributed to NCC, the Coliseum, the Cradle of Aviation Museum, Long Island Marriott Hotel, and Long Island Children’s Museum.

The County owns and operates two electrical distribution systems. The first system serves NCC and the Coliseum from a central metering point located within the CUP. The second system serves the western and northern portions of Mitchel Field, now utilized primarily by NCC. The electricity is purchased from LIPA.

The CUP is sited on an approximately 5.2-acre parcel of land, located at 185 Charles Lindbergh Boulevard, Garden City, New York 11530, identified on the Land and Tax Map of the County of Nassau as Section 44, Block F, Lot 407, situated in the vicinity of Mitchel Field, Uniondale, New York. In addition to the parcel containing these Facilities, the Facilities includes all underground pipes presently existing and used and useable in connection with the CUP. Finally, the Facilities includes portions of the Medical Plant and portions of the Correctional Facility.

APPENDIX 2
PERMITS AND RELATED DOCUMENTS

State:

Air State Facility Permit as synthetic minor source with fuel cap
DEC ID 1-2820-01015/0009

Nassau County Department of Health Toxic or Hazardous Materials Facility Storage
Permit

Nassau County Sewer Discharge Permit

APPENDIX 3
REQUIRED OPERATING PERIOD INSURANCE

(a) Obligation to Obtain. The Company shall obtain and maintain the insurance set forth in this Appendix 3. Such insurance may be maintained under individual or blanket insurance policies.

(b) the Company Coverage. The Company shall maintain during the Term the insurance described below with insurance companies reasonably acceptable to the County and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

- (i) General Liability Insurance: Liability insurance on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage.
 - a. Each Occurrence: \$2,000,000
 - b. General Aggregate: \$4,000,000
 - c. Products Aggregate: \$2,000,000
 - d. The Company shall include the County as an additional insured and provide a waiver of subrogation in favor of the County.
- (ii) Automobile Liability Insurance: Automobile liability insurance against claims for personal injury (including bodily injury and death) or property damage arising out of the use of all owned, leased, non-owned and hired motor vehicles, including loading and unloading, and containing appropriate no-fault insurance provisions where applicable.
 - a. Not less than \$1,000,000, Combined Single Limit (per accident).
 - b. The Company shall include the County as an additional insured on a primary, non-contributory basis and provide a waiver of subrogation in favor of the County.
- (iii) Workers' Compensation Insurance: Workers' compensation insurance as required by applicable laws, including employers' liability insurance for all employees of the Company.
 - a. Not less than \$1,000,000, each accident.
 - b. Not less than \$1,000,000, Disease (each employee), and \$1,000,000, Disease (policy limit).
- (iv) Excess Liability Insurance: Excess liability insurance on an occurrence basis covering claims in excess of the underlying insurance described in the foregoing subsections (i), (ii) and (iii).
 - a. Each Occurrence / Aggregate: \$12,000,000
 - b. The Company shall include the County as an additional insured on a primary, non-contributory basis and provide a waiver of subrogation in favor of the County.
- (v) If necessary in connection with a given scope of work, Professional Liability Insurance: Professional liability insurance against claims for professional

liability in connection with the Company's performance of its obligations pursuant to this Agreement.

- a. Each Occurrence / Aggregate: \$5,000,000
- (vi) Pollution Liability Insurance: Pollution liability insurance, via either a Contractors Pollution Liability (CPL) policy or Pollution Legal Liability policy, insuring the Company's performance of its obligations pursuant to this Agreement. The policy shall provide sudden & accidental as well as gradual pollution conditions.
- a. Each Occurrence / Aggregate: \$5,000,000
 - b. The Company shall include the County as an additional insured on a primary, non-contributory basis and provide a waiver of subrogation in favor of the County.

The amounts of insurance required in the foregoing subsections (i), (ii), (iii), (iv), and (v) may be satisfied by the Company purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified. Upon mutual agreement of the County, the Company may provide equivalent self-insurance in lieu of the requirements set forth in this Appendix.

All insurance policies shall be primary and non-contributory to any insurance maintained by the County. All insurance policies are required to be placed with insurance carriers with an A.M. Best rating of not less than A-, VII.

The Company shall maintain the coverages and limits herein at all times during the Term of the Agreement. Further, the Company shall require in each contract with any subcontractor performing work pursuant to this Agreement that such subcontractor obtain coverages that are reasonably comparable to the Company's required coverages and that are reasonably appropriate in their limits and other terms and conditions in light of the nature of the work to be performed by such subcontractor.

The County, as Additional Insured, shall be entitled to 30 days written notice of cancellation, non-renewal or restrictive amendment of any policy.

On or before the date on which insurance must be provided, the Company shall furnish certificates of insurance to the County evidencing the insurance required pursuant to this Appendix. Each Party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

Notwithstanding that the Company shall have been responsible for the purchase of, any insurance required under this Appendix, the County shall promptly pay to the Company any deductible amount related to any claim against or other cost to the Company covered under any such insurance policy of the Company that arose due to the gross negligence or intentional misconduct of the County.

APPENDIX 4 MONTHLY REPORTS

The monthly report required by Section 3.14A of the Agreement shall include a summary of all relevant data and records related to the operation of the Facilities for each Billing Month including, to the extent known, the following:

The form of the monthly report will be agreed by the Company and the County prior to the Effective Date.

A duly authorized representative of the Company shall sign the monthly report. Above the signature line shall be the following statement:

“I _____ (name), acting as a duly authorized representative of _____ (Company) do hereby certify that all of the information in this monthly report is, to the best of my knowledge, true and accurate. All of the operation, maintenance and repair obligations performed during the period covered by this invoice pursuant to the Agreement have been carried out. Any operation, maintenance or repair obligation called for or rescheduled has been disclosed in this monthly report and all other occurrences which are significant with regard to the Agreement, have been disclosed in the monthly report.”

APPENDIX 5
TOOLS INVENTORY

Group	Quantity	Description
PIPE WRENCHES	2	14"
	3	18"
	2	24"
	2	36"
	1	48"
	2	Pipe Vise
	1	Portable pipe threader and stand
	1	set Pipe Dies 3/8" - 1-1/2"
	3	Manual pipe threader
	4	Pipe Cutter
	4	NPT Pipe Taps 3/8", 3/4", 1", 1-1/4"
WRENCHES		
OPEN END	1	1-1/8" - 1-9/16"
	3	Crows Foot 3/4", 13/16", 1"
BOX	1	set 1/2" - 1-1/2"
COMBINATION	1	set 3/8" - 1-3/4"
MISC	1	1/4" Refrigeration wrench
	2	set 1" - 1-3/4"
	1	Slugging 1-1/4" - 2-3/8"
	2	strap wrench
	3	Crescent 3" X 12", 2" X 24"
	1	1" drive air impact
	1	Torque Wrench 175ft-lb, 1/2" drive
	1	set T-handle hex wrench
	1	set L-handle hex wrench
SOCKETS & BITS	2	1/2" drive set 3/8" - 1-5/16"
	1	hand ratchet and bit set 1/4" – 7/8"
	2	1" impact set 7/8 - 2-7/8"
	1	3/4" impact set 3/4" - 1-7/8"
	1	3/4 drive 1" - 2"
	1	1"drive ratchet 36" lg
	3	1" Drive socket 2-3/8", 2-1/8", 1-13/16"
	1	cutting pliers

Hoists and come alongs	1	1 Ton 30'
	1	1 Ton 10'
	1	1-1/2 Ton 30'
Slings	5	endless 3/4" X 4', 2,400lb cap
	1	endless 1" X 10', 4,800lb cap
	1	flat 1" X 6', 6,100lb cap
Hammers	2	Sledge
	5	Ball Peen
	1	Claw
	1	Rubber Mallet
Screwdrivers	6	Phillips
	6	Flat blade
Miscellaneous	2	Vise grip 6"
	3	pliers 6"
	1	needle nose plier
	2	slip joint large and small
	1	retaining ring plier set
	2	Tin snip
	2	angle snip
	1	Hydraulic nut splitter
	4	C-Clamp
	1	Flaring tool
	3	Drill bit sets 1/4" - 1"
	1	Dial indicator
	4	tubing cutters
	3	6" pipe Vise
	1	puller set
	2	grease gun
	1	36" level
	1	refrigerant gauge set
	1	3/8 drive hammer drill
	2	cordless drill
	1	tube cleaning kit
	2	pallet jack
	1	Arch punch set 1/4" - 1"

	1	Vacuum pump
	1	refrigerant pump down unit
	1	cutting torch set
	1	25 ton shop press
	1	soldering iron
	2	bench grinder 8"
	1	12" circular saw
	4	Wet/dry vacuum
	2	Fluke multimeter
	1	HV Tic-Tracer

APPENDIX 6 COST SUBSTANTIATION

PART I. PURPOSE

This Appendix sets forth the County's minimum requirements for substantiating costs incurred during the Term of the Agreement. The Company will conform to the Cost Substantiation requirements set forth in this Appendix.

PART II. CALCULATION OF COSTS

The cost of all work for which the Company is entitled to reimbursement hereunder shall be on a Cost Substantiated basis as determined on the following basis:

1. On the basis of actual direct cost of labor, material and incidental expense necessarily incurred in good faith and paid directly by the Company as described herein, as follows:
 - a. Direct cost of payments to Subcontractors for material, installation, or other services.
 - b. Direct cost of field craft labor payroll including payroll taxes, fringe benefits and Worker's Compensation insurance.
 - c. The direct salary cost of the Company's non-field craft labor personnel at their equivalent hourly rates, including allowances for holidays, vacation and absences calculated on an annual basis in accordance with standard accounting practices for the portion of the time they are directly engaged in the work hereunder. As complete compensation for all overhead, other indirect costs and profits no multipliers are to be applied to direct salary costs:

Engineering-Related Services, and Construction Services:

Home Office

Facility Site

Non-Manual Field Hired Personnel

- d. For work involving the use of transportation equipment or heavy equipment such as trucks, tractors, derricks, cranes, and excavators, the Company shall be reimbursed for their use at actual rental prices. Such rental prices shall include furnishing of all necessary power or fuel and labor and materials to lubricate, grease, rig, maintain and repair equipment, but, unless otherwise specifically agreed to, shall not include labor for operation purposes. For heavy equipment not self-propelled or readily movable, extra expense for transportation to and from the Site will

be paid for at actual prices in addition to rental rates.

- e. The rental rate for self-owned equipment used shall be reasonable and shall be based upon those prevailing in the area of the County where such work is to be done, and shall be agreed to in writing before the work is begun. For equipment which is already on the Facility Site, the rental period shall start when ordered to work by the County, and shall continue until ordered to discontinue by the County. For equipment which has to be brought to the Facility Site for specific work ordered by the County, the County will pay all loading and unloading costs, also all transportation costs to and from the Facility Site within the boundaries of Nassau County provided, however, that the cost of return transportation shall not exceed that of moving the equipment to the Facility Site. The minimum payment for any one rental period shall be for 4 hours, unless otherwise agreed upon between the County and the Company. The rental period shall begin at the time the equipment has been unloaded on the Facility Site, and shall end on and include the day the order to discontinue the use of the equipment is given to the Operator by the County. The daily rate shall apply for rental periods of 4 calendar days or less, the weekly rate shall apply for rental periods of more than 4 and not exceeding 21 calendar days, and the monthly rate shall apply for rental periods in excess of 21 calendar days. For fractional periods above the full unit rental period (day, week, month) reimbursement shall be proportioned on the basis of the applicable rental period (Day = 8 Hours; Week = 7 calendar days; Month = 30 calendar days). In the alternative, the County Engineer may approve for reimbursement a rate representing the allocable costs of ownership. Self-owned equipment is defined to include equipment rented from companies controlled by the Company or Affiliates.

PART III. GENERAL REQUIREMENTS

1. Time Reporting

Company Employees:

The Company will submit monthly labor summaries along with any invoice for which labor costs are applicable. The monthly labor summary should include the full name, classification, hourly billing rate, the number of hours worked during the billing period and the type of hours billed (e.g., regular time, overtime, sick time, holiday time, training, personal, etc.), and the type of work performed. Figure A-1 provides a format for a monthly labor summary.

Detailed time sheets, containing the items above at a minimum, for Company personnel must be maintained by the Company at all times and are subject to County audit upon request.

Agents of the Company:

The Company will be required to provide the same substantiation for Subcontractors and agents whose labor charges will be billed to the County.

2. Expenses:

Receipts, invoices, or other form of written documentation produced by a third party shall be submitted by the Company for any bill submitted as a Pass Through Charge, equipment purchases, or any other items for which the Company will seek reimbursement from the County. Such receipts shall be available for the County audit upon request.

EXAMPLE OF A MONTHLY LABOR SUMMARY

MONTHLY LABOR SUMMARY

FOR THE PERIOD [_____] – [_____] [20__]

Name	Class	Rate	Type	Hours	Description

APPENDIX 7 SUBCONTRACTOR INFORMATION

1. Approved Subcontractors

As of the Effective Date, the companies set forth in Appendix 8 have been determined to be approved Subcontractors hereunder.

In addition, (i) each of the Subcontractors, and (ii) any of their subcontractors that have been and remain duly approved by the County, shall be deemed approved Subcontractors for the purposes of this Agreement.

2. Subcontractor Approval Process

For proposed subcontractors not approved in accordance with Section 1 of this Appendix (e.g. as of the Effective Date, or previously determined to be approved by the County), the Company shall be subject to the following subcontractor approval process with the County.

In accordance with Section 10.11B of this Agreement, the Company shall provide the following information to the County:

- a. Name and address of Subcontractor (If a corporation: names of officers, directors and any shareholders possessing 5% or more of the outstanding stock in the corporation; If a partnership: names of all general or limited partners);
- b. Names of all affiliated and related companies and their relationship to the Subcontractor;
- c. List of creditors, excluding only mortgages of record, bond holders pursuant to a public offering and operation debts accrued in the normal course of business and customarily extinguished within 120 days;
- d. List of any and all criminal convictions within the last five years recorded by the Subcontractor, any officer or director thereof, shareholder, any Affiliate, or any related Company;
- e. List of any and all civil penalties, judgments, consent decrees, or other sanctions within the last five years recorded by the Subcontractor, any officer or director thereof, shareholder, any Affiliate or any related company;
- f. List of any and all current investigations, indictments or pending litigation by any Federal, State or local jurisdiction recorded by the Subcontractor, any officer or director thereof, shareholder, any Affiliate or any related company;
- g. List of any and all actions occurring within the last five years which have resulted in revocation or suspension of any permit or authority to do business in any Federal, State, or local jurisdiction, recorded by the Subcontractor, any officer or director

thereof, shareholder, any Affiliate or any related company;

- h. List of any and all actions occurring in the past five years that have resulted in the barring from public bidding recorded by the Subcontractor, any officer or director thereof, shareholder, any Affiliate or any related company; and
- i. List of any bankruptcy proceedings in the past five years recorded by the Subcontractor, Affiliate or related company.

APPENDIX 8
LIST OF PRE-APPROVED SUBCONTRACTORS TO THE COMPANY (THOSE IN EXCESS
OF \$100,000)

The list of Pre-Approved Subcontractors shall be finalized by the Parties prior to the Effective
Date.

APPENDIX 9
EXIT PROCEDURES AND TEST PROTOCOLS

In addition to any other requirement of this Agreement, including any other Appendix, the Company shall develop the Exit Procedures and Test Protocols, which shall be reviewed and approved by the County.

The Exit Procedures and Test Protocols are to be included in the Operation and Maintenance Plan, as prepared pursuant to Section 3.5 of this Agreement, and performed no less than 120 days in advance of the end of the Term.

APPENDIX 10
FACILITY CAPITAL REPAIRS OR FACILITY MODIFICATIONS
ANTICIPATED BY THE COMPANY AS OF THE EFFECTIVE DATE

- (Reliability) Boiler 2 partial retube \$850k
- (Reliability, Efficiency) Underground HTHW leak at Marriott \$90k
- (Reliability) HTHW heat exchanger tube replacement ~\$300k (estimated amount)
- (Reliability) CUP aux transformer \$90k
- (Reliability, Safety) NUMC DA repair \$250k
- (Reliability) CUP boiler feed water pump \$18k
- (Reliability, Efficiency) Air Compressors NUMC \$24k
- (Reliability, Efficiency) Air Compressors CUP \$24k

APPENDIX 11
EXCLUSIVITY PERIOD SCHEDULE FOR DISCUSSIONS AND NEGOTIATIONS
REGARDING PROPOSED TRANSACTION

- Phase I: Begins on the Effective Date
 - The Company, the County, and potential customer base begin collaboration on future expected needs, greenhouse gas goals, NUMC requirements, and desire for electrical generation. The Exclusivity Discussion Period will begin on the Effective Date.
- Phase II: Begins 5 months after start of Phase I
 - Collaboration is complete and the Company begins technical review of solutions along with confidentiality requirements needed for the proposed transaction.
- Phase III: Begins 3 months after start of Phase II
 - The Company submits a Proposed Transaction Proposal with the technical, commercial, and economic solution to the County and potential customer base (potential for electrical service contracts directly with some customers). The Exclusivity Negotiation Period will commence upon submission of the Proposed Transaction Proposal to the County.
- Phase IV: Begins 2 months after start of Phase III
 - The County and customer base provide go/no-go decision to the Company based on proposal merits.
 - If the County agrees to move forward with the Company based on the proposal merits, the Parties work together to finalize terms, pricing, and necessary final agreements (lease, master energy agreement, etc.) for presentation to the County legislature and other customers for approval in March 2024.

APPENDIX EE
EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled “Participation by Minority Group Members and Women in Nassau County Contracts,” governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

- a) The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgrades, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgrading, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.
- b) At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Contractor’s obligations herein.
- c) The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- d) The Contractor shall make best efforts to solicit active participation by certified minority or women-owned business enterprises (“Certified M/WBEs”) as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.
- e) The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.
- f) Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best Efforts Checklist.
- g) Contractors for projects under the supervision of the County’s Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes to the list of subcontractors under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor

to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.

- h) At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.
- i) In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.
- j) Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor's Subcontracts and Contractor's fulfillment of Best Efforts to obtain participation by Certified M/WBEs.
- k) A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.
- l) The Contractor shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:
 - a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
 - b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
 - c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction, or increase the amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrators award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the

Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules (“CPLR”).

(m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Contractors or Subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Contractor shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Subcontractor as to work in connection with the County Contract.

As used in this Appendix EE the term “Best Efforts Checklist” shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Appendix EE.

As used in this Appendix EE the term “County Contract” shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term “County Contract” does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term “County Contractor” means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Appendix EE the term “County Contractor” shall mean a person or firm who will manage and be responsible for an entire contracted project.

As used in this Appendix EE “Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises” shall include, but is not limited to the following:

- a. Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be included to demonstrate that it contained language indicating that the County Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor’s affidavit with a notary’s signature and stamp shall be required as part of the documentation.
- b. Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation
- c. Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation
- d. Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blue prints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.
- e. Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.
- f. Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation

- g. If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.
- h. The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation
- i. County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

As used in this Appendix EE the term “Executive Director” shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term “Subcontract” shall mean an agreement consisting of part or parts of the contracted work of the County Contractor.

As used in this Appendix EE, the term “Subcontractor” shall mean a person or firm who performs part or parts of the contracted work of a prime contractor providing services, including construction services, to the County pursuant to a county contract. Subcontractor shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime contractor that are necessary for the prime contractor to fulfill its obligations to provide services to the County pursuant to a county contract. Subcontractor shall not include a supplier of materials to a contractor who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a contractor, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

Provisions requiring contractors to retain or submit documentation of best efforts to utilize certified subcontractors and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.

APPENDIX L
CERTIFICATE OF COMPLIANCE

In compliance with Local Law 1-2006, as amended (the “Law”), the Contractor hereby certifies the following:

1. The chief executive officer of the Contractor is:

_____ (Name)

_____ (Address)

_____ (Telephone Number)

2. The Contractor agrees to either (1) comply with the requirements of the Nassau County Living Wage Law or (2) as applicable, obtain a waiver of the requirements of the Law pursuant to section 9 of the Law. In the event that the contractor does not comply with the requirements of the Law or obtain a waiver of the requirements of the Law, and such contractor establishes to the satisfaction of the Department that at the time of execution of this agreement, it had a reasonable certainty that it would receive such waiver based on the Law and Rules pertaining to waivers, the County will agree to terminate the contract without imposing costs or seeking damages against the Contractor

3. In the past five years, Contractor _____ (HAS) _____ (HAS NOT) not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed against the Contractor, describe below:

4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action _____ (HAS) _____ (HAS NOT) been commenced against or relating to the Contractor in connection with federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If such a proceeding, action, or investigation has been commenced, describe below:

5. Contractor agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

Dated

Signature of Chief Executive Officer

Name of Chief Executive Officer

Sworn to before me this

_____ day of _____, 20____.

Notary Public



Nassau County Interim Finance Authority

Contract Approval Request Form (As of January 1, 2015)

1. Vendor: Nassau Energy, LLC

2. Amount requiring NIFA approval: \$29,900,000.00

Amount to be encumbered: \$0.01

Slip Type: New

If new contract - \$ amount should be full amount of contract

If advisement - NIFA only needs to review if it is increasing funds above the amount previously approved by NIFA

If amendment - \$ amount should be full amount of amendment only

3. Contract Term: 01/31/2023 to 01/31/2025

Has work or services on this contract commenced? No

If yes, please explain:

4. Funding Source:

General Fund (GEN)	X	Grant Fund (GRT)
Capital Improvement Fund (CAP)		Other
Federal %	0	
State %	0	
County %	100	

Is the cash available for the full amount of the contract? Yes

If not, will it require a future borrowing? No

Has the County Legislature approved the borrowing? N/A

Has NIFA approved the borrowing for this contract? N/A

5. Provide a brief description (4 to 5 sentences) of the item for which this approval is requested:

The subject Operation and Maintenance Agreement allows for the continued delivery of thermal energy in the form of high-temperature hot water and chilled water for heating and cooling purposes to several critical facilities which include educational, cultural and healthcare institutions in and around the Nassau County Hub. The proposed Operation and Maintenance Agreement has a term of two years.

Under the terms of the Operation and Maintenance Agreement, the operator, Nassau Energy LLC, will operate the existing facilities in order to continue to provide such thermal energy to the existing base customers (Nassau Community College, the Veterans Memorial Coliseum, Long Island Children's Museum, the Cradle of Aviation, Long Island Marriott, Nassau University Medical Center (NUMC), the Correctional Center, Technical Service Building and the Aquatic Center. The Operation and Maintenance Agreement also grants to Nassau Energy, LLC the right to pursue and negotiate a potential long-term solution for on-site production of thermal and electric energy to the District Energy System that can contribute to the development of the Hub.

6. Has the item requested herein followed all proper procedures and thereby approved by the:

Nassau County Attorney as to form

Nassau County Committee and/or Legislature

Date of approval(s) and citation to the resolution where approval for this item was provided:

7. Identify all contracts (with dollar amounts) with this or an affiliated party within the prior 12 months:

Contract ID	Posting Date	Amount Added in Prior 12 Months
-------------	--------------	---------------------------------

AUTHORIZATION

To the best of my knowledge, I hereby certify that the information contained in this Contract Approval Request Form and any additional information submitted in connection with this request is true and accurate and that all expenditures that will be made in reliance on this authorization are in conformance with the Nassau County Approved Budget and not in conflict with the Nassau County Multi-Year Financial Plan. I understand that NIFA will rely upon this information in its official deliberations.

Authenticated User

Date

COMPTROLLER'S OFFICE

To the best of my knowledge, I hereby certify that the information listed is true and accurate and is in conformance with the Nassau County Approved Budget and not in conflict with the Nassau County Multi-Year Financial Plan.

Regarding funding, please check the correct response:

I certify that the funds are available to be encumbered pending NIFA approval of this contract.

If this is a capital project:

I certify that the bonding for this contract has been approved by NIFA.

Budget is available and funds have been encumbered but the project requires NIFA bonding authorization.

Authenticated User

Date

NIFA

Amount being approved by NIFA:

Payment is not guaranteed for any work commenced prior to this approval.

Authenticated User

Date

NOTE: All contract submissions MUST include the County's own routing slip, current NIFS printouts for all relevant accounts and relevant Nassau County Legislature communication documents and relevant supplemental information pertaining to the item requested herein.

NIFA Contract Approval Request Form MUST be filled out in its entirety before being submitted to NIFA for review.

NIFA reserves the right to request additional information as needed.

Elaine Phillips
Comptroller



OFFICE OF THE COMPTROLLER
240 Old Country Road
Mineola, New York 11501

COMPTROLLER APPROVAL FORM FOR PERSONAL, PROFESSIONAL OR HUMAN SERVICES CONTRACTS

Attach this form along with all personal, professional or human services contracts, contract renewals, extensions and amendments.

CONTRACTOR NAME: _____

CONTRACTOR ADDRESS: _____

FEDERAL TAX ID #: _____

Instructions: Please check the appropriate box ("☑") after one of the following roman numerals, and provide all the requested information.

I. ☐ The contract was awarded to the lowest, responsible bidder after advertisement for sealed bids. The contract was awarded after a request for sealed bids was published in _____ [newspaper] on _____ [date]. The sealed bids were publicly opened on _____ [date]. _____ [#] of sealed bids were received and opened.

II. ☐ The contractor was selected pursuant to a Request for Proposals.

The Contract was entered into after a written request for proposals was issued on _____ [date]. Potential proposers were made aware of the availability of the RFP by advertisement in _____ [newspaper], posting on industry websites, via email to interested parties and by publication on the County procurement website. Proposals were due on _____ [date]. _____ [state #] proposals were received and evaluated. The evaluation committee consisted of: _____

_____ (list # of persons on committee and their respective departments). The proposals were scored and ranked. As a result of the scoring and ranking, the highest-ranking proposer was selected.

III. ☐ This is a renewal, extension or amendment of an existing contract.

The contract was originally executed by Nassau County on _____[date]. This is a renewal or extension pursuant to the contract, or an amendment within the scope of the contract or RFP (copies of the relevant pages are attached). The original contract was entered into after _____

_____[describe procurement method, i.e., RFP, three proposals evaluated, etc.] Attach a copy of the most recent evaluation of the contractor's performance for any contract to be renewed or extended. If the contractor has not received a satisfactory evaluation, the department must explain why the contractor should nevertheless be permitted to continue to contract with the county.

IV. ☐ Pursuant to Executive Order No. 1 of 1993, as amended, at least three proposals were solicited and received. The attached memorandum from the department head describes the proposals received, along with the cost of each proposal.

- ☐ **A.** The contract has been awarded to the proposer offering the lowest cost proposal; **OR:**
- ☐ **B.** The attached memorandum contains a detailed explanation as to the reason(s) why the contract was awarded to other than the lowest-cost proposer. The attachment includes a specific delineation of the unique skills and experience, the specific reasons why a proposal is deemed superior, and/or why the proposer has been judged to be able to perform more quickly than other proposers.

V. ☐ Pursuant to Executive Order No. 1 of 1993 as amended, the attached memorandum from the department head explains why the department did not obtain at least three proposals.

- ☐ **A.** There are only one or two providers of the services sought or less than three providers submitted proposals. The memorandum describes how the contractor was determined to be the sole source provider of the personal service needed or explains why only two proposals could be obtained. If two proposals were obtained, the memorandum explains that the contract was awarded to the lowest cost proposer, or why the selected proposer offered the higher quality proposal, the proposer's unique and special experience, skill, or expertise, or its availability to perform in the most immediate and timely manner.
- ☐ **B.** The memorandum explains that the contractor's selection was dictated by the terms of a federal or New York State grant, by legislation or by a court order. (Copies of the relevant documents are attached).
- ☐ **C.** Pursuant to General Municipal Law Section 104, the department is purchasing the services required through a New York State Office of General Services contract no. _____, and the attached memorandum explains how the purchase is within the scope of the terms of that contract.

- ☐ **D.** Pursuant to General Municipal Law Section 119-o, the department is purchasing the services required through an inter-municipal agreement.

VI. ☐ This is a human services contract with a not-for-profit agency for which a competitive process has not been initiated. Attached is a memorandum that explains the reasons for entering into this contract without conducting a competitive process, and details when the department intends to initiate a competitive process for the future award of these services. For any such contract, where the vendor has previously provided services to the county, attach a copy of the most recent evaluation of the vendor's performance. If the contractor has not received a satisfactory evaluation, the department must explain why the contractor should nevertheless be permitted to contract with the county.

In certain limited circumstances, conducting a competitive process and/or completing performance evaluations may not be possible because of the nature of the human services program, or because of a compelling need to continue services through the same provider. In those circumstances, attach an explanation of why a competitive process and/or performance evaluation is inapplicable.

VII. ☐ This is a public works contract for the provision of architectural, engineering or surveying services. The attached memorandum provides details of the department's compliance with Board of Supervisors' Resolution No. 928 of 1993, including its receipt and evaluation of annual Statements of Qualifications & Performance Data, and its negotiations with the most highly qualified firms.

Instructions with respect to Sections VIII, IX and X: All Departments must check the box for VIII. Then, check the box for either IX or X, as applicable.

VIII. ☐ Participation of Minority Group Members and Women in Nassau County Contracts. The selected contractor has agreed that it has an obligation to utilize best efforts to hire MWBE sub-contractors. Proof of the contractual utilization of best efforts as outlined in Exhibit "EE" may be requested at any time, from time to time, by the Comptroller's Office prior to the approval of claim vouchers.

IX. ☐ Department MWBE responsibilities. To ensure compliance with MWBE requirements as outlined in Exhibit "EE", Department will require vendor to submit list of sub-contractor requirements prior to submission of the first claim voucher, for services under this contract being submitted to the Comptroller.

X. ☐ Vendor will not require any sub-contractors.

In addition, if this is a contract with an individual or with an entity that has only one or two employees: ☐ a review of the criteria set forth by the Internal Revenue Service, *Revenue Ruling No. 87-41, 1987-1 C.B. 296*, attached as Appendix A to the Comptroller's Memorandum, dated February 13, 2004, concerning independent contractors and employees indicates that the contractor would not be considered an employee for federal tax purposes.


Department Head Signature

Date

NOTE: Any information requested above, or in the exhibit below, may be included in the county's "staff summary" form in lieu of a separate memorandum.



COUNTY OF NASSAU

POLITICAL CAMPAIGN CONTRIBUTION DISCLOSURE FORM

1. Has the vendor or any corporate officers of the vendor provided campaign contributions pursuant to the New York State Election Law in (a) the period beginning April 1, 2016 and ending on the date of this disclosure, or (b), beginning April 1, 2018, the period beginning two years prior to the date of this disclosure and ending on the date of this disclosure, to the campaign committees of any of the following Nassau County elected officials or to the campaign committees of any candidates for any of the following Nassau County elected offices: the County Executive, the County Clerk, the Comptroller, the District Attorney, or any County Legislator?

YES ☐ NO ☒ If yes, to what campaign committee?

Electronically signed and certified at the date and time indicated by:
Stefaan Sercu [STEFAAN.SERCU@ENGIE.COM]

Dated: 01/04/2023 05:40:18 pm

Vendor: Nassau Energy, LLC

Title: President



COUNTY OF NASSAU

LOBBYIST REGISTRATION AND DISCLOSURE FORM

1. Name, address and telephone number of lobbyist(s)/lobbying organization. The term "lobbyist" means any and every person or organization retained, employed or designated by any client to influence - or promote a matter before - Nassau County, its agencies, boards, commissions, department heads, legislators or committees, including but not limited to the Open Space and Parks Advisory Committee and Planning Commission. Such matters include, but are not limited to, requests for proposals, development or improvement of real property subject to County regulation, procurements. The term "lobbyist" does not include any officer, director, trustee, employee, counsel or agent of the County of Nassau, or State of New York, when discharging his or her official duties.

N/A

2. List whether and where the person/organization is registered as a lobbyist (e.g., Nassau County, New York State):

N/A

3. Name, address and telephone number of client(s) by whom, or on whose behalf, the lobbyist is retained, employed or designated:

N/A

4. Describe lobbying activity conducted, or to be conducted, in Nassau County, and identify client(s) for each activity listed. See the last page for a complete description of lobbying activities.

N/A

5. The name of persons, organizations or governmental entities before whom the lobbyist expects to lobby:

N/A

6. If such lobbyist is retained or employed pursuant to a written agreement of retainer or employment, you must attach a copy of such document; and if agreement of retainer or employment is oral, attach a written statement of the substance thereof. If the written agreement of retainer or employment does not contain a signed authorization from the client by whom you have been authorized to lobby, separately attach such a written authorization from the client.

7. Has the lobbyist/lobbying organization or any of its corporate officers provided campaign contributions pursuant to the New York State Election Law in (a) the period beginning April 1, 2016 and ending on the date of this disclosure, or (b), beginning April 1, 2018, the period beginning two years prior to the date of this disclosure and ending on the date of this disclosure, to the campaign committees of any of the following Nassau County elected officials or to the campaign committees of any candidates for any of the following Nassau County elected offices: the County Executive, the County Clerk, the Comptroller, the District Attorney, or any County Legislator?

YES [] NO [X] If yes, to what campaign committee? If none, you must so state:

I understand that copies of this form will be sent to the Nassau County Department of Information Technology ("IT") to be posted on the County's website.

I also understand that upon termination of retainer, employment or designation I must give written notice to the County Attorney within thirty (30) days of termination.

VERIFICATION: The undersigned affirms and so swears that he/she has read and understood the foregoing statements and they are, to his/her knowledge, true and accurate.

The undersigned further certifies and affirms that the contribution(s) to the campaign committees listed above were made freely and without duress, threat or any promise of a governmental benefit or in exchange for any benefit or remuneration.

Electronically signed and certified at the date and time indicated by:
Stefaan Sercu [STEFAAN.SERCU@ENGIE.COM]

Dated: 01/05/2023 11:49:11 am

Vendor: Nassau Energy, LLC

Title: President

The term lobbying shall mean any attempt to influence: any determination made by the Nassau County Legislature, or any member thereof, with respect to the introduction, passage, defeat, or substance of any local legislation or resolution; any determination by the County Executive to support, oppose, approve or disapprove any local legislation or resolution, whether or not such legislation has been introduced in the County Legislature; any determination by an elected County official or an officer or employee of the County with respect to the procurement of goods, services or construction, including the preparation of contract specifications, including by not limited to the preparation of requests for proposals, or solicitation, award or administration of a contract or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies; any determination made by the County Executive, County Legislature, or by the County of Nassau, its agencies, boards, commissions department heads or committees, including but not limited to the Open Space and Parks Advisory Committee, the Planning Commission with respect to the zoning, use, development or improvement of real property subject to County regulation, or any agencies, boards, commissions, department heads or committees with respect to requests for proposals, bidding, procurement or contracting for services for the County; any determination made by an elected county official or an officer or employee of the county with respect to the terms of the acquisition or disposition by the county of any interest in real property, with respect to a license or permit for the use of real property of or by the county, or with respect to a franchise, concession or revocable consent; the proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law; the decision to hold, timing or outcome of any rate making proceeding before an agency; the agenda or any determination of a board or commission; any determination regarding the calendaring or scope of any legislature oversight hearing; the issuance, repeal, modification or substance of a County Executive Order; or any determination made by an elected county official or an officer or employee of the county to support or oppose any state or federal legislation, rule or regulation, including any determination made to support or oppose that is contingent on any amendment of such legislation, rule or regulation, whether or not such legislation has been formally introduced and whether or not such rule or regulation has been formally proposed.

The term "lobbying" or "lobbying activities" does not include: Persons engaged in drafting legislation, rules, regulations or rates; persons advising clients and rendering opinions on proposed legislation, rules, regulations or rates, where such professional services are not otherwise connected with legislative or executive action on such legislation or administrative action on such rules, regulations or rates; newspapers and other periodicals and radio and television stations and owners and employees thereof, provided that their activities in connection with proposed legislation, rules, regulations or rates are limited to the publication or broadcast of news items, editorials or other comment, or paid advertisements; persons who participate as witnesses. attorneys or other representatives in public rule-making or rate-making proceedings of a County agency, with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation; persons who attempt to influence a County agency in an adjudicatory proceeding, as defined by § 102 of the New York State Administrative Procedure Act.

Business History Form

The contract shall be awarded to the responsible proposer who, at the discretion of the County, taking into consideration the reliability of the proposer and the capacity of the proposer to perform the services required by the County, offers the best value to the County and who will best promote the public interest.

In addition to the submission of proposals, each proposer shall complete and submit this questionnaire. The questionnaire shall be filled out by the owner of a sole proprietorship or by an authorized representative of the firm, corporation or partnership submitting the Proposal.

NOTE: All questions require a response, even if response is "none" or "not-applicable." No blanks.

(USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER THE FOLLOWING QUESTIONS).

Date: 01/10/2023

1) Proposer's Legal Name: Nassau Energy, LLC

2) Address of Place of Business: 185 Charles Lindbergh Blvd

City: Garden City State/Province/
Territory: NY Zip/Postal
Code: 11530

Country: US

3) Mailing Address (if different): 1360 Post Oak Blvd., Suite 400

City: Houston State/Province/
Territory: TX Zip/Postal
Code: 77056

Country: US

Phone: (713) 636-0000

Does the business own or rent its facilities? R If other, please provide details:

--

4) Dun and Bradstreet number: 068478554

5) Federal I.D. Number: 133407290

6) The proposer is a: Other (Describe) Limited Liability Corporation ("LLC")

7) Does this business share office space, staff, or equipment expenses with any other business?

YES ☐ NO ☒ If yes, please provide details:

--

8) Does this business control one or more other businesses?

YES ☐ NO ☒ If yes, please provide details:

- 9) Does this business have one or more affiliates, and/or is it a subsidiary of, or controlled by, any other business?

YES ☒ NO ☐ If yes, please provide details:

Nassau Energy, LLC is member-managed by Nassau Energy Services, LLC, which is an indirect subsidiary of ENGIE Holdings Inc., a large company with numerous affiliates and subsidiaries. ENGIE Holdings Inc. is an indirect subsidiary of ENGIE S.A., a global corporation with hundreds of affiliates and subsidiaries. ENGIE Holdings Inc. is the top North American subsidiary of ENGIE S. A. Nassau Energy, LLC will be the only subsidiary to perform the contract. Further, all responses in this form are, unless otherwise indicated, limited to ENGIE Holdings Inc. and its subsidiaries in North America.

2 File(s) uploaded: Org chart of Nassau Energy, LLC 12-31-22.pdf, Organizational Chart for Nassau Energy Services, LLC (Member - Manager of Nassau Energy, LLC).PNG

- 10) Has the proposer ever had a bond or surety cancelled or forfeited, or a contract with Nassau County or any other government entity terminated?

YES ☐ NO ☒ If yes, state the name of bonding agency, (if a bond), date, amount of bond and reason for such cancellation or forfeiture: or details regarding the termination (if a contract).

- 11) Has the proposer, during the past seven years, been declared bankrupt?

YES ☐ NO ☒ If yes, state date, court jurisdiction, amount of liabilities and amount of assets

- 12) In the past five years, has this business and/or any of its owners and/or officers and/or any affiliated business, been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency? And/or, in the past 5 years, have any owner and/or officer of any affiliated business been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, where such investigation was related to activities performed at, for, or on behalf of an affiliated business.

YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

- 13) In the past 5 years, has this business and/or any of its owners and/or officers and/or any affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies? And/or, in the past 5 years, has any owner and/or officer of an affiliated business been the subject of an investigation by any government agency, including but not limited to federal, state and local regulatory agencies, for matters pertaining to that individual's position at or relationship to an affiliated business.

YES ☒ NO ☐ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

Note that the state of NY is currently conducting an audit of the 2018, 2019, and 2020 consolidated income tax return of ENGIE Holdings Inc. of which Nassau Energy LLC is a member. The audit commenced on July 21, 2022 and is expected to conclude by December 31, 2023. The state of NY has not proposed any income tax adjustments for Nassau Energy LLC to date. Although we do not believe an audit rises to the level of an "investigation" of the sort suggested by this Question, we are disclosing its existence out of an abundance of caution.

- 14) Has any current or former director, owner or officer or managerial employee of this business had, either before or during

such person's employment, or since such employment if the charges pertained to events that allegedly occurred during the time of employment by the submitting business, and allegedly related to the conduct of that business:

a) Any felony charge pending?

YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

b) Any misdemeanor charge pending?

YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

c) In the past 10 years, you been convicted, after trial or by plea, of any felony and/or any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?

YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

d) In the past 5 years, been convicted, after trial or by plea, of a misdemeanor?

YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

e) In the past 5 years, been found in violation of any administrative, statutory, or regulatory provisions?

YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

- 15) In the past (5) years, has this business or any of its owners or officers, or any other affiliated business had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held?

YES ☐ NO ☒ If yes, provide details for each such investigation, an explanation of the circumstances and corrective action taken.

- 16) For the past (5) tax years, has this business failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges?

YES ☐ NO ☒ If yes, provide details for each such year. Provide a detailed response to all questions checked 'YES'. If you need more space, photocopy the appropriate page and attach it to the questionnaire.

- 17) Conflict of Interest:

a) Please disclose any conflicts of interest as outlined below. NOTE: If no conflicts exist, please expressly state "No conflict exists."

(i) Any material financial relationships that your firm or any firm employee has that may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of Nassau County.

No conflict exists

(ii) Any family relationship that any employee of your firm has with any County public servant that may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of Nassau County.

No conflict exists

(iii) Any other matter that your firm believes may create a conflict of interest or the appearance of a conflict of interest in acting on behalf of Nassau County.

No conflict exists

- b) Please describe any procedures your firm has, or would adopt, to assure the County that a conflict of interest would not exist for your firm in the future.

Please see our Ethics Policy attached

2 File(s) uploaded: ENGIE_Code-Ethics of Business Relationships - Governing Principals.pdf, Ethics Charter EN.pdf

- A. Include a resume or detailed description of the Proposer's professional qualifications, demonstrating extensive experience in your profession. Any prior similar experiences, and the results of these experiences, must be identified.

Have you previously uploaded the below information under in the Document Vault?

YES ☒ NO ☐

Is the proposer an individual?

YES ☐ NO ☒ Should the proposer be other than an individual, the Proposal MUST include:

- i) Date of formation;

01/20/1987

- ii) Name, addresses, and position of all persons having a financial interest in the company, including shareholders, members, general or limited partner. If none, explain.

Nassau Energy, LLC is an indirect subsidiary of ENGIE S.A.

- iii) Name, address and position of all officers and directors of the company. If none, explain.

Member-Managed by: Nassau Energy Services, LLC

Officers:

Stefaan Sercu - President

Rachel W. Kilpatrick - VP and Assistant Secretary

(See Attached Complete List)

2 File(s) uploaded: Officers Directors Listing Nassau Energy Services, LLC 6-10-20(1).pdf, Officers of Nassau Energy, LLC (as of 09-30-2021).pdf

- iv) State of incorporation (if applicable);

DE

- v) The number of employees in the firm;

23

- vi) Annual revenue of firm;
29500000
- vii) Summary of relevant accomplishments
31 years of successful service to Nassau County. \$24.9 million in annual revenue.
- viii) Copies of all state and local licenses and permits.

B. Indicate number of years in business.

31

C. Provide any other information which would be appropriate and helpful in determining the Proposer's capacity and reliability to perform these services.

31 years of successful service to Nassau County; including 100% thermal reliability to our customers since March, 1991.

D. Provide names and addresses for no fewer than three references for whom the Proposer has provided similar services or who are qualified to evaluate the Proposer's capability to perform this work.

Company	Holyoke Gas & Electric		
Contact Person	Brian Beauregard		
Address	200 Northhampton St.		
City	Holyoke 01040	State/Province/Territory	MA
Country	US		
Telephone	(413) 536-9352		
Fax #			
E-Mail Address	bbeauregard@hged.com		

Company	University of Maryland at College Park		
Contact Person	David Shaughnessy		
Address	7757 Baltimore Avenue		
City	College Park	State/Province/Territory	MD
Country	US		
Telephone	(301) 405-1000		
Fax #			
E-Mail Address	dshaughn@umd.edu		

Company	Miller Coors		
Contact Person	Axel Johnson		
Address	PO Box 4030 / Mail Stop - BC 390		
City	Golden	State/Province/Territory	CO
Country	US		
Telephone	(303) 277-2915		
Fax #	(303) 277-5738		
E-Mail Address	axel.johnson@millercoors.com		

I, Stefaan Sercu , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Stefaan Sercu , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Name of submitting business: Nassau Energy, LLC

Electronically signed and certified at the date and time indicated by:
Stefaan Sercu STEFAAN.SERCU@ENGIE.COM

President`
Title

01/10/2023
Date

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered by all officers and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer. Answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name: Stefaan Sercu
Date of birth: 02/09/1973
Home address: 701 Usener St.

City:	<u>Houston</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77009</u>
Country:	<u>US</u>				

Business Address: 1360 Post Oak Lane, Suite 400

City:	<u>Houston</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77056</u>
Country:	<u>US</u>				
Telephone:	<u>713 - 636- 1757</u>				

Other present address(es): _____

City:	_____	State/Province/ Territory:	_____	Zip/Postal Code:	_____
Country:	_____				
Telephone:	_____				

List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President	<u>07/01/2014</u>	Treasurer	_____
Chairman of Board	_____	Shareholder	_____
Chief Exec. Officer	<u>07/01/2014</u>	Secretary	_____
Chief Financial Officer	_____	Partner	_____
Vice President	_____		
(Other)	_____		

3. Do you have an equity interest in the business submitting the questionnaire?

YES [] NO [X] If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?

YES [] NO [X] If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or notfor-profit organization other than the one submitting the questionnaire?

YES ☒ NO ☐ If Yes, provide details.

1 File(s) uploaded: S. Sercu Listing of Officer and Director Positions.pdf

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer?

YES ☐ NO ☒ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:

- a. Been debarred by any government agency from entering into contracts with that agency?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Been declared in default and/or terminated for cause on any contract, and/or had any contracts cancelled for cause?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated?

YES ☐ NO ☒ If 'Yes', provide details for each such instance. (Provide a detailed response to all questions check "Yes". If you need more space, photocopy the appropriate page and attached it to the questionnaire.)

9. a. Is there any felony charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

b. Is there any misdemeanor charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

c. Is there any administrative charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

d. In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

e. In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

f. In the past 5 years, have you been found in violation of any administrative or statutory charges?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

10 In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5? YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

11 In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer?

YES ☒ NO ☐ If yes, provide an explanation of the circumstances and corrective action taken.

Note that the state of NY is currently conducting an audit of the 2018, 2019, and 2020 consolidated income tax return of ENGIE Holdings Inc. of which Nassau Energy LLC is a member. The audit commenced on July 21, 2022 and is expected to conclude by December 31, 2023. The state of NY has not proposed any income tax adjustments for Nassau Energy LLC to date. Although we do not believe an audit rises to the level of an "investigation" of the sort suggested by this Question 11, we are disclosing its existence out of an abundance of caution.

12 In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

13 For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or

- . local taxes or other assessed charges, including but not limited to water and sewer charges?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

I, Stefaan Sercu , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Stefaan Sercu , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Nassau Energy, LLC

Name of submitting business

Electronically signed and certified at the date and time indicated by:

Stefaan Sercu STEFAAN.SERCU@ENGIE.COM

President

Title

01/10/2023 10:34:39 am

Date

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered by all officers and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer. Answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name: Sarah Pearce
Date of birth: 01/25/1979
Home address: 584 Brentwood Ave
City: Upland State/Province/Territory: CA Zip/Postal Code: 91786
Country: US
Business Address: 150 E Colorado Blvd. Suite 360
City: Pasadena State/Province/Territory: CA Zip/Postal Code: 91105
Country: US
Telephone: 6263774751
Other present address(es):
City: _____ State/Province/Territory: _____ Zip/Postal Code: _____
Country: _____
Telephone: _____

List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President	_____	Treasurer	<u>04/01/2020</u>
Chairman of Board	_____	Shareholder	_____
Chief Exec. Officer	_____	Secretary	_____
Chief Financial Officer	_____	Partner	_____
Vice President	<u>04/01/2020</u>		
(Other)			

3. Do you have an equity interest in the business submitting the questionnaire?
YES [] NO [X] If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?
YES [] NO [X] If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or notfor-profit organization other than the one submitting the questionnaire?
YES ☒ NO ☐ If Yes, provide details.

2 File(s) uploaded: S. Pearce Exhibit to Question No. 5 Director and Officer Positions.docx, S. Pearce Officer and Director Positions.pdf

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer?
YES ☐ NO ☒ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:

- a. Been debarred by any government agency from entering into contracts with that agency?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Been declared in default and/or terminated for cause on any contract, and/or had any contracts cancelled for cause?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated?
YES ☐ NO ☒ If 'Yes', provide details for each such instance. (Provide a detailed response to all questions check "Yes". If you need more space, photocopy the appropriate page and attached it to the questionnaire.)

9.

- a. Is there any felony charge pending against you?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Is there any misdemeanor charge pending against you?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Is there any administrative charge pending against you?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- e. In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- f. In the past 5 years, have you been found in violation of any administrative or statutory charges?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- 10 In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- 11 In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer?
YES ☒ NO ☐ If yes, provide an explanation of the circumstances and corrective action taken.

Note that the state of NY is currently conducting an audit of the 2018, 2019, and 2020 consolidated income tax return of ENGIE Holdings Inc. of which Nassau Energy LLC is a member. The audit commenced on July 21, 2022 and is expected to conclude by December 31, 2023. The state of NY has not proposed any income tax adjustments for Nassau Energy LLC to date. Although we do not believe an audit rises to the level of an "investigation" of the sort suggested by this Question 11, we are disclosing its existence out of an abundance of caution.

Please also note that the Internal Revenue Service ("IRS") concluded its audit of the 2016 and 2017 consolidated income tax return of ENGIE Holdings Inc., of which Nassau Energy LLC is a member. The income tax returns were accepted as filed. "No-change".

- 12 In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any

- . sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- 13 For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or
. local taxes or other assessed charges, including but not limited to water and sewer charges?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

I, Sarah Pearce , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Sarah Pearce , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Nassau Energy, LLC

Name of submitting business

Electronically signed and certified at the date and time indicated by:

Sarah Pearce SARAH.PEARCE@ENGIE.COM

Vice President and Treasurer

Title

01/10/2023 12:19:13 pm

Date

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered by all officers and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer. Answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name: Rachel W. Kilpatrick
Date of birth: 05/06/1956
Home address: 2710 Sunset Boulevard

City:	<u>Houston</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77005</u>
Country:	<u>US</u>				

Business Address: 1360 Post Oak Blvd, Suite 400

City:	<u>Houston</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77056</u>
Country:	<u>US</u>				
Telephone:	<u>(713) 636-1134</u>				

Other present address(es): _____

City:	<u>Houston</u>	State/Province/ Territory:	_____	Zip/Postal Code:	_____
Country:	_____				
Telephone:	_____				

List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President	_____	Treasurer	_____
Chairman of Board	_____	Shareholder	_____
Chief Exec. Officer	_____	Secretary	<u>01/01/2015</u>
Chief Financial Officer	_____	Partner	_____
Vice President	<u>10/12/2014</u>		
(Other)			

3. Do you have an equity interest in the business submitting the questionnaire?

YES [] NO [X] If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?

YES [] NO [X] If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or notfor-profit organization other than the one submitting the questionnaire?
YES ☒ NO ☐ If Yes, provide details.

As an officer of a large public corporation, I am listed as an officer of a large number of legal entities owned by the corporation; making it impractical to list all such entities here.

4 File(s) uploaded: Copy of KILPATRICK QRY_DO SLATES ALL.xlsx, R. Kilpatrick Response to No. 5 Listing of Officer Director Positions.pdf, R. Kilpatrick Response to No. 5 Listing of Officer Director Positions.pdf, R. Kilpatrick Response to No. 5 Listing of Officer Director Positions.pdf

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer?
YES ☐ NO ☒ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:

- a. Been debarred by any government agency from entering into contracts with that agency?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Been declared in default and/or terminated for cause on any contract, and/or had any contracts cancelled for cause?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated?
YES ☐ NO ☒ If 'Yes', provide details for each such instance. (Provide a detailed response to all questions check "Yes". If you need more space, photocopy the appropriate page and attached it to the questionnaire.)

9.

- a. Is there any felony charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Is there any misdemeanor charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Is there any administrative charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- e. In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- f. In the past 5 years, have you been found in violation of any administrative or statutory charges?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- 10 In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- 11 In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- 12 In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- 13 For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

--

I, Rachel W Killpatrick , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Rachel W Killpatrick , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

CERTIFICATION

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Nassau Energy LLC

Name of submitting business

Electronically signed and certified at the date and time indicated by:

Rachel W Kilpatrick RACHEL.KILPATRICK@ENGIE.COM

Vice President

Title

01/09/2023 12:57:19 pm

Date

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered by all officers and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer. Answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name: Kevin Jordan
Date of birth: 12/04/1973
Home address: 3226 Oak Bough Lane

City:	<u>Missouri City</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77459</u>
Country:	<u>US</u>				

Business Address: 1360 Post Oak Lane

City:	<u>Houston</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77056</u>
Country:	<u>US</u>				
Telephone:	<u>7136361477</u>				

Other present address(es): _____

City:	_____	State/Province/ Territory:	_____	Zip/Postal Code:	_____
Country:	_____				
Telephone:	_____				

List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President	_____	Treasurer	_____
Chairman of Board	_____	Shareholder	_____
Chief Exec. Officer	_____	Secretary	_____
Chief Financial Officer	_____	Partner	_____
Vice President	<u>07/01/2021</u>		
(Other)			

3. Do you have an equity interest in the business submitting the questionnaire?

YES [] NO [X] If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?

YES [] NO [X] If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or notfor-profit organization other than the one submitting the questionnaire?
YES ☒ NO ☐ If Yes, provide details.

1 File(s) uploaded: Kevin Jordan Officer and Director Positions.pdf

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer?
YES ☐ NO ☒ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:
- a. Been debarred by any government agency from entering into contracts with that agency?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Been declared in default and/or terminated for cause on any contract, and/or had any contracts cancelled for cause?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated?
YES ☐ NO ☒ If 'Yes', provide details for each such instance. (Provide a detailed response to all questions check "Yes". If you need more space, photocopy the appropriate page and attached it to the questionnaire.)

- 9.
- a. Is there any felony charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

b. Is there any misdemeanor charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

c. Is there any administrative charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

d. In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

e. In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

f. In the past 5 years, have you been found in violation of any administrative or statutory charges?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

10 In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5? YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

11 In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer?

YES ☒ NO ☐ If yes, provide an explanation of the circumstances and corrective action taken.

Note that the state of NY is currently conducting an audit of the 2018, 2019, and 2020 consolidated income tax return of ENGIE Holdings Inc. of which Nassau Energy LLC is a member. The audit commenced on July 21, 2022 and is expected to conclude by December 31, 2023. The state of NY has not proposed any income tax adjustments for Nassau Energy LLC to date. Although we do not believe an audit rises to the level of an "investigation" of the sort suggested by this Question 11, we are disclosing its existence out of an abundance of caution.

12 In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

13 For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or

- . local taxes or other assessed charges, including but not limited to water and sewer charges?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

I, Kevin Jordan , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Kevin Jordan , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

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Nassau Energy, LLC

Name of submitting business

Electronically signed and certified at the date and time indicated by:

Kevin Jordan KEVIN.JORDAN@ENGIE.COM

Vice President

Title

01/11/2023 05:58:22 pm

Date

PRINCIPAL QUESTIONNAIRE FORM

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1. Principal Name: John B. Boatwright, Jr.
Date of birth: 10/22/1966
Home address: 10015 Longmont Dr.

City:	<u>Houston</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77042</u>
Country:	<u>US</u>				

Business Address: 1360 Post Oak Lane, Suite 400

City:	<u>Houston</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77056</u>
Country:	<u>US</u>				
Telephone:	<u>713 - 636-1172</u>				

Other present address(es): _____

City:	_____	State/Province/ Territory:	_____	Zip/Postal Code:	_____
Country:	_____				
Telephone:	_____				

List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President	_____	Treasurer	_____
Chairman of Board	_____	Shareholder	_____
Chief Exec. Officer	_____	Secretary	<u>04/01/2020</u>
Chief Financial Officer	_____	Partner	_____
Vice President	_____		
(Other)	_____		

3. Do you have an equity interest in the business submitting the questionnaire?
YES [] NO [X] If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?
YES [] NO [X] If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or notfor-profit organization other than the one submitting the questionnaire?
YES ☒ NO ☐ If Yes, provide details.

1 File(s) uploaded: J. Boatwright Officer - Director Positions.pdf

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer?
YES ☐ NO ☒ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:
- a. Been debarred by any government agency from entering into contracts with that agency?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Been declared in default and/or terminated for cause on any contract, and/or had any contracts cancelled for cause?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated?
YES ☐ NO ☒ If 'Yes', provide details for each such instance. (Provide a detailed response to all questions check "Yes". If you need more space, photocopy the appropriate page and attached it to the questionnaire.)

- 9.
- a. Is there any felony charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

b. Is there any misdemeanor charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

c. Is there any administrative charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

d. In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

e. In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

f. In the past 5 years, have you been found in violation of any administrative or statutory charges?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

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YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

11 In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer?

YES ☒ NO ☐ If yes, provide an explanation of the circumstances and corrective action taken.

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YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

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. local taxes or other assessed charges, including but not limited to water and sewer charges?
YES [] NO [X] If yes, provide an explanation of the circumstances and corrective action taken.

--

I, John B. Boatwright, Jr. , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, John B. Boatwright, Jr. , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

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Nassau Energy, LLC

Name of submitting business

Electronically signed and certified at the date and time indicated by:

John B. Boatwright, Jr. JOHN.BOATWRIGHT@ENGIE.COM

Secretary

Title

01/10/2023 12:30:56 pm

Date

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered by all officers and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer. Answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

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1. Principal Name: Darin Hawkins
Date of birth: 01/12/1974
Home address: 130 Bellaire Ct.

City:	<u>Bellaire</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77401</u>
Country:	<u>US</u>				

Business Address: 1360 Post Oak Lane, Suite 400

City:	<u>Houston</u>	State/Province/ Territory:	<u>TX</u>	Zip/Postal Code:	<u>77056</u>
Country:	<u>US</u>				
Telephone:	<u>7136361151</u>				

Other present address(es): _____

City:	_____	State/Province/ Territory:	_____	Zip/Postal Code:	_____
Country:	_____				
Telephone:	_____				

List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President	_____	Treasurer	_____
Chairman of Board	_____	Shareholder	_____
Chief Exec. Officer	_____	Secretary	_____
Chief Financial Officer	_____	Partner	_____
Vice President	<u>07/01/2014</u>		
(Other)			

3. Do you have an equity interest in the business submitting the questionnaire?

YES [] NO [X] If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?

YES [] NO [X] If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or notfor-profit organization other than the one submitting the questionnaire?
YES ☒ NO ☐ If Yes, provide details.

1 File(s) uploaded: Listing of D. Hawkins Officer and Director Positions.pdf

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer?
YES ☐ NO ☒ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:

- a. Been debarred by any government agency from entering into contracts with that agency?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Been declared in default and/or terminated for cause on any contract, and/or had any contracts cancelled for cause?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated?
YES ☐ NO ☒ If 'Yes', provide details for each such instance. (Provide a detailed response to all questions check "Yes". If you need more space, photocopy the appropriate page and attached it to the questionnaire.)

9.
a. Is there any felony charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

b. Is there any misdemeanor charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

c. Is there any administrative charge pending against you?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

d. In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

e. In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

f. In the past 5 years, have you been found in violation of any administrative or statutory charges?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

10 In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5? YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

11 In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer?

YES ☒ NO ☐ If yes, provide an explanation of the circumstances and corrective action taken.

Note that the state of NY is currently conducting an audit of the 2018, 2019, and 2020 consolidated income tax return of ENGIE Holdings Inc. of which Nassau Energy LLC is a member. The audit commenced on July 21, 2022 and is expected to conclude by December 31, 2023. The state of NY has not proposed any income tax adjustments for Nassau Energy LLC to date. Although we do not believe an audit rises to the level of an "investigation" of the sort suggested by this Question 11, we are disclosing its existence out of an abundance of caution.

12 In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held?

YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

13 For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or

. local taxes or other assessed charges, including but not limited to water and sewer charges?
YES [] NO [X] If yes, provide an explanation of the circumstances and corrective action taken.

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I, Darin Hawkins , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Darin Hawkins , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Nassau Energy, LLC

Name of submitting business

Electronically signed and certified at the date and time indicated by:

Darin Hawkins DARIN.HAWKINS@ENGIE.COM

Vice President

Title

01/09/2023 03:29:27 pm

Date

PRINCIPAL QUESTIONNAIRE FORM

All questions on these questionnaires must be answered by all officers and any individuals who hold a ten percent (10%) or greater ownership interest in the proposer. Answers typewritten or printed in ink. If you need more space to answer any question, make as many photocopies of the appropriate page(s) as necessary and attach them to the questionnaire.

COMPLETE THIS QUESTIONNAIRE CAREFULLY AND COMPLETELY. FAILURE TO SUBMIT A COMPLETE QUESTIONNAIRE MAY MEAN THAT YOUR BID OR PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE AND IT WILL NOT BE CONSIDERED FOR AWARD

1. Principal Name: Courtney Jenkins
Date of birth: 08/16/1985
Home address: 112 Moffitt Street

City:	<u>San Francisco</u>	State/Province/ Territory:	<u>CA</u>	Zip/Postal Code:	<u>94131</u>
Country:	<u>US</u>				

Business Address: 500 12th Street, Suite 300

City:	<u>Oakland</u>	State/Province/ Territory:	<u>CA</u>	Zip/Postal Code:	<u>94609</u>
Country:	<u>US</u>				
Telephone:	<u>5105027314</u>				

Other present address(es):

City:		State/Province/ Territory:		Zip/Postal Code:	
Country:					
Telephone:					

List of other addresses and telephone numbers attached

2. Positions held in submitting business and starting date of each (check all applicable)

President	<u></u>	Treasurer	<u></u>
Chairman of Board	<u></u>	Shareholder	<u></u>
Chief Exec. Officer	<u></u>	Secretary	<u></u>
Chief Financial Officer	<u></u>	Partner	<u></u>
Vice President	<u>09/21/2017</u>		
(Other)			

3. Do you have an equity interest in the business submitting the questionnaire?

YES ☐ NO ☒ If Yes, provide details.

4. Are there any outstanding loans, guarantees or any other form of security or lease or any other type of contribution made in whole or in part between you and the business submitting the questionnaire?

YES ☐ NO ☒ If Yes, provide details.

5. Within the past 3 years, have you been a principal owner or officer of any business or notfor-profit organization other than the one submitting the questionnaire?
YES ☒ NO ☐ If Yes, provide details.

Please see attached listing of Officer - Director positions, including not for profit positions

2 File(s) uploaded: C. Jenkins Exhibit to Question No. 5 Director and Officer Positions.docx, Courtney Jenkins Officer and Director Positions.pdf

6. Has any governmental entity awarded any contracts to a business or organization listed in Section 5 in the past 3 years while you were a principal owner or officer?
YES ☐ NO ☒ If Yes, provide details.

NOTE: An affirmative answer is required below whether the sanction arose automatically, by operation of law, or as a result of any action taken by a government agency. Provide a detailed response to all questions checked "YES". If you need more space, photocopy the appropriate page and attach it to the questionnaire.

7. In the past (5) years, have you and/or any affiliated businesses or not-for-profit organizations listed in Section 5 in which you have been a principal owner or officer:

- a. Been debarred by any government agency from entering into contracts with that agency?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- b. Been declared in default and/or terminated for cause on any contract, and/or had any contracts cancelled for cause?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- c. Been denied the award of a contract and/or the opportunity to bid on a contract, including, but not limited to, failure to meet pre-qualification standards?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- d. Been suspended by any government agency from entering into any contract with it; and/or is any action pending that could formally debar or otherwise affect such business's ability to bid or propose on contract?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

8. Have any of the businesses or organizations listed in response to Question 5 filed a bankruptcy petition and/or been the subject of involuntary bankruptcy proceedings during the past 7 years, and/or for any portion of the last 7 year period, been in a state of bankruptcy as a result of bankruptcy proceedings initiated more than 7 years ago and/or is any such business now the subject of any pending bankruptcy proceedings, whenever initiated?
YES ☐ NO ☒ If 'Yes', provide details for each such instance. (Provide a detailed response to all questions check "Yes". If you need more space, photocopy the appropriate page and attached it to the questionnaire.)

9.

- a. Is there any felony charge pending against you?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.
- b. Is there any misdemeanor charge pending against you?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.
- c. Is there any administrative charge pending against you?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.
- d. In the past 10 years, have you been convicted, after trial or by plea, of any felony, or of any other crime, an element of which relates to truthfulness or the underlying facts of which related to the conduct of business?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.
- e. In the past 5 years, have you been convicted, after trial or by plea, of a misdemeanor?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.
- f. In the past 5 years, have you been found in violation of any administrative or statutory charges?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

10 In addition to the information provided in response to the previous questions, in the past 5 years, have you been the subject of a criminal investigation and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency and/or the subject of an investigation where such investigation was related to activities performed at, for, or on behalf of the submitting business entity and/or an affiliated business listed in response to Question 5?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

11 In addition to the information provided, in the past 5 years has any business or organization listed in response to Question 5, been the subject of a criminal investigation and/or a civil anti-trust investigation and/or any other type of investigation by any government agency, including but not limited to federal, state, and local regulatory agencies while you were a principal owner or officer?
YES ☒ NO ☐ If yes, provide an explanation of the circumstances and corrective action taken.

Note that the state of NY is currently conducting an audit of the 2018, 2019, and 2020 consolidated income tax return of ENGIE Holdings Inc. of which Nassau Energy LLC is a member. The audit commenced on July 21, 2022 and is expected to conclude by December 31, 2023. The state of NY has not proposed any income tax adjustments for Nassau Energy LLC to date. Although we do not believe an audit rises to the level of an “investigation” of the sort suggested by this Question 11, we are disclosing its existence out of an abundance of caution

12 In the past 5 years, have you or this business, or any other affiliated business listed in response to Question 5 had any sanction imposed as a result of judicial or administrative proceedings with respect to any professional license held?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

- 13 For the past 5 tax years, have you failed to file any required tax returns or failed to pay any applicable federal, state or local taxes or other assessed charges, including but not limited to water and sewer charges?
YES ☐ NO ☒ If yes, provide an explanation of the circumstances and corrective action taken.

--

I, Courtney Jenkins , hereby acknowledge that a materially false statement willfully or fraudulently made in connection with this form may result in rendering the submitting business entity and/or any affiliated entities non-responsible, and, in addition, may subject me to criminal charges.

I, Courtney Jenkins , hereby certify that I have read and understand all the items contained in this form; that I supplied full and complete answers to each item therein to the best of my knowledge, information and belief; that I will notify the County in writing of any change in circumstances occurring after the submission of this form; and that all information supplied by me is true to the best of my knowledge, information and belief. I understand that the County will rely on the information supplied in this form as additional inducement to enter into a contract with the submitting business entity.

CERTIFICATION

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS QUESTIONNAIRE MAY RESULT IN RENDERING THE SUBMITTING BUSINESS ENTITY NOT RESPONSIBLE WITH RESPECT TO THE PRESENT BID OR FUTURE BIDS, AND, IN ADDITION, MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Nassau Energy, LLC

Name of submitting business

Electronically signed and certified at the date and time indicated by:

Courtney Jenkins COURTNEY.JENKINS@ENGIE.COM

Vice President

Title

01/11/2023 11:05:19 am

Date

COUNTY OF NASSAU

CONSULTANT'S, CONTRACTOR'S AND VENDOR'S DISCLOSURE FORM

1. Name of the Entity: Nassau Energy, LLC

Address: 185 Charles Lindberg Blvd.

City: Garden City State/Province/Territory: NY Zip/Postal Code: 11530

Country: US

2. Entity's Vendor Identification Number: 133407290

3. Type of Business: Ltd. Liability Co (specify) _____

4. List names and addresses of all principals; that is, all individuals serving on the Board of Directors or comparable body, all partners and limited partners, all corporate officers, all parties of Joint Ventures, and all members and officers of limited liability companies (attach additional sheets if necessary):

3 File(s) uploaded: Officer Director Listing Nassau Energy, LLC 06-10-20 (1).pdf, Officers Nassau Energy, LLC (Effective 04-01-20).pdf, Officers of Nassau Energy, LLC (as of 09-30-2021).pdf

5. List names and addresses of all shareholders, members, or partners of the firm. If the shareholder is not an individual, list the individual shareholders/partners/members. If a Publicly held Corporation, include a copy of the 10K in lieu of completing this section.

If none, explain.

Nassau Energy, LLC is a indirect subsidiary of ENGIE S.A. - see Parent EHI 2019 Audited FS Financial Statement.

2 File(s) uploaded: EHI 2019 Audited FS Redacted.pdf, EHI 2021 Audited Financial Statements_Redacted w letters signed.pdf

6. List all affiliated and related companies and their relationship to the firm entered on line 1. above (if none, enter "None"). Attach a separate disclosure form for each affiliated or subsidiary company that may take part in the performance of this contract. Such disclosure shall be updated to include affiliated or subsidiary companies not previously disclosed that participate in the performance of the contract.

Please see attached listings of affiliated - subsidiary companies businesses registered in NY. See also Org Chart for Nassau Energy, LLC to parent EHI.

3 File(s) uploaded: Organizational Chart for Nassau Energy Services, LLC (Member - Manager of Nassau Energy, LLC).PNG,

7. List all lobbyists whose services were utilized at any stage in this matter (i.e., pre-bid, bid, post-bid, etc.). If none, enter “None.” The term “lobbyist” means any and every person or organization retained, employed or designated by any client to influence - or promote a matter before - Nassau County, its agencies, boards, commissions, department heads, legislators or committees, including but not limited to the Open Space and Parks Advisory Committee and Planning Commission. Such matters include, but are not limited to, requests for proposals, development or improvement of real property subject to County regulation, procurements. The term “lobbyist” does not include any officer, director, trustee, employee, counsel or agent of the County of Nassau, or State of New York, when discharging his or her official duties.

Are there lobbyists involved in this matter?
YES [] NO [X]

(a) Name, title, business address and telephone number of lobbyist(s):

(b) Describe lobbying activity of each lobbyist. See below for a complete description of lobbying activities.

(c) List whether and where the person/organization is registered as a lobbyist (e.g., Nassau County, New York State):

8. VERIFICATION: This section must be signed by a principal of the consultant, contractor or Vendor authorized as a signatory of the firm for the purpose of executing Contracts.

The undersigned affirms and so swears that he/she has read and understood the foregoing statements and they are, to his/her knowledge, true and accurate.

Electronically signed and certified at the date and time indicated by:
Stefaan Sercu [STEFaan.SERCU@ENGIE.COM]

Dated: 01/10/2023 03:58:00 pm

Title: President

The term lobbying shall mean any attempt to influence: any determination made by the Nassau County Legislature, or any member thereof, with respect to the introduction, passage, defeat, or substance of any local legislation or resolution; any determination by the County Executive to support, oppose, approve or disapprove any local legislation or resolution, whether or not such legislation has been introduced in the County Legislature; any determination by an elected County official or an officer or employee of the County with respect to the procurement of goods, services or construction, including the preparation of contract specifications, including but not limited to the preparation of requests for proposals, or solicitation, award or administration of a contract or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies; any determination made by the County Executive, County Legislature, or by the County of Nassau, its agencies, boards, commissions, department heads or committees, including but not limited to the Open Space and Parks Advisory Committee, the Planning Commission, with respect to the zoning, use, development or improvement of real property subject to County regulation, or any agencies, boards, commissions, department heads or committees with respect to requests for proposals, bidding, procurement or contracting for services for the County; any determination made by an elected county official or an officer or employee of the county with respect to the terms of the acquisition or disposition by the county of any interest in real property, with respect to a license or permit for the use of real property of or by the county, or with respect to a franchise, concession or revocable consent; the proposal, adoption, amendment or rejection by an agency of any rule having the force and effect of law; the decision to hold, timing or outcome of any rate making proceeding before an agency; the agenda or any determination of a board or commission; any determination regarding the calendaring or scope of any legislature oversight hearing; the issuance, repeal, modification or substance of a County Executive Order; or any determination made by an elected county official or an officer or employee of the county to support or oppose any state or federal legislation, rule or regulation, including any determination made to support or oppose that is contingent on any amendment of such legislation, rule or regulation, whether or not such legislation has been formally introduced and whether or not such rule or regulation has been formally proposed.