

APPENDIX A

NORTH CAROLINA

AGREEMENT FOR SERVICES

CHATHAM COUNTY

**THIS AGREEMENT FOR SERVICES (this "Agreement")**, made and entered into this \_\_\_ day of August, 2017 by and between Chatham County, a body politic and corporate of the State of North Carolina, (hereinafter referred to as the "County"), and Atlantic Power Solutions, Inc., (hereinafter referred to as "Contractor").

**WHEREAS**, Contractor, has agreed to provide services in a professional manner in accordance with the standards of Contractor's industry and as hereinafter set forth; and

**WHEREAS**, the County wishes to enter into an Agreement with Contractor to provide the services specified in Appendix 1, Scope of Work, attached hereto and incorporated herein by reference.

**NOW THEREFORE**, in consideration of the mutual agreements described below, the parties agree as follows:

1. **Term of Agreement:** The initial term of this Agreement shall commence on **August 22, 2017** and shall end on or before **June 30, 2019**.
2. **Scope of Service:** The Contractor shall provide to the County the Services (the "Services") set forth in the "Scope of Work" attached hereto as Appendix 1, which is incorporated herein and made an integral part of the Agreement.
3. **Compensation:** As compensation for the services to be provided by Contractor, the County shall pay the Contractor the amount **\$12,425.00** payable within thirty (30) days from receipt of invoice, or as otherwise set forth in Appendix 1. (Additional emergency and holiday repair rates are included herein in the Scope of Work).
4. **Insurance:** Contractor shall maintain insurance policies at all times with minimum limits as follows:

**Coverage**

Worker's Compensation  
Statutory Limits

**General/Professional Liability**

\$100,000 bodily injury per person (BI)  
\$500,000 bodily injury per occurrence (BI)  
\$100,000 property damage (PD)

**Automobile Liability**

\$250,000 bodily injury per person (BI)  
\$100,000 property damage (PD) or

All insurance policies shall be issued by companies authorized to do business under the laws of the State of North Carolina and shall be rated not less than "A" by A.M. Best and Company. Contractor shall furnish Certificates of Insurance to the County, naming the County as an additional insured, prior to the commencement of operations. The certificates shall clearly indicate that Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Compliance with the foregoing requirements shall not relieve Contractor from any liability or obligations under this Agreement.

5. Confidentiality: All proprietary data and information, if any, furnished to Contractor by the County shall be regarded as confidential, shall remain the sole property of the County and shall be held in confidence and safekeeping by Contractor for the sole use of the County and Contractor under the terms of this Agreement. Contractor agrees that its officers, employees and agents will not disclose to any person, firm or entity other than the County or its designated legal counsel, accountants or practice management consultants any information about the County. Contractor agrees to carry out its obligations to the County in compliance with all privacy and security regulations required by law.

6. Status of Parties: Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between Contractor and the County. Contractor and its employees and representatives are independent contractors, solely responsible for its or their performance under this Agreement and shall have no legal authority to bind the County.

7. Assignment and Subcontracting: Neither this Agreement nor any rights or obligations hereunder shall be subcontracted, assigned, or delegated by Contractor without prior written consent of the County, which consent may be withheld in the County's sole discretion.

8. Binding Effect: This Agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns, if such assignment has been approved by the County.

9. Notices: Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Chatham County  
Attn: County Manager  
Post Office Box 1809  
Pittsboro, North Carolina 27312

Atlantic Power Solutions, Inc.  
Attn: Walter Petty  
2287 Bonlee Bennett Road  
Siler City, North Carolina 27344

Either party may change its address for notices under this Agreement by giving written notice of such change to the other party in accordance with the terms of this paragraph.

10. Governing Law: This Agreement and the rights and obligations to the parties hereunder shall be construed and governed by the laws of the State of North Carolina and venue for any proceedings arising hereunder shall be in the state court of appropriate jurisdiction located in Chatham County, North Carolina.

11. Modifications: This Agreement may be amended or modified by the mutual written consent of the parties. A modification is not enforceable against the County unless it is signed by the County Manager, Purchasing Agent, or other duly authorized official.

12. Entire Agreement: This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

13. Waiver: A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach thereof.

14. Termination: This Agreement may be terminated as follows:

- (i) Cause: If the services provided by the Contractor under this Agreement are determined to be unsatisfactory or unacceptable, as determined by the County Manager, this Agreement may be

terminated by the County for default. Grounds for termination for default shall include, but not be limited to:

- (a) Failure to respond to all reasonable requests from the County to provide services covered by this Agreement.
- (b) Failure to maintain equipment in accordance with the requirements of this Agreement and with all laws.
- (c) Failure to properly recycle any electronic equipment as specified in Article 9, Chapter 130A of the North Carolina General Statute or failure to comply with any statutory requirement within the formal bid request, as provided in the bid packet, incorporated herein by reference.
- (d) Lack of proper insurance as required under this Agreement.
- (e) Charging rates or fees in excess of those provided in this Agreement.
- (f) Inefficient, or unsafe practices in providing services.
- (g) Other actions which impact unfavorably on the faithful performance of this Agreement.

- (ii) Convenience: The County reserves the right to terminate this Agreement upon thirty (30) days written notice to Contractor for any reason deemed by the County to serve the public interest. This termination for convenience will not be made when termination is authorized under any other provisions of this Agreement. In the event of such termination the County shall pay the Contractor those costs directly attributable to services received by the County in compliance with the Agreement prior termination. Provided, however, that no costs will be paid to the Contractor which are recoverable in the Contractor's normal course of doing business. The County is not liable for loss of any profits anticipated to be made hereunder, nor for any special, consequential or similar damage.

15. Annual Appropriations and Funding. This Agreement is subject to the annual appropriation of funds by the Chatham County Commissioners. Notwithstanding any provision herein to the contrary, in the event that funds are not appropriated for this Agreement, the County shall be entitled to immediately terminate this Agreement, without penalty or liability, except the payment for all service satisfactorily provided under this Agreement up to and through the Contractor's receipt of notice of termination.

16. Hold Harmless: Contractor agrees to indemnify and hold harmless the County, its agents, servants and employees from any and all claims, actions, lawsuits, damages, judgments or liabilities of any kind whatsoever arising out of the provision of service under this Agreement.

17. County Policy: The County opposes discrimination on the basis of race and sex and requires all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under County contracts.

18. E-Verify: Effective September 4, 2013 North Carolina local government units are prohibited from entering into certain contracts unless the contractor and the contractor's subcontractors, if any, comply with the requirements of N.C. Gen. Stats. §64-26(a). Prior to providing any services hereunder, Contractor and Contractor's subcontractors, if any, are subject to the provisions of N.C. Gen. Stats. §64-26(a). Contractor agrees to fully comply with such statute and require Contractor's subcontractors, if any, to fully comply with such statute.

19. Iran Divestment Act: Contractor hereby certifies that Contractor, an all subcontractors, are not on the Iran Divestment List (the "List") created by the North Carolina State Treasurer pursuant to N.C.G.S § 143-6A-4. Contractor shall not utilize any subcontractor that is identified on the List.

20. Requirement to Recycle Certain Electronic Equipment: If applicable, Contractor's failure to properly recycle any electronic equipment as specified in Article 9, Chapter 130A of the North Carolina General Statute or failure to comply with any statutory requirement within the formal bid request, as provided in the bid packet, incorporated herein by reference, shall be grounds for immediate termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement in their official capacities with legal authority to do so.

**Chatham County:**

By: \_\_\_\_\_  
Renee Paschal, County Manager

**Contractor**

By: \_\_\_\_\_  
Walter Petty, President  
Atlantic Power Solutions, Inc.  
2287 Bonlee Bennett Road  
Siler City, North Carolina 27344  
Phone: 919.837.2959  
Email: Walter@atlanticpowersolutions.com

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Vicki McConnell, Finance Director

APPENDIX 1

SCOPE OF WORK

PROJECT NAME: Chatham County Emergency Operations and Water Utility Generator Maintenance and Repair Services

SCOPE OF SERVICE: Provide two scheduled site visits per year, one of which will be a full service (fluid and filter replacement, etc.), of the generators including inspection, testing (including a facility load test), and reporting on each generator as a result of the inspections visit. The second site visit will be only inspections, testing (including a facility load test), and reporting on each generator as a result of the inspections visit.

List of Generators and location included herein as Attachment B.

TOTAL BASE COST: which includes all Reimbursables. \$12,425.00

EMERGENCY AND HOLIDAY RATES:

Emergency response time after hours including weekends:	\$127.50 per hour
Emergency response time holidays	\$170.00 per hour
Percent markup during unscheduled responses	20%

COMPLETION DATE: June 30, 2019