THIS MASTER PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is dated as of the 7th day of December, 2020, by and between ExecuPOWER LLC, a limited liability company of the Commonwealth of Pennsylvania with a principal place of business located at 555 Croton Road, Suite 307, King of Prussia, PA 19406 (“Engineer”) and McCormick Taylor, Inc., with a principal place of business located at Two Commerce Square, 10th Floor, 2001 Market Street, Philadelphia, PA 19103 (the “Consultant”).

# ARTICLE 1- ENGAGEMENT OF CONSULTANT; TERM OF AGREEMENT

1.1 Engineer hereby engages Consultant to provide professional services in connection with Projects to be initiated pursuant to this Agreement in accordance with the requirements outlined in the Service Order initiating such Project (the “Services”). Except as set forth in this Agreement, Consultant shall not have any duties or responsibilities for any part of any Project other than that which is set forth on the Service Order.

1.2 The Consultant shall cooperate with and shall coordinate its Services with the Engineer to avoid unreasonable delay in the orderly and sequential overall progress of the Engineer’s services.

1.3 Consultant shall not subcontract any portion of the Services to Sub-consultants without the prior written approval of Engineer, which approval maybe withheld without cause.

1.4 Term of Agreement. This Agreement shall commence as of December 7, 2020 and shall terminate on December 7, 2022 or upon earlier termination in accordance with the provisions of this Agreement (the “Term”). Engineer may extend the Term for one additional two-year period by providing written notice to Consultant of its intent to extend the Term at least 14 days in advance of the expiration of the initial Term.

1.5 No Exclusivity. During the Term of this Agreement, including any period of extension, Engineer may contract with professionals other than Consultant to provide services of the nature and type of the Services included within this Agreement in connection with any project initiated by any Owner with whom Engineer contracts to provide services.

1.6 Process of Engagement. Engineer will initiate each Project under this Agreement by issuing a Service Order (“Service Order”) to Consultant, substantially in the form of the Service Order annexed as Exhibit A. At a minimum, each Service Order shall set forth:

1.6.1 The scope of the Services required of Consultant;

1.6.2 the schedule for completion of the Consultant’s obligations, including key milestone dates, for the Project;

1.6.3 the Engineer’s Authorized Representative for the Project;

1.6.4 the documentation deliverables which Engineer will require in connection with the Project; and

1.6.5 whether the Project shall be completed on a Fixed Price, Hourly Fee, Hourly Fee subject to a NotTo-Exceed Cap or Unit Price basis; and

1.6.6 otherwise identify any specific requirements and/or limitations of the Prime Contract.

1.7 Consultant Representation. Consultant’s acceptance of any Service Order issued pursuant to this Agreement shall constitute a representation by Consultant that it is fully qualified and properly staffed, and that it possesses the requisite skill, expertise and licensing to provide the full scope of Services required by the Service Order, including any Services which shall be incidental thereto in connection with such Project.

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1.7.1 The Engineer and Consultant agree to work together on the basis of mutual trust, good faith and

fair dealing, and shall take all actions reasonably necessary to enable each other to perform this Agreement and each Project initiated pursuant to this Agreement in a timely, efficient and economical manner consistent with the Standard of Care. The Engineer and Consultant shall endeavor to promote harmony and cooperation among all Project participants.

1.8 Neither the Consultant nor any of its agents or employees shall act on behalf of or in the name of the Engineer except as provided in this Agreement or in a Service Order initiating a Project pursuant to this Agreement, or unless authorized in writing by the Engineer to do so.

# ARTICLE 2- PRIME CONTRACT

2.1 With regard to each Project initiated pursuant to this Agreement, Engineer will first have entered into a contract with another party (the “Owner”) pursuant to which Engineer will have been obligated to provide certain engineering and other related professional services in connection with that Project (the “Prime Contract). Engineer shall provide Consultant with a copy of the Prime Contract (with certain financial information redacted) in connection with each Service Order issued pursuant to this Agreement.

2.1.1 For purposes of this Agreement, the term “Project” shall mean the work or services required by the Owner in the Prime Contract.

2.1.2 Flow Down. To the extent that the provisions of the Prime Contract apply to the Services, Engineer shall assume toward Consultant all obligations and responsibilities that the Owner assumes toward the Engineer, and the Consultant shall assume toward the Engineer all obligations and responsibilities that the Engineer assumes toward the Owner. Insofar as applicable to this

Agreement, the Engineer shall have the benefit of all rights, remedies and redress against the Consultant that the Owner, under the Prime Contract, has against the Engineer, and the Consultant shall have the benefit of all rights, remedies and redress against the Engineer that the Engineer, under the Prime Contract, has against the Owner. Where a provision of the Prime Contract is inconsistent with a provision of this Agreement, this Agreement shall govern, unless a provision of this Agreement expressly provides for the terms of the Prime Contract to govern in the event of inconsistency.

# ARTICLE 3- CONSULTANT’S RESPONSIBILITIES

3.1 Standard of Care. The Consultant shall carry out all Services provided pursuant to this Agreement in accordance with all applicable Regulatory Requirements and professional standards and to the standard of a qualified professional experienced in providing professional engineering services of the type required under the Service Order for projects of a size, type and complexity of the Project to be constructed in North America.

3.2 The Consultant represents and covenants that all Services will conform to the Engineer’s requirements and shall be free of defects and in accordance with the Standard of Care. The Consultant shall, at the written request of Engineer, promptly upon notification, carry out all corrective Services required to rectify any defect in Services. The Consultant shall be entitled to no compensation for any corrective Services.

3.3 Licensure. The Consultant shall procure or provide all Services which are required by law to be provided by licensed professionals through properly licensed professionals employed or retained by the Consultant.

3.4 The Consultant shall recommend to the Engineer the appropriate investigations, surveys, tests, analyses, reports and the services of other consultants that should be obtained for the proper execution of the Consultant’s Services.

3.5 The Consultant shall provide copies of drawings, reports, specifications and other necessary information to the Engineer and any other consultants identified by Engineer for receipt of such information in the format required by the Engineer.

3.6 Consultant shall provide prompt written notice to the Engineer if the Consultant becomes aware of any errors, omissions or inconsistencies in the services or information provided by the Engineer or consultants other than Consultant in connection with the Project. Consultant may rely upon the information Engineer provides to Consultant regarding each Project initiated pursuant to this Agreement or the site of each such Project to the extent that Engineer may, under the relevant Prime Contract, rely upon information provided by Owner to Engineer.

3.7 In connection with each Project initiated pursuant to this Agreement, Consultant shall comply with all Personnel background investigation and qualification requirements set forth in the Prime Contract.

3.8 Without limiting the generality of the foregoing, Consultant shall promptly remove from the Projects any employee or agent of Consultant or of any Subcontractor who, in Engineer’s sole discretion, is performing unsatisfactorily, unsafe, incompetent, careless, unqualified to perform the Work assigned to such Person, creates an unsafe or hostile work environment, disregards the terms and conditions of this Agreement, or is interrupting, interfering with or impeding the timely and proper completion of the Project. Consultant shall provide Engineer with Engineer-approved replacements at no additional cost to Engineer and in a timely fashion so as not to impact the performance of the Project.

# ARTICLE 4- CONTRACT SUM; COMPENSATION OF CONSULTANT

4.1 Contract Sum. Subject to the further provisions of this Article 4, in particular the provisions of Paragraph 4.3, the Engineer shall pay the Consultant in current funds for the Consultant’s proper performance of the Services in connection with each Project initiated pursuant to this Agreement.

4.2 The Service Order for each Project initiated pursuant to this Agreement shall indicate the method by which the Engineer intends to compensate Consultant for its Services.

4.2.1 Fixed Price. For Projects performed on a Fixed Price basis, the Engineer shall pay the Consultant the fixed price set forth in the Service Order. The Fixed Price shall be payable monthly in accordance with the progress of the Services, such that 100% of the Fixed Fee (less retainage as set forth below in this Article 4) shall have been paid to Consultant at the time of Final

Completion of the Services, subject to the overall limitations of Paragraph 4.3 of this Agreement.

4.2.2 Hourly Fee for Services. For Projects performed on an Hourly Fee for Services basis, the Engineer shall pay the Consultant the Approved Hourly Billing Rate set forth in an Attachment to the Service Order for the time actually spent by each of Consultant’s personnel in providing the Services in each monthly billing period, for the Consultant’s proper performance of the Services, subject to the overall limitations of Paragraph 4.3 of this Agreement. All monthly bills shall include a detailed statement showing the progress of the Services and the actual time each of Consultant’s personnel devoted to providing the Services in the billing period, along with the appropriate Approved Billing Rate applied to that time.

4.2.3 Hourly Fee for Services, subject to a Not-to-Exceed Cap. For Projects performed on an Hourly Fee for Services, subject to a Not-to-Exceed Cap basis, the Engineer shall pay the Consultant the Approved Hourly Billing Rate set forth in an Attachment to the Service Order for the time actually spent by each of Consultant’s personnel in providing the Services in each monthly billing period, subject to the limitation of the Not-to-Exceed Amounts for each category of the Services and subject, also, to the overall limitations of Paragraph 4.3 of this Agreement. All monthly bills shall include a detailed statement showing the progress of the Services and the actual time each of Consultant’s personnel devoted to providing the Services in the billing period, along with the appropriate Approved Billing Rate applied to that time.

4.2.4 Unit Fee for Services. For Projects performed on a Unit Fee for Services basis, the Engineer shall pay Consultant the fixed amount per unit set forth in an Attachment to the Service Order for each unit completed in each billing period, subject to the overall limitations of Paragraph 4.3 of this Agreement. The Consultant shall provide Engineer with monthly statement showing the units completed in the preceding monthly billing period and applying the Unit Fee set forth in the Service Order, to arrive at the appropriate monthly billing amount.

4.3 Time for Payment. Consultant shall submit detailed billing statements to Engineer on a monthly basis in connection with each Project initiated pursuant to this Agreement. Engineer will pay Consultant invoices properly submitted and documented in accordance with this Agreement (and satisfying additional applicable requirements, if any, imposed by the relevant Prime Contract) within ten (10) days of Engineer’s receipt of payment from Owner for Consultant’s Services in that billing period, or within such shorter period of time required by local law in the jurisdiction in which the Project is located, provided that Engineer’s obligation to make any payment to Consultant in connection with any payment application is expressly conditioned upon Engineer’s prior receipt of payment for those Services from Owner under the related Prime Contract and that Engineer shall only be obligated to make payment to Consultant if Engineer has first received such payment from Owner.

4.4 Retainage. Unless otherwise required by the law of the State in which a Project is located, as to each payment otherwise due to Consultant for the Services in connection with any Project initiated pursuant to this Agreement, Engineer shall reduce such payment by retention by the amount and to the extent required under the Prime Contract.

# ARTICLE 5- CHANGES IN THE CONTRACT SUM

5.1 If the Engineer materially expands or contracts the scope of the Services in connection with any Project

initiated pursuant to this Agreement (“Material Change in Scope”), the Contract Sum may be adjusted appropriately to account for such Material Change in Scope. To be effective, any such adjustment in compensation must first be presented to Owner in accordance with the provisions of the relevant Prime Contract and be accepted by the Owner as a Change in the Prime Contract between the Owner and Engineer.

5.1.1 For purposes of this Agreement, a “Material Change in Scope” does not include changes reflected in modifications of drawings and/or specifications or other documents existing as of the date of commencement of the Project.

5.2 The parties shall agree on the adjustment in the Consultant’s compensation at the time Engineer provides Owner’s approval for Consultant to proceed with Services necessitated by a Material Change in Scope.

5.2.1 If the Engineer and the Consultant do not agree on the adjustment in the amount, if any, to be paid to the Consultant as a consequence of a Material Change in Scope, the Engineer may engage a separate design professional to provide services necessitated by the Material Change in Scope, and Consultant shall furnish all information and data to such other design professional as may be reasonably requested by the Engineer or such other design professional, and shall otherwise cooperate with such other design professional, in a timely fashion and at no additional cost to Engineer.

5.3 Consultant shall make all requests for additional compensation and/or time in which to complete the Services by reason of a Material Change in Scope promptly in writing to the Engineer before the

Consultant proceeds to provide any Services required by such Material Change in Scope. Any failure by Consultant to provide written notice to Engineer in advance of commencing to provide such Services and to await authorization to proceed with such Services shall constitute a waiver of any claim by Consultant for additional compensation or for additional time arising out of such Services.

5.4 If the Consultant and Engineer do not agree on whether a particular change constitutes a Material Change in Scope, the parties shall proceed to resolve the dispute pursuant to Article 14 of this Agreement, and Consultant shall continue to provide the disputed services and all Services as requested by Engineer while such dispute is being resolved.

# ARTICLE 6- CONTRACT TIME

6.1 Consultant shall complete the Services in cooperation and in accordance with the Schedule for the Services prepared by Engineer. Consultant shall commence the Services of each Project initiated pursuant to this Agreement in accordance with the dates for commencement and completion set forth on the Service Order initiating such Project. Time is of the essence of each Project initiated pursuant to this Agreement unless the Service Order indicates that time is not of the essence.

# ARTICLE 7- INDEMNITY AND INSURANCE

7.1 In connection with each Project initiated pursuant to this Agreement, Consultant agrees, to the fullest extent permitted by law, to indemnify, defend and hold the Engineer and Owner and their officers and employees harmless from all claims, obligations and liabilities (and all costs and expenses including reasonable attorneys’ fees incurred in connection therewith) arising out of or related to:

7.1.1 Failure by Consultant to comply with any applicable Regulatory Requirement; or

7.1.2 Injury to or death of persons (including employees of Engineer, Consultant, its Sub-consultants, Constructor, its Subcontractors and suppliers, or Other Contractors) or damage to or loss of property (including the property of Engineer, but not including the Work itself) arising out of or related to, and to the extent of, the negligence, gross negligence or willful misconduct of

Consultant, a Sub-consultant, anyone directly or indirectly employed by them or anyone for whose negligent acts they may be liable, in the performance of this Agreement; or

7.1.3 Contamination, pollution, or public or private nuisance, arising directly or indirectly out of, and to the extent of, the negligence, gross negligence or willful misconduct of Consultant, a Subconsultant, anyone employed by them or anyone for whose acts they may be liable.

7.2 The above obligations of this Article 7 shall not be construed to negate, abridge, or reduce other rights, obligations or limitations of indemnity which would otherwise exist or which are expressly or impliedly created elsewhere in this Agreement.

7.3 In claims against any person indemnified under this Article 7 by an employee of the indemnifying party, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the indemnifying party under workers’ compensation acts, disability benefit acts or other employee benefit acts.

7.4 Prime Contract Indemnities Flow Down. To the extent that the relevant Prime Contract includes other, further or differing obligations of indemnity, all such obligations of indemnity shall flow down to this Agreement and Consultant shall indemnify, defend and hold Engineer harmless in connection with the Services of each Project initiated pursuant to this Agreement to the same extent that Engineer is obligated under the Prime Contract to indemnify, defend and hold the Owner harmless.

7.5 Insurance. At a minimum, Consultant shall purchase and maintain insurance of the types with limits of

liability in accordance with the requirements set forth on Exhibit B. If the relevant Prime Contract in connection with any Project initiated pursuant to this Agreement requires the Engineer and its Consultants carry other or different insurance coverages or to maintain more robust limits of liability, the insurance requirements of the Prime Contract shall override the provisions of this Agreement for purposes of that Project.

7.5.1 To the extent that Consultant fails to provide or to maintain insurance in accordance with the requirements of this Paragraph 7.5, Consultant shall defend, indemnify and hold the Engineer Additional Insureds harmless from and against any and all liability, damages, losses, and costs, including reasonable attorney's fees (collectively, “Losses”), to the full extent that such Losses would not have been incurred by the Engineer Additional Insureds had Consultant provided and maintained insurance in accordance with the requirements of this Paragraph 7.5.

7.5.2 Engineer may require Consultant at any time, and from time to time while providing Services in connection with a Project initiated pursuant to this Agreement, to obtain and maintain in force insurance with coverage or limits in addition to that described in Exhibit B, with premiums to be paid by Consultant for all additional insurance required.

ARTICLE 8- COMPLIANCE.

8.1 The Consultant shall comply with all Laws, statutes, ordinances, codes, rules, regulations and other Regulatory Requirements applicable to each Project initiated pursuant to this Agreement and/or to the relevant related Services.

# ARTICLE 9- CONFIDENTIALITY

9.1 The Consultant shall not disclose or permit the disclosure of any Confidential Information, except to its

employees and Sub-consultants who need such Confidential Information to provide the Services of any Project initiated pursuant to this Agreement, and shall not use or permit to be used any Confidential Information for anyone other than Owner or Engineer.

9.1.1 For purposes of this Agreement, “Confidential Information” means, at a minimum, any and all information, know-how and data, technical or non-technical, in any way relating to each Project initiated pursuant to this Agreement, which is disclosed to the Consultant by or on behalf of the Owner or the Engineer in connection with such Project. Confidential Information shall in addition have the meaning assigned to that term in the related Prime Contract, if it is defined in the Prime Contract.

9.2 Confidential Information shall not include information that:

9.2.1 was lawfully obtained by Consultant from a third party without any obligation of confidentiality;

9.2.2 is or becomes part of the public domain, except by breach of this Agreement; or

9.2.3 is required to be disclosed by law, or judicial or administrative order, provided that Consultant provides Engineer with prompt written notice of any such requirement(s) prior to disclosing such Confidential Information, as well as the terms and circumstances surrounding such requirement(s) so that Engineer may seek a protective order or other appropriate remedy before Consultant is obligated to disclose said Confidential Information. Consultant shall cooperate with Engineer and Owner in any attempt Engineer and/or Owner makes to avoid or limit any such disclosure.

9.3 Notwithstanding the foregoing, the Consultant may submit or distribute Documents as required to meet Regulatory Requirements or for other lawful purposes in connection with the Project, but Consultant shall obtain the Engineer’s written approval before submitting Documents in any such circumstances. In no event, however, shall the authorized distribution of Documents to meet Regulatory Requirements be construed as or operate to place any Confidential Information in the public domain.

9.4 Consultant acknowledges that the unauthorized use or disclosure of Confidential Information by Consultant or its employees, agents or Sub-consultants may give rise to irreparable injury and that money damages may not adquately compensate Engineer and/or Owner for such injury. Accordingly, Engineer and/or Owner shall be entitled to injunctive relief against Consultant and/or its employees, agents or Subconsultants, or any individual furnished with Confidential Information by Consultant hereunder, to prevent the breach or threatened breach of any promise made in this Agreement or in any Contract Document, in addition to any other legal remedies which may be available to Engineer.

9.5 The obligations of the Consultant under this Article 9 shall survive the completion of the Services of any Project initiated pursuant to this Agreement, the Final Completion of such Projects or earlier termination of this Agreement, until agreed otherwise in writing by both parties.

9.6 Consultant shall adhere to any more robust obligations of confidentiality imposed in connection with any Project initiated pursuant to this Agreement under the relevant Prime Contract.

# ARTICLE 10- OWNERSHIP OF DOCUMENTS

10.1 Except as otherwise provided in the Service Order initiating a Project, Consultant shall retain all Ownership of Consultant’s Background Intellectual Property created by the Consultant (i) prior to the Effective Date of this Agreement and (ii) outside of the Services provided in connection with any Project initiated pursuant to this Agreement.

10.1.1 For purposes of this Article 10, “Background Intellectual Property” means any information, writing, material, software, product, concept, invention, modification, discovery, design, development, improvement, process, formula, data, technique, know-how, manufacturing method, trade secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright or similar statutes or subject to analogous protection) owned, created, or conceived by Consultant prior to the Effective Date of this Agreement.

10.1.2 The Consultant grants Engineer and Owner, and their assignees and Affiliates a non-exclusive,

perpetual (or other maximum term permitted by applicable Law), fully paid-up license to use, copy, and store, and to transfer, or to modify and create derivative works from, any of the Consultant’s Background Intellectual Property utilized in connection with the Services of each Project initiated pursuant to this Agreement or which are incorporated into Documents (as defined below in this Article 10).

10.2 Consultant grants to the Owner and Engineer the rights of ownership and/or use of the Documents prepared and/or procured by Consultant in connection with its Services in connection with each Project initiated pursuant to this Agreement that Engineer has granted to Owner under the related Prime Contract annexed as part of the Service Order.

10.2.1 For purposes of this Agreement, the term “Documents” means documents, drawings, specifications, procurement documents, electronic data and information, reports, studies, procedures, and any other data or information prepared or in preparation by the Consultant in provision of the Services, or otherwise provided by the Consultant under the Agreement.

10.3 The Consultant shall maintain on file and make available to the Engineer design calculations for the Services, and shall furnish copies thereof to the Engineer on request.

10.4 The Consultant shall obtain from its Sub-Consultants rights and rights of use that correspond to the rights given by the Consultant to the Engineer in this Agreement and the Consultant shall provide Engineer with evidence that such rights have been secured before any Sub-Consultant commences to provide Services in connection with the Project.

10.5 Consultant shall supply Engineer with Documents in connection with each Project initiated pursuant to this Agreement in the form and format required by Engineer.

10.6 The obligations of the Consultant under this Article 10 shall survive the completion of the Services of any Project initiated pursuant to this Agreement, the Final Completion of such Projects or earlier termination of this Agreement, until agreed otherwise in writing by both parties.

# ARTICLE 11- MISCELLANEOUS PROVISIONS

11.1 Entire Agreement/No Oral Modification. This Agreement and its Exhibits represent the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by a writing, signed by Engineer and Consultant.

11.2 Notices. All notices to be given under this Agreement shall be in writing and addressed to the party to be notified, postage prepaid, by registered or certified mail, return receipt requested, or by delivering the same in person to such party at the address listed above. All notices shall be deemed to have been given when personally delivered or, if mailed, upon delivery or rejection as reflected on the return receipt for certified or registered mailing.

11.2.1 The persons and the addresses to which such notices shall be addressed are set forth below:

|  |  |
| --- | --- |
| Person and Address for Notice to Engineer: | Andrea M. Turley, P.E.  555 Croton Road, Suite 307  King of Prussia, PA 19406 |
| Person and Address for Notice to Consultant: | Patrick J. Guise  Two Commerce Square, 10th Floor  2001 Market Street  Philadelphia, PA 19103 |

11.3 Governing Law. This Agreement and all Service Orders issued pursuant to this Agreement shall be governed by the law of the Commonwealth of Pennsylvania, without reference to its conflicts of law rules, unless the law of the jurisdiction in which a Project is located requires that its law apply.

11.4 Assignment. The Consultant shall neither assign its interest in nor delegate its duties under this Agreement without the prior written consent of the Engineer, which consent may be withheld without cause.

11.5 No Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Engineer or Consultant.

11.6 Hazardous Materials Generally Excluded. Unless otherwise required by the Scope of Services set forth in Service Order or by the relevant Prime Contract, the Engineer and Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

# ARTICLE 12- TERMINATION AND SUSPENSION

12.1 Termination or Suspension of Prime Contract. Engineer may terminate or suspend any Project initiated pursuant to this Agreement at any time to the extent that Owner terminates or suspends the related Prime Contract between Engineer and Owner. In the event of such termination or suspension, Consultant shall immediately cease or suspend providing Services in accordance with the provisions of such notice. Engineer shall pay Consultant the portion of the Contract Sum earned by Consultant as of the effective date of the termination or suspension, to the extent that the Owner pays the Engineer for Consultant’s Services.

12.2 Termination for Cause. Without prejudice to any other right or remedy and after giving the Consultant five (5) Days’ written notice during which period the Consultant fails to cure, Engineer may terminate the services of the Consultant under this Agreement or in connection with any Project initiated pursuant to this Agreement: (i) if the Consultant is adjudged a bankrupt, or makes a general assignment for the benefit of its creditors, or becomes insolvent, or a receiver is appointed on account of its insolvency, or (ii) if, through no fault of the Engineer, Consultant is unable to complete the Services in accordance with the Project Schedule for the Services, or (iii) if the Engineer has a good faith basis to believe or a reasonable belief that the Consultant is not timely meeting its financial obligations to its Sub-consultants, or (iv) if Consultant submits any falsified document, or (v) if a construction lien claim or notice of unpaid balance or mechanic’s or materialmen’s lien or notice of intention to file a lien or a stop payment notice is filed with or served on Engineer in connection with a Project initiated pursuant to this Agreement and not immediately bonded, discharged or insured over by Consultant in a manner satisfactory to Engineer, or (vi) if Consultant otherwise defaults in any of its obligations under this Agreement.

12.3 Termination at the end of the Term of this Agreement. At the conclusion of the Term of this Agreement,

or at the conclusion of any extended Term of this Agreement, the Consultant shall complete work on all Projects in process at the date of the end of the Term of this Agreement, pursuant to and in accordance with all the terms and conditions of this Agreement, and Engineer shall continue to make payment pursuant to and in accordance with all the terms and conditions of this Agreement.

# ARTICLE 13- CONSTRUCTION AND OTHER LIENS

13.1 If any Sub-consultant or any other person directly or indirectly acting for, through or under the Consultant or any of them at any time files or maintains any construction lien claim, mechanic’s or materialmen’s lien, mechanic’s or materialmen’s lien notices, notice of unpaid balance, notices of contract, statements of account, or stop payment notices (collectively, “Liens”) in connection with any Project initiated pursuant to this Agreement, then, to the extent that the Engineer has paid the Consultant in accordance with the provisions of this Agreement for its Services, the Consultant agrees to cause such Liens to be satisfied, removed or discharged by bond, payment or otherwise within ten (10) days from the date of the filing thereof, and upon its failure to do so, the Engineer shall have the right, in addition to all other rights and remedies provided under the Contract Documents or by Law, to cause such Liens to be satisfied, removed or discharged by whatever means the Engineer chooses, including by withholding payment from the Consultant in an amount equal to the claimed amount of the Liens plus any reasonable costs incurred by Engineer in removing such Liens until satisfactory evidence has been furnished to the Engineer that said indebtedness has been satisfied or fully discharged.

13.2 If any Lien or claim remains unsatisfied at completion or termination of any Project initiated pursuant to this Agreement, Consultant shall promptly refund to Engineer all costs incurred by Engineer in extinguishing such Liens, including any cost of filing and attorneys’ fees.

13.3 Consultant agrees to cause a provision equivalent to the foregoing which fully protects Engineer against any and all such Liens by any Sub-consultant (including any other person directly or indirectly acting for, through or under Consultant) to be included in the contract with each such person or entity in connection with each Project initiated pursuant to this Agreement. Consultant shall provide Engineer with an executed copy of the agreement with any Sub-Consultant or sub-Sub-Consultant at the commencement of the work of each such Sub-Consultant in form satisfactory to Engineer.

13.4 If required under the Prime Contract in connection with any Project initiated pursuant to this Agreement and if permissible under the law of the jurisdiction in which the Project is located, Consultant shall provide prospective waivers of all lien rights for itself and its Sub-consultants.

# ARTICLE 14- RESOLUTION OF DISPUTES

14.1 Notice of Dispute. If any controversy or claim arising out of or relating to this Agreement, any breach thereof or any Project initiated pursuant to this Agreement is not resolved, Engineer and the Consultant agree (i) first to provide written notice of the dispute to one another within 20 days of the event giving rise

to the dispute; and (ii) to negotiate in person with senior executives in good faith regarding a resolution of the dispute.

14.2 Mediation. Except as provided in Paragraph 14.5 below, if the parties do not reach agreement through

direct negotiation within thirty (30) days of the notice required by Paragraph 14.1, they shall refer the dispute to mediation with a mutually-acceptable mediator as a condition precedent to binding dispute resolution. If Engineer and Consultant cannot agree upon the selection of a mediator within ten (10) Days, the parties shall submit the dispute to mediation with a mediator selected by the American Arbitration Association. The mediation shall be held in King of Prussia, Pennsylvania, unless the parties mutually agree upon an alternate location or local law requires a different location. Mediation may include third parties who agree, in writing, to participate in mediation. The Parties agree to share the mediator’s fee and any filing fees, equally, but each party shall bear its own attorney’s fees (and any other related costs such as expert fees). Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

14.3 Arbitration. Except as provided in Paragraph 14.5 below, any controversy or claim arising out of or relating to this Agreement, any breach thereof or any Project initiated pursuant to this Agreement, which remains unresolved sixty (60) days after the initiation of mediation (whether with the American Arbitration Association or with another mediator) shall be decided by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties may mutually agree to delay the initiation of arbitration. This agreement to arbitrate shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq., to the exclusion of inconsistent state laws.

14.3.1 The Parties each acknowledge and agree that in accepting arbitration as the mode of binding dispute resolution for disputes arising out of this Agreement or any Project initiated pursuant to this Agreement they are knowingly surrendering the right to trial by jury in connection with such claims and/or disputes.

14.3.2 The claims and disputes of Owner, Engineer, Consultant, and other persons or entities involving a common question of fact or law shall be heard by the same arbitrator(s) in a single consolidated proceeding.

14.4 Venue for Litigation or Arbitration. Except as provided in Paragraph 14.5, or where prohibited by law, any arbitration concerning disputes arising out of or relating to this Agreement or to a Project initiated pursuant to this Agreement shall be held in King of Prussia, Pennsylvania, unless the parties mutually agree to an alternate location. Litigation, where permissible under this Article 14, shall be venued in the

State courts located in Montgomery County, Pennsylvania or in the federal court for the Eastern District of Pennsylvania, unless the law of the jurisdiction in which the Project is located requires otherwise. Notwithstanding the foregoing, the parties consent to an alternate jurisdiction and venue for arbitration or litigation to the extent that any dispute is consolidated into an existing lawsuit or arbitration in another location by mutual agreement of the Parties or by court order.

14.5 Claims Involving Owner or Third Parties. If the claim or dispute involves the Owner or a lawsuit filed by a third party who is not obligated to arbitrate with the Engineer, then the Parties agree to resolve their dispute in the venue and forum required by the Prime Contract or in the jurisdiction in which such third party action is properly filed, and Consultant consents to and voluntarily submits to such jurisdiction and venue.

14.6 Continuing Performance. During the course of resolution of any dispute, the Consultant shall continue to provide the Services unless Engineer, in its sole discretion, suspends or terminates the Services in accordance with the terms of this Agreement.

ARTICLE 15- ORDER OF PRECEDENCE; DEFINITIONS.

15.1 Order of Precedence. In the event of a conflict between this Agreement and a Service Order, the terms of this Agreement shall prevail over the Service Order unless the inconsistent provision expressly identifies the specific provision or provisions of this Agreement which the Service Order is intended to and does in fact modify

15.2 Prime Contract Definitions. Terms not defined in this Agreement shall have the meaning given to them in the relevant Prime Contract, if they are defined in the Prime Contract.

15.3 Constructor. The Constructor is the contractor (or contractors) engaged by the Owner to perform

operations at the site of a Project initiated pursuant to this Agreement to manage and/or build such Project.

15.4 Contract Documents. The Contract Documents consist of this Agreement, any subsequent modifications to this Agreement, the Service Order initiating a Project pursuant to this Agreement and the following Exhibits which are attached hereto and incorporated herein by reference:

15.4.1 Exhibit A – Form of Service Order

15.4.2 Exhibit B – Consultant’s Insurance Requirements

15.5 Engineer Additional Insureds. The Engineer Additional Insureds are defined in Exhibit B, the Consultant’s Insurance Requirements.

15.6 Laws. The term “Laws” means (i) all applicable laws (including Environmental Laws), ordinances, rules, codes, orders, judgments, decrees, injunctions or other legally binding obligations and permit or approval terms and conditions of any federal, state or local governmental or regulatory authority with jurisdiction over the Project, the Engineer or Consultant or of the facilities of either of them; and (ii) all generally applicable industry or self-regulatory standards whether the same are regional, national or international and any changes thereto relating to the Services or the work of the Project, including without limitation all health and safety rules and regulations imposed by all such authorities on Engineer or Consultant in connection with the Services.

15.7 Other Contractor. The term “Other Contractor” means a contractor other than the Constructor or its Subcontractors or Consultants with whom the Owner contracts separately to perform construction or operations related to a Project initiated pursuant to this Agreement.

15.8 Regulatory Requirements means collectively all Laws applicable to a Project initiated pursuant to this Agreement, or to the Owner’s, the Engineer’s or the Consultant’s operations; all building regulatory requirements including Laws and regulations imposed on and/or applicable in any way to the carrying out of the Services; and construction regulatory requirements including, but not limited to, relevant building codes.

\* \* \* \*

This Agreement is entered into as of the day and year first written above.

ENGINEER CONSULTANT

EXECUPOWER LLC McCORMICK TAYLOR, INC.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Andrea M. Turley, P.E. Patrick J. Guise

Title: Managing Partner & COO Title: Chief Visionary Officer Date: Date:

Exhibit A

Form of Service Order

Page 1

Last updated:

Exhibit B

Consultant’s Insurance Requirements

1. Consultant’s Insurance. Before commencing to provide Services in connection with any Project initiated pursuant to this Agreement, Consultant shall furnish Engineer with certificates of insurance evidencing the coverages required by this Exhibit B and shall thereafter notify the Engineer, in writing, at least thirty (30) Days in advance, of any cancellation, reduction or restriction or other limitation of such insurance coverages. Such certificates shall contain transcripts from the proper office of the insurer evidencing in particular the named and additional insureds in connection with each Project initiated pursuant to this Agreement, the extent of the insurance, the location and the operations in which the insurance applies, the expiration date, and the notice of cancellation clause. All policies shall be underwritten by a carrier or carriers having an A.M. Best (or equivalent) rating of A- or better.
2. Subject to the more detailed description of the specific requirements of Consultant’s liability insurance requirements set forth below in Paragraphs 3-7 of this Exhibit B, this Paragraph 2 summarizes Consultant’s worker’s compensation and liability Insurance requirements:

Kind of Insurance Minimum Limits

# Workers’ Compensation Statutory

Employer’s Liability Not less than $1,000,000 per accident/disease

Commercial General Liability, $1,000,000 per occurrence; and insuring against bodily injury, property $2,000,000 per project aggregate; damage, contractual liability (including $2,000,000 per project products/completed

Consultant’s indemnification obligations operations

contained herein), personal injury and advertising injury

Commercial automobile liability Not less than $2,000,000 combined singled limit

(including third-party liability and including coverage for all owned and non-owned vehicles):

Excess/Umbrella Liability Insurance $5,000,000 per occurrence and per project or per location aggregate

in excess of CGL, ELI and Auto Liability

Professional Liability/ Errors & Not less than $3,000,000 per claim

Omissions (containing prior acts coverage sufficient to cover all Services performed for this Project)

# Cyber/Network Liability Insurance (if $10,000,000 per occurrence

Services require access to Engineer and/or Owner’s network, etc.)

Pollution Liability Insurance (if $5,000,00 combined single limit Services include provision etc. of

Hazardous Materials)

1. Additional Insureds. Consultant shall have its Commercial General Liability and Automobile Liability Policies endorsed to name as additional insureds ExecuPOWER, LLC, its parent company, its subsidiaries and affiliates, and their respective officers, directors, members, employees, agents and representatives, successors and assigns; and the Owner, and any other parties required by the relevant Prime Contract in connection with each Project initiated pursuant to this Agreement (the “Engineer Additional Insureds”).
2. The Consultant’s insurance coverages shall be primary, and shall pay prior to any other coverage available to the Engineer Additional Insureds. All coverage shall be non-contributing with respect to any other insurance or self-insurance which may be maintained by the Engineer Additional Insureds.
3. Waiver of Subrogation. With the exception of professional liability insurance, all coverages required under this Exhibit B shall include a waiver of subrogation and a waiver of any insured-versus-insured exclusion regarding the Engineer Additional Insureds (provided that this waiver of subrogation shall not circumvent Consultant’s indemnification obligations under the terms of the Agreement).
4. Sub-Consultant Insurance Requirements. Consultant shall permit no Sub-consultant to enter upon or continue the performance of Services in connection with any Project initiated pursuant to this Agreement unless such Sub-consultant is and remains insured in accordance with the requirements set forth in this Exhibit B or the Engineer and Owner approve of such Sub-consultant’s non-conforming insurance program in advance of either the Consultant contracting with the Sub-consultant or of the Sub-consultant’s change from a conforming to a non-conforming insurance program. In the absence of Engineer’s and Owner’s prior written consent to a non-conforming insurance program for any Sub-Consultant, Consultant shall indemnify Engineer for any loss suffered by it for the failure of such Sub-Consultant to be insured as required by this Paragraph 6.
5. Detailed Liability Insurance Requirements:
   1. Worker's Compensation and Employer’s Liability. Consultant shall provide worker’s compensation insurance with statutory limits of coverage, including employer's liability limits of $1,000,000 each accident/ $1,000,000 bodily injury by disease each employee/ $1,000,000 bodily injury by disease policy aggregate.

(i) Waiver of Subrogation. Waiver of Subrogation Endorsement must be provided in favor of the Engineer Additional Insurers.

* 1. Commercial general liability insurance (“CGL”). Consultant’s CGL shall be written on the current edition of ISO Form CG 00 01 or an equivalent form; it shall provide coverage for ongoing operations, completed operations, personal injury and advertising injury liability, and contractual liability.
     1. Sublimits. The limits of coverage shall not be less than $1,000,000 each occurrence, $1,000,000 for Personal Injury and Advertising Injury Liability; $2,000,000 per project general aggregate, and $2,000,000 per project products-completed operations aggregate for not less than three (3) years from the date of Final Completion of the Project, if applicable, or the date Engineer accepts the Services, if there is no Final Completion of the Project.
     2. Waiver of Subrogation. Waiver of Subrogation must be provide using ISO Form CG 24 04 or an equivalent form.
     3. Additional Insureds. The CGL shall name the Engineer Additional Insureds as additional insureds for both ongoing operations and completed operations using the current editions of ISO Forms CG 20 10 and CG 20 37 (or by using equivalent forms.)
     4. Railroad Coverage. If work is to be done within 50 feet of any railroad track, the current edition of ISO Form CG 24 17 (or an equivalent form) must be attached to the policy.
  2. Automobile liability insurance. Automobile liability insurance shall be provided covering the use and maintenance of owned, non-owned, hired and rented vehicles.
     1. Limits. Limits of coverage shall be not less than $2,000,000 combined single limit each accident.
     2. Additional Insureds. The policy shall name the Engineer Additional Insureds as additional insureds.
     3. Waiver of Subrogation. Waiver of Subrogation Endorsement must be provided in favor of the Engineer Additional Insurers.

1. Excess/Umbrella. Excess or Umbrella liability insurance coverage with a limit of not less than five million dollars ($5,000,000.00) per occurrence and per project or per location aggregate, in excess of the CGL, automobile liability and, if applicable, pollution liability, insurance coverages. Excess coverage must follow form.
2. Professional Liability. Consultant shall procure and obtain at its own cost and expense and maintain in full force and effect, Professional liability and errors and omissions insurance with minimum limits of $3,000,000 each claim, $3,000,000 policy aggregate, with prior acts coverage sufficient to include all Services provided in connection with the Project.
   1. The Consultant shall maintain the above-described Professional Liability Insurance covering errors and omissions during the course of design and for a minimum period of thirty-six (36) months (or longer if required by law) after final payment of the Consultant or Substantial Completion of each Project initiated pursuant to this Agreement, whichever last occurs.
3. Cyber/Network Security Insurance. If Consultant will have access to Owner's and/or Engineer's computer networks or Critical Cyber Assets, Consultant shall maintain Cyber/Network Security Insurance with a limit of not less than ten million dollars ($10,000,000) per claim and in the aggregate.
   1. Coverage must include liability for financial loss resulting from or arising out of acts, errors, or omissions in the performance of contractual obligations assumed by Consultant under this Agreement including for: (i) breaches of security; (ii) violation or infringement of any right to privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; (iii) breach of contract in connection with a network security or data privacy event; (iv) data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and (v) participation in a denial of service attack on a third party, or arising out of acts, errors, or omissions, in rendering the Services.
   2. Such insurance must address all of the foregoing, without limitation, if caused by an employee of the Consultant or by an independent contractor working on behalf of the Consultant in performing the Services under this Agreement. Policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world.
4. Pollution Liability. If the Services involves or requires Consultant to handle, transport, dispose of or otherwise perform work or operations with Hazardous Substances, Consultant shall, in addition provide pollution liability insurance applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, with a combined single limit of not less than five million dollars ($5,000,000.00) per occurrence, automobile pollution liability coverage at least as broad as that provided under the ISO pollution liability — broadened coverage for covered auto endorsement (CA 99 48) will be provided, and the Motor Carrier Act Endorsement (MCS 90) will be attached to Consultant’s automobile liability policy. Coverage as required in this Exhibit B will apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, or other irritants, contaminants, or pollutants.