

ENGINE RESERVATION & ENGINEERING AGREEMENT

This **ENGINE RESERVATION & ENGINEERING AGREEMENT** (the “Agreement”) is made on the 24th day of August 2020, between

USVI Water and Power Authority, a quasi-governmental entity organized under the laws of the United States Virgin Islands, with its principal office located at 9720 Este Thomas, St. Thomas, Virgin Islands 00801 (the “Owner”),

and

WÄRTSILÄ NORTH AMERICA, INC. a limited liability company incorporated under the laws of Maryland, with its offices at 11710 Gessner Rd., Suite A, Houston, Texas 77064, USA.

Each of Owner and Wärtsilä also being referred to as a “Party” and, together, the “Parties”.

WITNESSETH:

WHEREAS, Owner is interested in purchasing Wärtsilä engine generating sets, together with related auxiliary equipment, and Wärtsilä battery energy storage systems for the projects described below, to be located in St. John, US Virgin Islands (the “Projects”);

WHEREAS, Wärtsilä has made an offer dated June 28th, 2018, to Owner for the construction on an EPC basis of the projects described below;

WHEREAS, Owner intends to enter into engineering, procurement and construction (EPC) contracts with Wärtsilä (the “EPC Contracts”), the terms of which are still to be negotiated and agreed between parties, to execute the following Projects:

1. Cruz Bay Site 1, for battery energy storage only;
2. Cruz Bay Site 2, 1 x 9L32 oil cube; and
3. Coral Bay, 1 x 9L32 oil cube and battery energy storage

WHEREAS, pending the negotiations, Owner desires to secure a) the availability for the Wärtsilä engines begin engineering work for the Projects and b) for Wärtsilä to commence certain engineering work described in this before the EPC Contract are signed;

WHEREAS, the Parties recognize the benefit of Wärtsilä undertaking the engineering in order to better define the scope of services to be rendered under the EPC Agreements and the price related to the same.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Availability Schedule & Engineering

Wärtsilä undertakes to have the engines available ex-works at its factory in Vaasa, Finland (Incoterms 2010) by March 31, 2021 at the latest (the “Availability Schedule”) for onward delivery pursuant to the terms and conditions of the EPC Contracts subject to the EPC Contracts being signed and the downpayments (as defined in the EPC Contracts) being received by October 30, 2020. If the signature of the EPC Contracts or receipt of the downpayments is beyond this date, the Availability Schedule will be extended on at least a day to day basis. Furthermore, Wärtsilä undertakes to submit the engineering work for the Projects as set forth in Appendix 1 (Cruz Bay BESS), Appendix 2 (Cruz Bay Generator Set), and Appendix 3 (Coral Bay Bess and Generator Set), including the documents included on Appendix 4 (Civil Engineering Documents), Appendix 5 (Mechanical Engineering Documents), and Appendix 6 (Electrical Engineering Documents), to Owner within 3 calendar months, at the latest, starting from the date that Wärtsilä has completed and delivered to Owner the geotechnical report and the topographical survey for all three (3) sites and Wärtsilä has received payment of 50% of the Engine Reservation and Engineering Fee (as defined in Section 2 below) (“Engineering Completion Date”).

The Parties acknowledge and agree to cooperate in connection with the reservation of the engines and with the production of the engineering, and to maintain regular and open communication, both in person and by e-mail and telephone, between appropriate technical and other representatives of the Parties, in order specifically to enable Owner (a) to review and provide comments on the process and the scope of the engineering work and (b) to have input into the end product of the engineering, to ensure, in both instances, that it complies with the engineering scopes outlined in Appendix 1, Appendix 2, and Appendix 3. If Owner requests Wärtsilä to perform work under this Agreement beyond the scope agreed to by the Parties in Appendix 1, Appendix 2, and Appendix 3, Wärtsilä will be entitled to a written order for the changes (a “Change Order”), as applicable, and changes to the Engine Reservation and Engineering Fee, if any are appropriate, shall be agreed before proceeding with the additional work.

2. Engine Reservation and Engineering Fee

In consideration of Wärtsilä’s undertakings set forth in Section 1 above, Owner shall pay a fee of \$ 2,892,350 (the “Engine Reservation and Engineering Fee”) to Wärtsilä for the Powerplant scope plus an additional USD 450,000 for the Battery energy storage related scope at Cruz Bay and at Coral Bay; payments will be made based on the following:

- 1st downpayment: 50% at signing of the contract, paid within thirty (30) working days from the signature by both Parties of this Agreement; and
- 40% paid upon delivery to and acceptance by the Owner of the complete engineering scopes defined in Appendices 1, 2 and 3. Acceptance by Owner shall not be unreasonably withheld. If Owner does not notify Wärtsilä of any material deficiencies with the engineering work delivered within thirty days following delivery, the engineering work will be deemed accepted and the 40% milestone

- payment will become due.
- 10% paid within forty (40) days following the approval by a locally admitted Professional Engineer, as evidenced by his or her stamp (the "Local PE Approval"), which acceptance shall not be unreasonable withheld, delayed, or conditioned; and further provided that Wärtsilä shall be responsible for the costs of any revisions to the engineering work required in order to obtain the Local PE Approval.

The Engine Reservation and Engineering Fee shall be converted to United States Dollars (USD) at the date of signing this agreement based on the €/USD exchange rate as published on the web site of the European Central Bank and shall be payable in USD in immediately available funds and net of any taxes, charges, withholding taxes or deductions whatsoever.

The Engine Reservation and Engineering Fee shall be paid against an invoice to Wärtsilä's bank account:

Beneficiary: Wärtsilä North America, Inc.
Bank: Nordea Bank AB (publ), New York
Branch
Bank Address: 1211 Avenue of the Americas, New
York, NY 10036
Account # : 7049163001
Swift Code: NDEAUS3N
ABA: 026010786

In the event that the EPC contracts are not concluded one month after the Engineering Completion Date at the latest for any reason whatsoever, Wärtsilä will no longer secure the Availability Schedule as provided in Section 1 above. In such a case, Wärtsilä shall have the right to retain all amounts of the Reservation Fee spent to secure the Availability Schedule and to perform the engineering for the Project. The Owner acknowledges and agrees that the Reservation Fee is a fair and equitable compensation for the Availability Schedule and the engineering which Wärtsilä has agreed to secure against the payment of the Reservation Fee. Therefore, the Owner hereby fully, finally, unconditionally and irrevocably waives any right, remedy and cause of action, whether in contract or at law, it may have to claim back the Reservation Fee amounts spent by Wärtsilä to secure the Availability Schedule and to perform the engineering in the event the Contract is not concluded one month after the Engineering Completion Date at the latest for any reason whatsoever.

3. Effectiveness of this Agreement

This Agreement shall become effective upon the signature hereof by both Parties. In the event 50% of the Engine Reservation and Engineering Fee is not received by Wärtsilä in full within thirty (30) working days from the signature of this Agreement at the latest, this Agreement shall automatically terminate in which case neither Party shall have any obligations whatsoever toward the other Party hereunder.

4. Miscellaneous

(a) Negotiations

The Parties hereto acknowledge that they are in the process of negotiating the EPC Contracts but that the payment or the receipt, as the case may be, of the Engine Reservation and Engineering Fee hereunder shall not constitute or be deemed to constitute or imply any obligation on either Party to enter into the EPC Contracts.

(b) Wärtsilä represents and warrants that the engineering will be undertaken in accordance with reasonable practices, methods, techniques and standards, as in effect or generally applicable on the date of this Agreement, that are generally accepted for use in the international power generation industry and commonly used in prudent power generation engineering and operations to design and engineer equipment lawfully, safely, and efficiently as applicable to equipment of the size, service and type used in the Project ("Prudent Engineering Practice"), provided, however, that Prudent Engineering Practice is not intended to be limited solely to the optimum practice, methods or actions to the exclusion of all other practices, methods or actions but is instead to be construed as a range of possible practices used by skilled and prudent owners and operators of power generating facilities similar to the Project in terms of output, location and operating characteristics.

(c) Limitation of Liability

In any case whatsoever, neither Party shall be responsible for any indirect, consequential, punitive, incidental and special losses and damages arising out of or in connection with this Agreement or the negotiations for the EPC Contracts, including but not limited to loss of opportunity, loss of profit, loss of revenue, loss of reputation, loss of use of equipment, loss of interest and loss of production.

(d) Entire Agreement; Binding Agreement; Assignment

This Agreement represents the entire agreement between Wärtsilä and Owner relating to the subject matter set forth herein and supersedes all previous agreements and understandings between them. This Agreement may be amended or modified only in writing signed by the duly authorized officers of each Party.

This Agreement shall be binding upon and inure to the benefit of each Party and each Party's successors and assigns.

Owner shall not assign or transfer any rights, benefits or obligations hereunder or any part thereof to any person. Wärtsilä may at any time assign and transfer all or any of its rights, benefits and obligations hereunder to any of its affiliates.

(e) Counterparts

This Agreement may be executed in any number of counterparts which when taken together shall constitute one agreement.

(f) Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the New York, NY without reference to its conflict of laws principles.

All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The arbitration proceedings shall be in the English language and the place of arbitration shall be New York, NY USA.

(g) COVID-19


The Parties expressly agree that COVID-19 shall be deemed a force majeure event (defined as a cause or occurrence affecting the ability of a Party to perform its obligations under this Agreement which cause or occurrence is beyond the reasonable control of the Party affected and not due to an act or omission of the Party affected and which could not have been reasonably foreseen or avoided by the exercise of reasonable diligence) under this Agreement (whether foreseen or unforeseen at the time of this Agreement). Further, and accordingly any existing arrangements that are, at the time of this Agreement, already affected by COVID-19 shall not be within the control of a Party. In accordance with this Agreement, the Contractor shall keep the Owner informed of the implications of COVID-19 on the Contractor's performance under this Agreement.

(h) HUD Grant

The parties acknowledge that payments to Wärtsilä will be financed as part of a grant that Owner has received from the United States Department of Housing and Urban Development ("HUD"). Accordingly, the parties agree to be bound by the terms and conditions of the HUD General Provisions attached hereto as Appendix 7 and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on the day first written above.

USVI Water and Power Authority

By 
Name: Lawrence J. Kupfer
Title: Executive Director (CEO)

Wärtsilä North America, Inc

By 
Name: Edmund Phillips
Title: Business Development Manager (BDM)

Appendix 1

Engineering Scope Cruz Bay BESS (Site 2)

Appendix 2

Engineering Scope for Cruz Bay Generator Set (Site 2)

Appendix 3

Engineering Scope of Coral Bay BESS and Generator Set

Appendix 4

Civil Engineering Documents

Appendix 5

Mechanical Engineering Documents

Appendix 6

Electrical Engineering Documents

Appendix 7

HUD General Provisions