

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2014-246

Council Meeting Date: 07-14-2014

Date Adopted: 07-14-2014

TITLE: RESOLUTION AUTHORIZING EMEX, LLC TO CONDUCT A REVERSE AUCTION FOR NATURAL GAS FOR THE BOROUGH OF NEW PROVIDENCE

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Muñoz.

WHEREAS, Borough of New Providence has determined to move forward with the EMEX Reverse Auction in order procure electricity for Borough of New Providence; and

WHEREAS, the Local Unit Technology Pilot Program and Study Act (P.L. 2001, c. 30) (the "Act") authorizes the purchase of electricity supply service for public use through the use of an online auction service; and

WHEREAS, Borough of New Providence will utilize the online auction services of EMEX, LLC, an approved vendor pursuant to the Act, waiver number EMEX LLC-1, located at [www.energymarketexchange.com](http://www.energymarketexchange.com); and

WHEREAS, EMEX, LLC is compensated for all services rendered through the participating supplier that a contract is awarded to; and

WHEREAS, the auction will be conducted pursuant to the Act; and be it

WHEREAS, if the auction achieves a price of \$0.8021/therm or less for a 12 month term, a price of \$0.8103/therm or less for an 18 month term, or a price of \$0.776/therm or less for a 24 month term; Borough of New Providence may award a contract to the winning supplier for the selected term.

FURTHER RESOLVED, that the Mayor of the Borough of New Providence be and hereby is authorized to execute on behalf of the Borough of New Providence any natural gas contract proffered by the participating supplier that submits the winning bid in the EMEX Reverse Auction if the auction achieves a price 0.8021/therm or less for a 12 month term, a price of \$0.8103/therm or less for an 18 month term, or a price of \$0.776/therm or less for a 24 month term; Borough of New Providence may award a contract to the winning supplier for the selected term.

APPROVED, this 14<sup>th</sup> day of July, 2014.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 14<sup>th</sup> day of July, 2014.

Wendi B. Barry, Borough Clerk

## RIDER TO ENERGY CONTRACT IN CONNECTION WITH REVERSE AUCTION

The undersigned energy supplier, \_\_\_\_\_, ("Energy Supplier") hereby agrees that the terms stated in this Rider To Energy Contract In Connection with Reverse Auction (the "Rider") will form part of any contract (the "Contract") between Energy Supplier and the following government entity(ies):

Borough of New Providence, New Jersey  
(the "Customer(s)") that results or arises from Energy Supplier's participation in a reverse auction to be held on or about 7/15/2014, under which Energy Supplier wishes to bid to receive the Contract to provide natural gas supply services to said Customer(s). In the event of any conflict between the terms of any such resulting Contract and the terms of this Rider, the terms of this Rider shall control.

1. The Contract shall be governed by the laws of the State of New Jersey and venue for any dispute under the Contract shall be exclusively in the state courts located within the county or counties in which such Customer(s) is/are located.
2. The Customer(s) shall have no indemnity obligations in favor of the Energy Supplier for any reason whatsoever to the extent such obligations are prohibited by state law or other statute.
3. In recognition of the New Jersey Open Public Records Act ("OPRA"), all confidentiality provisions contained in the Contract are hereby qualified with the requirement that the Customer(s) is/are exempt from such provisions to the extent required by OPRA or similar laws applicable to the Customer(s).
4. If a Customer receives a direct bill from the Energy Supplier, then in order to accommodate requirements that a Customer receive approval for payment of invoices at meetings of its governing body, the Contract shall provide for sufficiently long payment terms to accommodate same; and in no event shall such payment terms be less than thirty (30) days.
5. In recognition that Customer(s) provide a critical public function, Energy Supplier agrees that, notwithstanding any provision contained in the Contract, it shall not disconnect or cause or request the disconnection of a Customer's natural gas service for any reason. Energy Supplier reserves the right to return Customer to the utility for any material breach of the terms of the Contract and reserves all rights to sue for breach of the Contract.
6. Energy Supplier shall not charge or pass through any costs associated with a variance in a Customer's amount of natural gas consumption from the consumption amounts predicted based on historical usage or estimated amounts provided by or agreed to with such Customer unless the variance in usage from the amounts predicted is greater than

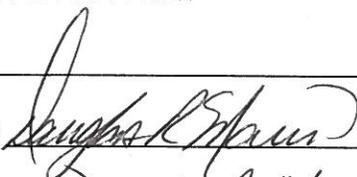
or equal to +/- 25% on a monthly basis. Any costs passed through due to a variance in usage must be passed through without mark-up. Nothing in this Section 6 prohibits Customer and Energy Supplier from agreeing on a larger consumption bandwidth in the Contract.

7. The existence of, and the terms and conditions of, this Rider shall be considered confidential and may not be disclosed by the Energy Supplier to any third party.
8. The per-therm price for natural gas in the bid and in the Contract shall include the entire cost of Customer's consumption, losses from the City Gate to the Burner Tip and the Energy Supplier's costs to serve Customer, such that the quoted price represents an all-in fixed rate for the entire cost of supplying natural gas, with the exception of any costs regulated by the NJ BPU other than those related to basic gas supply service. Nothing in this provision is meant to invalidate any provision in the Contract for adjustments to price resulting from a change in law.

ACKNOWLEDGED AND AGREED BY:

ENERGY SUPPLIER

CUSTOMER(S)

By:   
Name: Douglas R. MARVIN  
Title: Administrator  
Date: 7/15/14

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

I have the authority to bind the Energy Supplier

# Natural Gas Offer Sheet For: Borough of New Providence

Offer Number: H14071514737245



4 Executive Blvd., Suite 301, Suffern, NY 10901

P: 1.855.697.2537 F: 1.800.506.6009

[csny@hudsonenergy.net](mailto:csny@hudsonenergy.net)

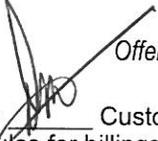
[www.hudsonenergy.net](http://www.hudsonenergy.net)

This Offer Sheet forms part of the Agreement entered into by and between Hudson Energy Services, LLC ("HES") and Borough of New Providence ("Customer"). This Offer Sheet shall only become binding and enforceable when it and the General Terms and Conditions are executed by both Customer and HES. Nothing herein shall be deemed to require HES to execute the Agreement. The Date on which HES executes this Offer Sheet and the General Terms and Conditions shall be deemed the "Effective Date" of the Agreement.

Customer Name:	Borough of New Providence
Billing Address:	360 Elkwood Ave.
City, State, Zip Code:	New Providence, NJ, 07974-
Contact Person:	Douglas Marvin
Phone:	(908) 665-1400
E-mail:	

## Offer Specifics

*Offer Expiration: 5:00pm Eastern Prevailing Time on 7/15/2014*

Initial here:  Customer will be billed by the Utility in accordance with its usual requirements and schedules for billings, deposits, payments, late payments and other charges. HES's charges will appear on the bill together with the amounts charged by the Utility for delivery. The invoice will be based on the actual data provided by the Utility. If the Utility does not provide actual data in a timely manner, HES or the Utility may use estimated data to calculate Customer's invoice and, upon receipt of actual data, charges will be reconciled and adjusted as needed in subsequent invoices.

Term (months) *	24 Month	Estimated Average Monthly Volume (therm)	5777
Billing Fee (\$/month)	\$0.00	Estimated Annual Volume (therm)	69,354
		Estimated Term Volume (therm)	138,684
Fixed Price (\$/therm)	\$0.7332		
GEOgas Price (\$/therm)	\$0.000	GEOgas Usage Percentage	0%
Total Price (\$/therm)	\$0.7332		

\* The actual document term is subject to all included accounts' estimated start and estimated end dates below.

The Natural Gas Price and the GEOgas Price include 7% New Jersey Sales and Use Tax.

### Included Accounts

Utility	Account #	Service Address	Start Month (Estimated)	End Month (Estimated)
Public Service Electric and Gas Company	PG000010151883513921	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016
Public Service Electric and Gas Company	PG000010882067101754	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016
Public Service Electric and Gas Company	PG000009677670301806	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016
Public Service Electric and Gas Company	PG000009178255701844	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016
Public Service Electric and Gas Company	PG000009908872601768	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016
Public Service Electric and Gas Company	PG000011127571501779	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016
Public Service Electric and Gas Company	PG000009908787601754	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016
Public Service Electric and Gas Company	PG000010638863001816	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016
Public Service Electric and Gas Company	PG000010894417401864	360 Elkwood Ave. New Providence NJ 07974	10/13/2014	10/2016

### Product-Specific Terms

#### Natural Gas Price and Pass-through Charges

The Fixed Price listed above includes the cost of Customer's consumption, transportation costs, delivery costs, compressor fuel costs, and HES's costs to serve Customer. The Fixed Price does not include any other costs that may be assessed by third parties. Such other costs are defined as Pass-through Charges and shall be the responsibility of Customer. See Section 7.5 for further details.

#### Quantity

Customer shall operate and manage the Location(s) in a manner that is materially consistent with Customer's past Energy usage practices. The approximate quantity of Energy consumed monthly at each Location, based on historical data and/or estimates, is listed in the chart below. Should a material change in usage practices occur, HES reserves the right to include as a Pass-through Charge any additional incremental costs incurred by HES as a result of such material change. HES may consider a change in the Location(s) to constitute a material change in usage practices.

Month	Expected Monthly Volume (therm)	Month	Expected Monthly Volume (therm)
January	13,482	July	652
February	9,340	August	668
March	5,552	September	2,718
April	2,219	October	7,222
May	479	November	11,634
June	771	December	14,620

Index Price (for use in the event of automatic renewal)

The Index Price for a given delivery month shall be the final published settlement price on the New York Mercantile Exchange ("NYMEX") Henry Hub natural gas futures list as listed at [www.cmegroup.com](http://www.cmegroup.com).

Exit Fees (Liquidated Damages)

If this Agreement ends early due to Customer's Default, Customer shall pay liquidated damages to HES as defined below. Further details regarding Default and Exit Fees are provided in Section 11 and Section 13.

Exit Fee - Customer's Remaining Volume multiplied by the difference per therm obtained by subtracting the market price for similarly situated customers existing at the time of the Default from the Natural Gas Price (provided that such Exit Fee shall be at least \$0.05 per therm); plus all transmission, delivery costs, penalties and any other charges incurred by HES as a result of the termination; plus all applicable taxes; plus HES's associated costs and reasonable legal expenses related to determining the liquidated damages and the enforcement of HES's rights and remedies. The parties agree that it would be difficult or impossible to determine the precise amount of damages that would result from Customer's Default, that the Exit Fee set forth herein represents a fair and reasonable estimate thereof, and that said Exit Fee constitutes liquidated damages and not a penalty.

GEOgas Exit Fee - If Customer signed for GEOgas, Customer's Remaining Volume multiplied by the GEOgas Price listed above.

Customer is advised to review in detail the General Terms and Conditions. In particular, see Section 5 for information on the possible automatic renewal of this agreement, and Section 7 for more information on charges and taxes under this agreement.

**By signing this Agreement, each party agrees to be bound by the terms of this Offer Sheet and the General Terms and Conditions, and acknowledges having full authority to sign this Agreement and enter a binding contract for the Location(s) and Utility accounts listed above.**

Accepted and agreed to:

Borough of New Providence

Signature: *Deborah R. Marwin*

Printed: Deborah R. Marwin

Title: Administrator

Date: 7/15/14

**I have the authority to bind Customer**

Hudson Energy Services, LLC

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**I have the authority to bind HES**

**Note to Customer: Please submit your executed Terms and Conditions and Offer Sheet to HES prior to the expiration period indicated on the Offer Sheet by either faxing the Agreement to (800) 506-6009 or e-mailing it to [nycontracts@hudsonenergy.net](mailto:nycontracts@hudsonenergy.net).**

Customer declines to receive communications about other products and services offered by HES, its affiliates or business partners. Customer will still receive communications relevant to this Agreement.

## STATEMENT OF GENERAL TERMS AND CONDITIONS

**1. Key Defined Terms. Agreement:** Collectively, the Offer Sheet and these General Terms and Conditions. **Customer:** The account holder(s) named on the Offer Sheet. **Electricity Price:** Either a Fixed Price or an Index Price plus a Fixed Adder, as listed on the Offer Sheet. Product specific components of the Electricity Price are indicated on the Offer Sheet. **Energy:** the electricity and/or natural gas commodity, as identified on the Offer Sheet, that HES supplies to Customer's Locations. **Fixed Adder:** The amount that Customer will pay per kWh, therm or ccf, as applicable, for the Term in addition to the Index Price for Customer's consumption of Energy to account for cost components that are not included in the Index Price. **Fixed Price:** The price listed on the Offer Sheet as the fixed price per kWh, therm or ccf, as applicable, that Customer will pay for the Term for Customer's consumption of Energy. **GEOgas:** Green energy option for natural gas. **GEOgas Price:** The price listed on the Offer Sheet as the GEOgas price per therm or ccf (as applicable) that Customer will pay for the Term for Customer's GEOgas, as further described in Section 7 below. **GEOpower:** Green energy option for electricity. **GEOpower Price:** The price listed on the Offer Sheet as the GEOpower price per kWh that Customer will pay for the Term for Customer's GEOpower, as further described in Section 7 below. **HES:** Hudson Energy Services, LLC. **Index Price:** The variable price per kWh, therm, or ccf, as applicable, defined on the Offer Sheet that Customer will pay for the Term for Customer's consumption of Energy. **Location:** Each natural gas and/or electricity account listed on the Offer Sheet, relating to Customer's premise(s) for service, or replacement thereof where approved by HES, is a separate "Location" bound by this Agreement. **Natural Gas Price:** Either a Fixed Price or an Index Price plus a Fixed Adder, as listed on the Offer Sheet. **NJBPU:** The State of New Jersey Board of Public Utilities. **Party:** HES or Customer; collectively "Parties". **PJM:** PJM Interconnection is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states, including New Jersey, and the District of Columbia. **Price:** As set out on the Offer Sheet, each of the Electricity Price, GEOpower Price, Natural Gas Price, and GEOgas Price, as applicable. **Remaining Volume:** Customer's anticipated Energy consumption under this Agreement (in kWh, therm, or ccf, as applicable) for the remainder of the Term, to be calculated by HES in accordance with HES's standard and reasonable practices in effect at the time of calculation and based on the Estimated Term Volume stated on the Offer Sheet. **Utility:** Customer's local electricity and/or natural gas distribution utility (including any successor). At any given time, the Utility's price for Energy commodity may be lower or higher than HES's price.

**2. Notice and Details of Appointment of Agent.** Customer gives HES the exclusive right to act as agent on Customer's behalf in making all supply and delivery arrangements with the Utility and others in order to provide Customer's full Energy requirements to the Location (and authorizes HES to notify the Utility of same). This may include, but is not limited to, coordinating with the Utility for transportation, distribution, and delivery of Energy, and negotiating, entering, performing, amending, and terminating agreements and/or obligations relating to the supply of Energy. Customer agrees, now and throughout the Term, that it: (a) is not, and will not be, bound by an agreement for its Location with an Energy supplier other than HES; and (b) will not cancel or modify HES's appointment as Customer's exclusive agent in providing Customer's full Energy requirements to the Location.

**3. Acceptance, Verification.** This Agreement is conditional upon acceptance by HES. HES's acceptance is at its sole discretion and depends, in part, on: (a) Utility's acceptance and implementation of HES's request to serve Customer under a deregulated Energy service program; (b) HES's ability to verify the accuracy of Customer's information by recorded telephone call (or other means acceptable to HES); (c) HES's review and approval of Customer's creditworthiness; and (d) Customer's current status as an HES customer. If all conditions are met, or otherwise waived by HES, HES will supply Energy to Customer's Location for the Term. HES reserves the right to require Customer to provide collateral, including a security deposit, letter of credit, or a guarantee deemed acceptable to HES, prior to HES's acceptance of this Agreement or during the Term of this Agreement.

**4. Term.** The Term of this agreement is specified on the Offer Sheet. A new Term will begin if this Agreement is renewed or otherwise extended. The Term begins on the Start Date, which will be HES's first day of Energy supply to Customer under this agreement. The Start Date will be reasonably close to the Estimated Start Date listed on the Offer Sheet. Should the Start Date be delayed (for reasons such as the Agreement being improperly completed, not submitted to HES, not implemented by the Utility, etc.), HES will use commercially reasonable efforts to resolve issues within its control. In the case of a renewal agreement, the Start Date will be the first date after the Estimated Start Date listed on the Offer Sheet at which HES can implement the Price. If the Start Date is not within 60 days of the Estimated Start Date due to Customer's action or lack of action, HES reserves the right to cancel this Agreement without penalty and propose a new Price to Customer. The End Date will be HES's last day of Energy supply under this Agreement, not including any renewal or extension. The Estimated End Date is the date calculated as Start Date plus Term, and the actual End Date may be 30 days or more from the Estimated End Date, depending on the time required to complete customer's switch back to Utility or other supplier. Customer remains responsible for all HES charges through, to, and including the actual End Date. Either HES or Customer may reasonably request to renegotiate the Price set forth in the Offer Sheet subject to mutually agreeable extension of the Term; provided that this provision shall not be construed as an obligation of either Party to modify the Price or Term, and any such modifications of the Price or Term shall only become effective if evidenced in written instrument and executed by both Parties.

**5. Renewal.** Unless either Party expresses its intent not to renew this Agreement in writing at least sixty (60) days prior to the end of the Term (or if such intent not to renew is expressed but Customer has not arranged for the transfer of its Energy service to another Energy provider by the end of the Term), this Agreement will automatically be renewed on a month to month basis if no other renewal agreement has yet been reached. Any automatic renewal will use a rate that is the greater of (a) Price, or (b) one-hundred forty percent (140%) of the Index Price, plus all other taxes, costs, charges or fees which are set forth in Section 7 of this Agreement.

**6. Green Energy Option (GEOgas and GEOpower).** If Customer selects GEOgas, HES will purchase and retire verified emissions reductions, allowances or instruments ("carbon credits") to offset 11.1 lbs (5.1 kg) worth of CO<sub>2</sub> for each ccf of natural gas Customer consumes, multiplied by the GEOgas Usage Percentage listed on the Offer Sheet. If Customer selects GEOpower, HES will purchase and retire a block of renewable energy certificates or attributes ("green energy") equivalent to Customer's electricity use, multiplied by the GEOpower Usage Percentage listed on the Offer Sheet. Purchasing GEOpower ensures that Green energy related to electricity is produced by renewable sources such as hydro, wind or bio-mass and injected into the electricity grid. HES can suspend or discontinue GEOgas and/or GEOpower at anytime (Customer will then stop paying for it but the rest of this Agreement will remain in effect). Carbon credits and green energy purchased and retired on Customer's behalf will: (a) relate to carbon credits and green energy produced in the year Customer pays for the units (plus or minus 12 months); and (b) remain HES's legal property. GEO-related charges will be included with the Energy charge on Customer's bill.

**7. Charges (and Credits) under this Agreement:** HES will supply Customer with Energy, GEOpower, and GEOgas for the Location, as applicable. Customer agrees to pay for the related charges, taxes, and other amounts charged by the Utility including, without limitation, charges relating to transmission, delivery, uplift, congestion and service charges. **7.1 Electricity Charge:** The Electricity Charge will be the product of Customer's

electricity consumption and the Electricity Price, plus pass-through charges (as applicable). **7.2 GEOpower Charge:** Customer's electricity consumption multiplied by the GEOpower Price as identified on the Offer Sheet. **7.3 Natural Gas Charge:** The Natural Gas Charge will be the product of Customer's natural gas consumption and the Natural Gas Price, plus pass-through charges (as applicable). **7.4 GEOgas Charge:** Customer's natural gas consumption multiplied by the GEOgas Price as identified on the Offer Sheet. **7.5 Pass-through Charges:** Pass-through Charges are discussed on the Offer Sheet. If HES is charged a billing fee by the Utility as a cost for billing Customer, HES may pass it through to Customer. Changes in Governing Law may result in certain costs or credits being shifted from the Utility or other similar or regulatory bodies (such as the NJBPU) to HES, or vice versa. If this happens, these costs or credits will be passed through to Customer at no markup. **7.6 Billing Fee.** If a monthly Billing Fee is specified on the Offer Sheet, Customer will pay this fee for each calendar month in the Term. **7.7 Taxes.** Customer shall pay lawful taxes and surcharges that may apply to the charges, whether direct or indirect, relating to the sale, purchase or delivery of Energy. This may include State or local municipal taxes that HES will pass through to Customer. If Customer is exempt from State/local taxes, it shall provide HES with proof of such status at the time of its execution of this Agreement. Otherwise, until Customer provides such proof, HES is not required to recognize any exemption or refund/credit previously paid taxes. CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HES HARMLESS FOR ALL TAX-RELATED OBLIGATIONS UNDER THIS AGREEMENT.

**8. Billing, Payment, Measurement:** Customer will be billed in the manner indicated in the Offer Specifics Section of the Offer Sheet. A history of late payments or a decision by the Utility to stop billing HES charges through the Utility bill may be reason for cancellation of this Agreement, the charging of Exit Fees, and possible referral to a collection agent. Customer shall pay HES's reasonable collection costs and legal fees associated with the collection of amounts owed by Customer to HES. The Utility will measure (or otherwise determine) the amount of Energy supplied to the Location. HES assumes no liability for errors in measurement and shall be entitled to revise any bill, if necessary, to account for any errors or reassessment made by the Utility. HES will not rebate or refund Customer for billings based in any part on estimated Energy usage (only a forward credit will appear on the bill). Customer agrees to comply with any and all billing and payment requirements as established by the applicable Utility and the NJBPU.

**9. Ending this Agreement Early, Default.** If this Agreement ends early, for any reason, Customer must still pay all amounts charged up to the early end date. HES can end this Agreement, at no cost to HES, if: (a) required/allowed by law; (b) the Utility is unable to service the Location; (c) a legislative or regulatory change materially alters HES's ability to profitably perform this Agreement; (d) Customer requests the substitution of the Location with another Utility account that does not meet HES's criteria set out in Section 20; or (e) Customer fails to perform this Agreement. Customer shall be in Default if, at any time during the Term, it: (i) changes its supplier, including to the Utility or other Energy marketer; (ii) withdraws HES's authority to obtain and use information necessary to perform this Agreement; (iii) fails to make timely payment of amounts due hereunder; (iv) consolidates or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, merger or transfer, the resulting, surviving or transferee entity (a) is less creditworthy than Customer prior to consolidation, merger or transfer, in HES' reasonable opinion, or (b) fails to assume, by operation of law or pursuant to an agreement reasonably satisfactory to HES, prior to or at the time of such consolidation, merger or transfer all of the obligations of Customer under this Agreement, or (c) fails to notify HES at the time of any such consolidation, merger or transfer; or (d) otherwise fails to comply with the terms and conditions of, or the Utility's rules in relation to, this Agreement. Should publishing of the Index Price be stopped by the publishing entity identified on the Offer Sheet, or if there is a material change in the method of calculation of the Index Price, HES may in its sole discretion either terminate this Agreement or determine the applicable Index Price by using the most recent price available from the publishing entity or by using another published source. This Agreement shall be deemed terminated at no cost and without liability to either Party if HES does not commence supply of Energy within 12 months of the anticipated Start Date, for whatever reason, and Customer has not contacted HES to implement same; or if this Agreement is unable to be implemented for reasons beyond HES's control.

**10. Rights of Non-Defaulting Party:** If either Party defaults, the non-defaulting Party may terminate this Agreement effective on the date indicated in its notice of termination and shall have the right (i) to withhold any payments due to the Defaulting Party under this Agreement; (ii) to suspend performance on or after the date of termination; and (iii) to the extent allowed by law, to disconnect, or cause to be disconnected, each Customer Location. In the event of disconnection for non-payment, Customer may be required to pay additional charges to Customer's Utility and HES. These charges will be itemized on the disconnect notice. If HES terminates this Agreement for reasons other than non-payment, Customer shall be transferred to the provider of last resort, and Customer shall be notified of the transfer. The Parties agree and acknowledge that under bankruptcy law (i) this Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code ("Code"), (ii) HES is a forward contract merchant; (iii) HES is not a Utility or "Utility" as that term is used in 11 U.S.C. 366, and Customer agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. 366 in any bankruptcy proceeding; and (iv) HES is entitled to the rights under, and protections afforded by, the Code.

**11. Exit Fees:** Customer understands that in order for HES to be able to supply Energy to its customers, HES enters into long term supply arrangements with suppliers of Energy to meet the forecasted consumption of its customers. If this Agreement ends prior to the Estimated End Date due to Customer's Default, Customer shall pay liquidated damages to HES according to the calculations provided on the Offer Sheet. The Exit Fee, GEOpower Exit Fee, and GEOgas Exit Fee identified on the Offer Sheet together form the "Exit Fees". The Parties agree that the liquidated damages calculation is a genuine pre-estimate of the damages that would be suffered by HES and shall be conclusively deemed to be liquidated damages designed to reimburse HES for its losses and not a late payment charge, penalty, fine, interest, or other charge of any kind.

**12. Suspension of Utility Service.** In the event of non-payment when due of all invoiced sums authorized in this Agreement, Energy supply and/or delivery service may be disconnected by the Utility. If this happens and the Utility later reconnects Customer, HES may, at HES's option, re-enroll Customer under this Agreement effective as of the date that the Energy supply and/or delivery service is reconnected by the Utility. Customer must notify HES within 30 days of the date of reconnection.

**13. Customer Information, Credit Review.** Customer requests, authorizes and directs the Utility and/or PJM to release to HES, Customer's contact and account information, current and historical Energy billing and usage data, and other payment information so as to enable HES to perform its obligations under this Agreement. Customer further authorizes HES to review Customer's credit history and information, whether in the possession of the Utility or third party credit reporting agencies (and HES may disclose such Customer information to its creditors, suppliers, affiliates, business partners, and service providers). HES's supply of Energy may depend on Customer's creditworthiness and HES is not obligated to accept, or continue performing, this Agreement if Customer does not meet HES's credit requirements. HES will send notice by regular mail to Customer if Customer is not approved by HES for credit reasons. Customer may rescind its authorization at any time but unless and until Customer does so, HES shall continue to have access to such information throughout the Term. Customer will promptly notify HES in advance of any change to Customer's information that is relevant to this Agreement. The Utility may also advise HES of any such change. Incorrect Customer information may be rectified. Customer authorizes HES to provide information about Customer, including contact information, to HES's affiliates, business partners and service providers. HES (and its

affiliates, business partners, and service providers) can communicate with Customer about other products and services offered by HES, its affiliates or business partners, unless Customer elects not to receive these communications by marking the appropriate section on the Offer Sheet or providing written notice to HES.

**14. Representations.** As a material inducement to entering into this Agreement, each Party, with respect to itself, represents and warrants to the other Party that it has the power and the authority to enter into, and perform its obligations under, this Agreement; and, each Party accepts this Agreement to be a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms. Customer further covenants that it: (a) shall provide HES with all necessary physical access and information required to implement this Agreement; (b) shall abide by the rules and tariffs of the Utility; (c) has made its own independent decisions to enter into this Agreement based solely upon its own judgment and upon advice from such advisers as it has deemed necessary; and (d) agrees no communication (written or oral) received from HES or its affiliates (or its respective representatives) will be deemed to be an assurance or guarantee as to the expected results of this Agreement. HES hereby warrants to Customer that at the time of delivery of Energy hereunder it will have good title and/or the right to sell such Energy, and that such Energy will be free and clear of all liens and adverse claims. EXCEPT AS PROVIDED FOR IN THE PRECEDING SENTENCE, HES EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, WHETHER WRITTEN OR ORAL, FOR OR WITH RESPECT TO ITS SUPPLY OF ENERGY OR OTHER OBLIGATIONS UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS, IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

**15. Indemnification.** HES does not transmit or distribute Energy to Customer and does not generate the Energy used or consumed by Customer. Therefore, HES does not promise a steady, continuous supply. There are events outside of HES's reasonable control which may result in fluctuations, interruptions or irregularities in Energy service. HES WILL NOT BE LIABLE FOR ANY FLUCTUATIONS, INTERRUPTIONS OR IRREGULARITIES IN ENERGY SERVICE OR FOR ANY DAMAGE OR CONSEQUENCES RESULTING THEREFROM. HES WILL ARRANGE FOR THE UTILITY TO DELIVER ENERGY TO THE FACILITY/METER(S) ASSOCIATED WITH THE LOCATION (THE "DELIVERY POINT"). FROM AND AFTER THE DELIVERY POINT, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, CAUSES OF ACTION AND JUDGMENTS OF ANY KIND RELATED TO HES'S DUTIES AND OBLIGATIONS HEREUNDER. HES SHALL NOT BE LIABLE FOR MATTERS WITHIN THE CONTROL OF THE UTILITY (INCLUDING, BY WAY OF EXAMPLE ONLY, MAINTENANCE OF THE DISTRIBUTION SYSTEM, SERVICE INTERRUPTIONS, LOSS, DETERIORATION OR TERMINATION OF SERVICE, OR METER READINGS) OR ANY DAMAGES CLAIMED TO HAVE BEEN INCURRED DUE TO ANY ACT OR OMISSION OF HES, WHERE SUCH ACT OR OMISSION IS DUE IN WHOLE OR IN PART TO ANY EVENT OR CIRCUMSTANCE BEYOND ITS REASONABLE CONTROL OR ITS ABILITY TO PERFORM. EACH PARTY SHALL USE COMMERCIALY REASONABLE EFFORTS TO MITIGATE DAMAGES.

**16. Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT WILL HES OR ANY OF ITS AFFILIATED COMPANIES BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST OPPORTUNITIES OR LOST PROFITS, EVEN IF HES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HES'S LIABILITY RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, IS LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE REMEDY AND ALL OTHER REMEDIES OR DAMAGES ARE EXPRESSLY WAIVED.

**17. Dispute Resolution.** Customer may contact HES with regard to a concern or dispute under this Agreement by mail, fax or telephone using HES's contact information as set out at the top of the Offer Sheet. Disputes arising under this Agreement shall, upon the demand of HES, be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect (the "Rules"), except as modified herein. The arbitration shall be held and the award shall be issued in New Jersey. There shall be one arbitrator, who shall be appointed by agreement of the Parties within thirty (30) days of receipt by the respondent of the demand for arbitration. Any arbitrator not appointed within the time limit provided herein, shall, upon the request of any Party, be appointed by the AAA in accordance with the Rules. Any arbitrator appointed by the AAA shall be a retired judge or a practicing attorney and an experienced arbitrator with no less than ten years of experience with energy related matters and large commercial cases. The hearing shall be held, if possible, within sixty (60) days of the appointment of the arbitrator. In rendering an award, the arbitrator shall be required to follow the law of the State of New Jersey and the terms of this Agreement. The arbitrator is not empowered to award actual, direct damages in excess of compensatory damages, and each Party hereby irrevocably waives any right to recover consequential, incidental, punitive, exemplary or similar damages with respect to any dispute. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. 1 et seq. The award, which shall be a written award stating the findings of fact and conclusions of law on which it is based, shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues or accounting presented to the arbitral tribunal. Judgment upon such award may be entered in any court of competent jurisdiction.

**18. Amendments.** HES may amend this Agreement by providing Customer notice of such amendment. Unless required by operation of law (including, for example, a Utility tariff change, administrative fee change, change in law, NJBPU order, sales and use tax or other state mandated charge), HES will not amend this Agreement without Customer's consent. However, if any such change creates additional costs (or credits) not currently included in the Price, then HES shall be entitled to pass through such incremental costs (or credits) to Customer.

**19. Assignment.** HES may sell, assign, pledge, or grant a security interest in all or any part of its interest in this Agreement, including to another Energy marketer without prior notice to, or further consent from, Customer. Customer shall not assign or otherwise transfer its rights or obligations under this Agreement without first obtaining HES's written consent, which shall not unreasonably be withheld. This Agreement enures to the benefit of and binds the Parties and their respective successors and assigns.

**20. Substitution of Location(s).** Customer may request the substitution of one or more Utility account(s) not already included in the Agreement for one or more existing Location(s) included in the Agreement. HES will agree to such substitution provided that (i) Customer provides HES with a minimum of 60 days notice of the request; (ii) the new Utility account(s) are located in the same Utility territory and PJM load zone, as applicable, as the Location(s) to be removed from the Agreement; and, (iii) in aggregate, the annual consumption, load profile, capacity requirement, and any other characteristics deemed by HES to be material to the Agreement are comparable, in HES's reasonable opinion, between the new Utility account(s) to be added to the Agreement and the existing Location(s) to be removed from the Agreement. If HES agrees to the requested substitution then (i) each of Customer's specified Utility accounts not already included in the Agreement will be a Location bound by this Agreement; (ii) HES is authorized to deal with

Customer's Utility in this regard; and (iii) if Governing Law requires Customer to provide HES with additional written authorization at the time of the substitution, as it relates to starting or ending service at a Location, Customer will have the option of providing it to HES or paying the Exit Fees as they relate to the Location(s) removed from the Agreement. If HES does not agree to the requested substitution and Customer ends service at a Location, Customer will pay the Exit Fees as they relate to that Location.

**21. Inability to Perform.** Customer accepts that certain events beyond the control of HES, including Force Majeure events declared by HES's direct or indirect suppliers, may affect HES's ability to supply Energy, GEOgas, or GEOpower at the Price. If this happens, HES may at its sole discretion and without liability: (a) temporarily supply them to Customer at the market price available to HES; or (b) suspend this Agreement until as soon as HES is reasonably able to resume performance. This Agreement will otherwise remain in full effect. "Force Majeure" means those events not reasonably anticipated when this Agreement was signed and beyond the control of HES including, but not limited to, Acts of God; fires, floods, wildlife, storms, lightning, earthquakes or regional freezing; war or hostile action; acts of the public enemy; civil insurrection, terrorism or sabotage; inability to access the transmission or distribution system, events associated with the Utility, the commodity supplier or others used to deliver Energy to the Location, curtailment or disruption by the Utility, the commodity supplier or the Utility's appropriation of Energy, event of Force Majeure of HES's supplier or suppliers; voltage fluctuations, irregularities or surges; or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities. Force Majeure shall not include: (a) Customer's decision to shut down, sell or relocate its facilities; (b) economic loss due to Customer's loss of markets or customers; or (c) changes in the market prices of Energy. If either Party is rendered unable by a Force Majeure Event to carry out, in whole or part, its obligations under this Agreement and such Party gives written notice and full details of the event to the other Party as soon as reasonably practicable after the occurrence of the event, then during the pendency of such Force Majeure Event, the obligations of the Party affected by the event (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) shall be suspended. A Party may furnish notice of a Force Majeure Event orally; provided, however, electronic or written notification must be furnished to the other Party within two (2) Business Days thereafter. The Party affected by the Force Majeure shall remedy the Force Majeure with all reasonable dispatch; provided however, that this provision shall not require HES to schedule delivery of Energy to, or Customer to receive Energy at, points other than the Delivery Points.

**22. Notice.** HES will send notices and correspondence to the billing address listed on the Offer Sheet (as may be amended from time to time upon receiving updated information from the Utility or Customer). At HES's discretion (if, for example, there is a fault with regard to the billing address), HES may instead send it to Customer's service or corporate address (as may be amended). When providing HES with notice, Customer shall send it to HES's address as listed on the Offer Sheet, to the attention of Customer Service Manager, Commercial Contracts, in a manner by which Customer may give proof of delivery upon request. Either Party can change its address for receiving notices by notifying the other pursuant to this paragraph. If a change in Governing Law necessitates that a group of customers be provided with a general notice, HES reserves the discretion to provide it by posting it on its website at [www.hudsonenergyservices.com](http://www.hudsonenergyservices.com).

**23. Governing Law.** The laws of the State of New Jersey govern this Agreement. If a provision of this Agreement is deemed contrary to or unenforceable under Governing Law, the Parties agree it shall be severed to the minimal extent possible consistent with the meaning of the rest of this Agreement and reasonable intent of the Parties, and replaced by an enforceable provision close in meaning to the original.

**24. Confidentiality.** Each Party acknowledges and agrees that the terms or conditions of this Agreement, including the fees paid hereunder and the terms of any proposal or any documents provided to Customer by HES in connection with this Agreement, constitute confidential information. Neither Party shall disclose any such confidential information to a third party (other than the Party's employees, counsel, accountants, affiliates or advisors who have a need to know such information and who have agreed to keep such information confidential) without the express prior written consent of the other Party, except in order to comply with any applicable law, regulation, exchange or regional transmission organization rule or in connection with any court or regulatory proceeding; provided, however, that each Party shall use reasonable efforts to prevent or limit the disclosure of confidential information, and shall immediately notify the other Party of the request for disclosure so as to afford such other Party the opportunity to oppose such disclosure or otherwise obtain a protective order or other relief as may be available. Each Party will cooperate with the other in any attempt to obtain such protections. This confidentiality provision shall not apply to (a) information that was known to a Party prior to obtaining information from the other Party; (b) information in the public domain; (c) information obtained by a Party from a third party who did not, directly or indirectly, receive the information from the other Party to this Agreement or from an entity that was under an obligation of confidentiality to the other Party to this Agreement; or (d) information developed by either Party independent of any confidential information. The Parties shall be entitled to all remedies available at law or equity to enforce or seek relief in connection with this confidentiality obligation.

**25. Recordings.** Each Party consents to the recording of all telephone conversations between its employees and the employees of the other Party. Any such recordings may be introduced to prove the intent of a transaction; provided, however, that nothing herein shall be construed as a waiver of any objection to the introduction of such evidence on the grounds of relevance. Absent manifest error, any conflict between such a recording and written documentation that is executed by both Parties shall be resolved in favor of such written documentation.

**26. Miscellaneous.** This Agreement contains the entire agreement between HES and Customer concerning the supply of Energy, GEOpower and GEOgas to the Location, as applicable. It may not be contradicted by any prior or contemporaneous oral or written document and can only be amended if agreed to by HES's head office in a written notice to, or recorded telephone call with, Customer. Electronic, e-mail and fax signatures are for legal purposes equivalent to original signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute the Agreement. Any document generated by the Parties with respect to this Agreement may be imaged and stored electronically (and used as if it were an original business record). The contents of HES's marketing materials do not form part of the Agreement and were not relied on by Customer. This Agreement does not create any partnership, duty, joint venture or other special relationship between the Parties. No delay by HES to exercise its rights under this Agreement will constitute a waiver of such rights. Applicable provisions of this Agreement will continue in effect after termination or expiration of this Agreement to the extent necessary, including those for billing adjustments and payments, limitation of liability, indemnification, and dispute resolution. Except as otherwise required by Governing Law or as set out herein, HES does not offer refunds.

**27. Emergency.** In an electricity or natural gas-related emergency, Customer shall contact the appropriate emergency personnel or the Utility, if appropriate, and not HES.



**28. NJBPU Complaint Line.** Notwithstanding the provisions contained in the Section 17 hereto (Dispute Resolution), if Customer has a complaint concerning the service it has received from HES, Customer may contact the New Jersey Board of Public Utilities, Division of Public Relations, Two Gateway Center, 8th floor, Newark, N.J. 07102; Telephone: 1-800-624-0241; or electronically at [www.bpu.state.nj.us](http://www.bpu.state.nj.us). The license numbers for HES are ESL-0083 (electric) and GSL – 0069 (gas).

**29. Consumer Information:** The services provided by the Utility will continue to be protected by the State's Home Energy Fair Practices Act and the NJBPU's Residential and Non-residential Rules. Should Customer have any questions or require additional information regarding this Agreement, Customer can contact HES at: Hudson Energy Services, LLC, 4 Executive Blvd. Suite 301, Suffern, NY 10901, 1-877 HUDSON9. Customer may also request information from the New Jersey Board of Public Utilities Division of Public Relations - Toll Free at 1-800-642-0241 or through their website at: <http://www.bpu.state.nj.us>.

**Essential Agreement Information**

- a) This Agreement is with Hudson Energy Services, LLC (HES), an alternative Energy supplier and not Customer's local Utility. Customer will continue to be supplied with Energy whether or not Customer signs this Agreement.
- b) This Agreement covers only the cost of Energy itself (along with GEOpower and/or GEOgas, if selected). As always, Customer will remain responsible for certain additional costs or charges that may be assessed by third parties. See Section 7.5 for additional details.
- c) This Agreement does not guarantee financial savings. At any given time, Customer's Utility's Energy commodity rates may be lower or higher than HES's prices for Energy.
- d) This Agreement can be automatically renewed on a month to month basis (see Section 5). Customer will owe Exit Fees to HES if Customer causes this Agreement to end early (see Section 11).
- e) By signing this Agreement, Customer agrees to initiate Energy service and begin enrollment with HES. HES, following its execution of this Agreement, will supply Energy (along with GEOpower and/or GEOgas, if selected) at the Price Customer agrees to on the Offer Sheet. Customer will pay any related charges, plus applicable taxes.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement. This Agreement will not become effective as to either Party unless and until executed by both Parties.

**Borough of New Providence**

**Hudson Energy Services LLC**

By: *Douglas R. Marvin*  
 I have the authority to bind the Customer.

By: \_\_\_\_\_  
 I have the authority to bind HES.

Print Name: *DOUGLAS R. MARVIN*

Print Name: \_\_\_\_\_

Date: *7/15/14*

Contract Version: HE.PJMNJ.P.FI.ALL.EN.20110218

Note to Customer: Please submit your executed Terms and Conditions and Offer Sheet to HES prior to the expiration period indicated on the Offer Sheet by either faxing the Agreement to (800) 506-6009 or e-mailing it to [nycontracts@hudsonenergy.net](mailto:nycontracts@hudsonenergy.net).