

**STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)**

**TOWN OF BLUFFTON AGREEMENT
NUMBER 2023-73**

THIS AGREEMENT is made the ____ of _____, 2023 between Emergency Power Systems, LLC (hereinafter called "Contractor") and the Town of Bluffton (hereinafter called "Town"), a municipal corporation organized and existing under the laws of the State of South Carolina.

WHEREAS, the Town desires to procure a standby generator for Town Hall to include service, installation, and a five-year warranty; and

WHEREAS, the Town and Contractor desire to enter into an Agreement wherein the Contractor shall provide such services as set forth herein below:

NOW, THEREFORE, for and in consideration of the mutual promises, undertaking and covenants set forth herein, the receipt and sufficiency of which are acknowledged and affirmed by the Town and the Contractor, the parties hereto agree as follows:

1. **Services/Schedule:** The Contractor shall perform services per the attached scope of work in Attachment 1.
2. **Deliverables:** The deliverables resulting from execution of the above-mentioned work shall include but not limited to: delivery and installation of a Cummins 175D6D genset with ATS and battery, including turnkey installation and delivery.
3. **Fees:** The total cost of these services shall be \$154,802.20 per Attachment 1.
4. **Invoicing:** The Contractor shall send invoices via email simultaneously to invoice@townofbluffton.com and to their Town project manager. Invoices may also be sent to the Town of Bluffton, PO Box 386 Bluffton, SC 29910, Attn: Accounts Payable if emailing is not possible. The invoice should reference contract number 2023-73 and the purchase order associated with the task order. Approved invoices shall be paid within 30 days upon receipt of the invoice in the Finance Department.
5. **General Terms and Conditions:**
 - a. The Contractor shall be required to maintain the appropriate amounts and coverages of insurance for general liability, auto liability, professional liability (as required), and workers compensation as identified in Attachment 2 for the entire length of the agreement. The contractor must provide the Town with a Certificate of Insurance for each that names the Town as an additional insured on their policy. The Contractor is required to immediately contact the Town should any change to these policies occur during the course of the performance of this contract. Failure to maintain these policies is grounds for termination.
 - b. Work will commence at NOTICE TO PROCEED and/or Purchase Order and expire upon completion and acceptance of the project. All deliverables, whether goods, services, supplies, or other, shall become the property of the Town. Any deliverables that may be provided in hard copy and electronic form, such as drawings, plans, specifications, reports, or other, shall be provided in such formats and orientations as required by the Town.
 - c. Contractor shall be licensed to perform the work including, but not limited to, a current Town of Bluffton Business License and any required State of South Carolina license.
 - d. Contractor shall comply with the most current Federal and State of South Carolina Laws and Regulations, including but not limited to, Fair Labor Standards Act and Occupational Safety and Health Administration guidelines.
 - e. In the event the Contractor is required to hire Subcontractors, those Subcontractors must be appropriately licensed by the Town of Bluffton. The Contractor must provide the Town with a list of all Subcontractors and to immediately notify the Town of any changes. Use of non-licensed Subcontractors is grounds for termination.

- f. The Town Manager or his designee may terminate this contract in whole or in part at any time for the convenience of the Town. If the contract is terminated for the convenience of the Town, the Town will pay the Contractor for costs incurred to that date of termination.
- g. Should any part of this Agreement be rendered void, invalid or unenforceable by a court of law, such a determination shall not render void, invalid or unenforceable any other part of this Agreement.
- h. This Agreement has been made and entered into in the State of South Carolina, and the laws of South Carolina shall govern the validity and interpretation of this Agreement in the performance due hereunder.
- i. This Agreement may not be modified nor any additional work performed unless such modification or work is approved in writing and signed by both parties. The Contractor may not assign this contract without the prior written approval of the Town.
- j. The Contractor shall defend, indemnify, and hold harmless the Town, its officers, directors, agents, and employees from and against any and all actions, costs, claims, losses, expenses, and/or damages, including attorney's fees, whether incurred prior to the institution of litigation, during litigation, or an appeal arising out of or resulting from the conduct of any activity hereby authorized or the performance of any requirement imposed pursuant by this Agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.
- k. In the event the Town must proceed to litigation to protect or enforce its rights, the Town shall be entitled to recover its reasonable attorney fees and costs.
- l. In the case of services provided under this Agreement, Contractor shall perform the work consistent with the professional skill and care ordinarily provided by members of its profession practicing under similar circumstances. In the case of goods provided under this Agreement, Contractor shall provide a one (1) year warranty to be measured from the date of final acceptance by the Town.
- m. The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by the Agreement. Nothing contained herein creates any relationship between the Town and Contractor other than that which is expressly stated herein. The Town is interested only in the results to be achieved under this Agreement. The conduct and control of the Contractor's agents and employees and methods utilized in fulfilling its obligations hereunder shall lay solely and exclusively with the Contractor. The Contractor's agents or employees shall not be considered employees of the Town for any purpose. No person employed by the Contractor shall have any benefits, status, or right of employment with the Town.
- n. The order of precedence shall be as follows: this Agreement, terms and conditions of the purchaser order, terms and conditions of the solicitation (if any), Contractor provided terms.

[Remainder of Page Intentionally Omitted. Signature Page(s) to Follow.]

IN WITNESS WHEREOF, the parties hereto affixed their signatures hereto the date first written hereinabove.

EMERGENCY POWER SYSTEMS, LLC

TOWN OF BLUFFTON

Date: _____

Date: _____

By: _____

By: _____

Print Name: _____

Print Name: Stephen Steese

Position: _____

Position: Town Manager

Witnesses: _____

Witnesses: _____

Attachments:

1. Scope of Work and Fee Schedule
2. Insurance

ATTACHMENT 1
SCOPE OF WORK

Quote 042823B

28-Apr-23

Name	Bluffton Town Hall Genset Turnkey				
Pricing good for 30 days Net 0 payment terms					
Item					Qty Total Cost
Genset	Cummins 175D6D, 208vac, 72 hour full load tank, Sound Attn LVII housing, Color is Green, PMG, 600a 100% breaker, 125 deg alt, Block heater battery charger, 5 year warr			1	\$78,778.00
ATS	600a, 208vac , 208vac, 3R, 3 pole			1	included
Start up	with battery and 4 hour load bank at full load (NFPA 110)			1	\$3,000.00
Assy	Remote Annunciator			1	included
Assy	Remote Estop			1	included
Turnkey	All conduit, wire, concrete pad, genset set on pad and installed				\$66,722.00
Tax					\$6,302.20
				Total	\$154,802.20
Note	No fuel included - tank is 1055 gals				

(check appropriate action):

RELEASE _____ Hold for Submittal Approval _____ Submittals are Electronic only

I, _____ (printed name) accept the above terms and conditions on behalf of _____ (printed company name) and authorize Emergency Power System LLC to order the equipment detailed in this Proposal as per approved submittals and as described in the above Proposal. Quote is for Equipment only to include shipping to Savannah Branch for Customer pick up. No installation, pipes regs or connections included. Restock fees will apply if order is canceled for any reason

Accepted By:

Authorized Signature_____
Date

Emergency Power Systems LLC
140 Retreat Plantation
Beaufort SC 29902

Estimator
John Carper
912-657-5510

ATTACHMENT 2

INSURANCE COVERAGES

Workers Compensation – Contractor shall maintain Worker's Compensation Insurance & Employers Liability in accordance with the State of South Carolina Code.

Business Auto Policy – Contractor shall maintain Business Automobile Liability at a limit of liability not less than \$500,000 each occurrence for all owned, non-owned and hired automobiles.

Commercial General Liability – Commercial General Liability for public liability during the lifetime of a contract shall have minimum limits of \$1,000,000 per claim, \$2,000,000 per occurrence for Personal Injury, Bodily Injury, and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Complete Operations, Contractual Liability and Broad Form Property Damage Endorsements. Coverage shall not contain an exclusion or limitation endorsement for Contractual Liability or Cross Liability. Coverage for the hazards of explosion, collapse and underground property damage (XCU) must also be included when applicable to the work to be performed. All insurance policies shall be issued from a company or companies duly licensed by the State of South Carolina. Specific endorsements will be requested depending upon the type and scope of work to be performed.

Professional Liability (for Professional Services only) – Contractor shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000, the Town reserves the right, but not the obligation, to review and request a copy of Vendors most recent annual report or audited financial statement.

Additional Insured Requirements – Except as to Workers' Compensation and Employers' Liability, said certificate(s) shall clearly state that coverage required by the contract has been endorsed as follows:

The Town of Bluffton, a municipality of the State of South Carolina, its officers, agents and employees as additional insured.

The Certificate of Insurance shall unequivocally provide thirty (30) days written notice to the Town prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Said liability insurance must be acceptable by and approved by the Town as to form and types of coverage.