

**PLANNED EQUIPMENT MAINTENANCE AGREEMENT
(Annual Maintenance Service and Inspections of Generators)**

THIS AGREEMENT ("Agreement") is made _____, 2022, between the **City of Lake Worth Beach**, Florida, a municipal corporation ("CITY"), with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **Cummins Inc.**, a corporation authorized to do business in the State of Florida ("CONTRACTOR") with its office located at 3777 Interstate Park Road, Riviera Beach, FL 33404.

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the CITY is in need of a CONTRACTOR to perform annual maintenance services and inspections of the generators; and

WHEREAS, the CONTRACTOR has been maintaining the City's generators successfully for the past five (5) years; and

WHEREAS, CONTRACTOR submitted a proposal to the CITY to continue providing annual maintenance services and inspections of the generators as a sole source provider; and

WHEREAS, the CITY desires to accept the CONTRACTOR's proposal for CONTRACTOR to render annual maintenance services and inspections of the generators as provided herein; and

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the CITY finds entering this Agreement with the CONTRACTOR serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. TERM

1.1 The term of this Agreement shall commence upon approval of the Agreement by the City and shall extend for a period of five (5) years, dependent on the annual appropriation of funds by the City Commission. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

2. SCOPE OF WORK

2.1 The Scope of Work includes all implements, machinery, equipment, transportation, tools, materials, supplies, labor and other things necessary for the maintenance and inspections of the generators, as more specifically set forth in the CONTRACTOR's proposal attached hereto and incorporated herein as Exhibit "A" (the "Scope of Work").

2.2 The CONTRACTOR represents to the CITY that the Scope of Work provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the CONTRACTOR's work shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

2.4 The Scope of Work shall be performed by the CONTRACTOR or under its supervision and all personnel engaged in performing the Scope of Work shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such Scope of Work. All of the CONTRACTOR's personnel (and all subcontractors), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

2.5 The Scope of Work shall be completed in accordance with the CITY issued Purchase Order, the terms and conditions set forth in the Scope of Work and this Agreement.

2.6 All goods, parts, and components purchased hereunder shall be governed by the express manufacturer's standard warranty period as set forth in CONTRACTOR's quotation and CONTRACTOR's warranty for workmanship shall extend for a period of ninety (90) days beginning on the final day of services rendered (collectively, the "Warranty Term"). If The CITY finds during the Warranty Term following completion of services that any services provided under this Agreement are defective in workmanship or do not conform with the terms set forth in this Agreement ("Non-Conforming Services"), and provides CONTRACTOR notification of Non-Conforming Services within thirty (30) days following discovery by The CITY, then CONTRACTOR shall either correct or re-perform the Non-Conforming Services, at CONTRACTOR's sole cost and expense. **THE WRITTEN WARRANTIES CONTAINED HEREIN SHALL BE THE SOLE AND EXCLUSIVE WARRANTY(IES) RELATED TO ALL GOODS AND SERVICES PROVIDED BY CONTRACTOR AND ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE; AND ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE ARE HEREBY EXPRESSLY EXCLUDED. REPAIR OR REPLACEMENT SHALL BE THE SOLE REMEDY FOR DEFECTS OR ERRORS IN WORKMANSHIP AND/OR MATERIALS.**

3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

3.1 The CONTRACTOR is and shall be, in the performance of the Scope of Work under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the Scope of Work performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Scope of Work.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the Scope of Work hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the

CONTRACTOR.

4. SERVICES

4.1 The CONTRACTOR shall provide all services as more specifically set forth in the Scope of Work and this Agreement.

5. FEE AND ORDERING MECHANISM

5.1 This cost of goods and services to be provided by the CONTRACTOR is set forth in the CONTRACTOR's proposal, attached hereto and incorporated herein as Exhibit "A". The costs set forth in Exhibit "A" shall remain fixed for the duration of this Agreement.

5.2 Should the CITY require additional materials or services not included in Exhibit "A", rates and payment for such additional work will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code and policy prior to any such additional services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism for the Scope of Work (including each order of specific services) under this Agreement will be by a CITY issued Purchase Order(s); however, the terms and conditions stated in a CITY issued Purchase Order(s) shall not apply. CONTRACTOR shall not provide services under this Agreement without a CITY issued Purchase Order specifically for the stated services requested. Each Purchase Order shall be approved in accordance to the CITY's procurement code and policy. CONTRACTOR shall provide the amount of requested goods and services listed in each CITY issued Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess goods, services or costs not specifically stated in the Purchase Order(s). The City's Fiscal Year ends on September 30th of each calendar year. The CITY cannot authorize the purchase of goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the CITY's City Commission. Additionally, the CITY must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the CITY will issue a new Purchase Order(s) each Fiscal Year for required and approved goods and services.

6. MAXIMUM COSTS

6.1 The CONTRACTOR expressly acknowledges and agrees that the total cost to complete the Scope of Work in accordance with Exhibit "A" shall not exceed the amounts set forth in Exhibit "A", and no additional costs shall be authorized without prior written approval from the CITY.

7. INVOICE

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for approval prior to receiving compensation. The CONTRACTOR shall be paid within thirty (30) days of receipt of an approved invoice for the provided goods and services.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within fifteen (15) days after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any amounts in dispute from the payment to the CONTRACTOR until the dispute is resolved.

8. AUDIT BY CITY

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

9. COPIES OF DATA/DOCUMENTS

9.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

10. OWNERSHIP

10.1 Each and every report or other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement and paid for by the CITY shall be the exclusive property of the CITY, excluding any existing or possible proprietary information contained therein.

10.2 Notwithstanding the foregoing, any and all property which CONTRACTOR is required to, or does, produce in the performance of or in connection with the Services hereunder including but not limited to data, reports, documents, computer data, photographs, videos, or otherwise (collectively "CONTRACTOR IP") shall be the sole and exclusive property of CONTRACTOR, including any and all copyrightable material contained therein. Nothing in this Agreement shall be deemed "works-made-for-hire" or shall be construed to remit ownership to the CITY unless the parties have entered into a separate design agreement which specifies the ownership thereto. CONTRACTOR hereby grants to the CITY a perpetual, worldwide, royalty-free use license to use the CONTRACTOR IP for its intended business purposes.

11. WRITTEN AUTHORIZATION REQUIRED

11.1 The CONTRACTOR shall not make changes in the Scope of Work or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

12. DEFAULTS, TERMINATION OF AGREEMENT

12.1 If the CONTRACTOR fails to timely perform the Scope of Work or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONTRACTOR specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does commence good faith steps to remedy the default to the reasonable satisfaction of the City Manager or designee, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the City Manager or designee, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-

mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

12.2 In the event the CITY fails to remit payment in accordance with the terms of this Agreement, the CITY shall be in breach of this Agreement and in addition to any and all remedies available to CONTRACTOR, either at law or in equity, may terminate this Agreement without penalty or liability upon ten (10) days' notice to the City.

12.3 Notwithstanding paragraph 12.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause upon thirty (30) days' prior written notice to CONTRACTOR. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for demobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

13. INSURANCE

13.1. Prior to commencing the Scope of Work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY from CONTRACTOR. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional Insured", on a primary, non-contributing basis and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

13.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

13.3. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

13.4. The CONTRACTOR shall maintain, during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

14. WAIVER OF BREACH

14.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

15. INDEMNITY

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent

permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all third party liability, suit, actions, proceedings, judgments, claims, losses, liens, costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) and damages for damage to persons, including bodily injury, disease, or death, or property damage, and regardless, of whether the allegations are false, fraudulent or groundless, to the extent arising out of or alleged to have arisen out of the negligence or willful misconduct of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

15.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

15.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

15.4 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 CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time. Nothing in this Agreement or otherwise shall require the CITY to indemnify, defend, or hold harmless the CONTRACTOR under this Agreement.

15.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16. LIMITATION OF LIABILITY.

16.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE HEREUNDER FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING LOST PROFITS OR SAVINGS, LOSS OF USE, LOSS OF DATA, OR DOWNTIME) EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE, EXCEPT THAT THE FOREGOING SHALL NOT RESTRICT A PARTY'S ABILITY TO RECOVER DIRECT DAMAGES FOR BREACH OF THIS AGREEMENT. EXCEPT FOR THE CONTRACTOR'S OBLIGATION TO INDEMNIFY, DEFEND, AND HOLD HARMLESS AS SET FORTH IN PARAGRAPH 15 ABOVE, IN NO EVENT SHALL CONTRACTOR'S TOTAL AND CUMULATIVE LIABILITY EXCEED THE GREATER OF; TWO TIMES THE TOTAL COMPENSATION DUE CONTRACTOR UNDER THIS AGREEMENT; OR (ii) ONE MILLION DOLLARS. BY ACCEPTANCE OF THIS AGREEMENT, THE CITY ACKNOWLEDGES THE SOLE REMEDY FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

17. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

17.1 This Agreement consists of the terms and conditions provided herein; **Exhibit "A"**; any CITY issued Purchase Orders; and, an amendments to this Agreement. To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with any CITY issued Purchase Order(s) next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

17.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

18. ASSIGNMENT

18.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

18.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

19. SUCCESSORS AND ASSIGNS

19.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

20. OF TRIAL BY JURY

20.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

21. GOVERNING LAW AND REMEDIES

21.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be exclusively in Palm Beach County, Florida.

21.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

22. TIME IS OF THE ESSENCE

22.1 Time is of the essence in all respects under this Agreement.

23. NOTICES

23.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City Manager
City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

Cummins Inc..3777 Interstate Park Road
Riviera Beach, FL 33404

With a copy to:

Cummins Inc.
301 Market St
Indianapolis, IN 46203

24. SEVERABILITY

24.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

25. DELAYS AND FORCES OF NATURE

25.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR

is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR and the CITY each specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work. **Special Notice:** As a result of the outbreak of the disease Covid-19 arising from the novel coronavirus, temporary delays in delivery, labor or services from CONTRACTOR and its sub-suppliers or subcontractors may occur. Among other factors, CONTRACTOR delivery obligations are subject to correct and punctual supply from our sub-suppliers or subcontractors, and CONTRACTOR reserves the right to make partial deliveries or modify its labor or service. While CONTRACTOR shall make every commercially reasonable effort to meet the delivery, service or completion obligations set forth herein, such dates are subject to change.

26. COUNTERPARTS

26.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. This Agreement may be executed electronically.

27. LIMITATIONS OF LIABILITY

27.1 Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages. There shall be no other limitation of liability under this Agreement.

28. PUBLIC ENTITY CRIMES

28.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

29. PREPARATION

29.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

30. PALM BEACH COUNTY INSPECTOR GENERAL

30.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

31. ENFORCEMENT COSTS

31.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

32. PUBLIC RECORDS

32.1 CONTRACTOR understands that this Agreement and all associated documents are subject to Florida's Public Records Law, Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Laws and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR BY MAIL AT CITY OF LAKE WORTH BEACH, ATTN: City Clerk, 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

33. COPYRIGHTS AND/OR PATENT RIGHTS

33.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONTRACTOR agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

34. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

34.1 CONTRACTOR certifies that all material, equipment, etc., contained in this proposal meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

35. FEDERAL AND STATE TAX

35.1 The CITY is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will sign an exemption certificate submitted by the successful Proposer. Vendors or contractors doing business with the CITY shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall any Vendor/Contractor be authorized to use the CITY's tax Exemption Number in securing such materials.

36. PROTECTION OF PROPERTY

36.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

37. DAMAGE TO PERSONS OR PROPERTY

37.1 The responsibility for all damage to person or property arising out of or on account of work done under this Contract shall rest upon the CONTRACTOR, and he/she shall save the CITY and political unit thereof harmless from all claims made on account of such damages.

38. SAFETY: ACCIDENT PREVENTION.

38.1 In the performance of this Agreement, the CONTRACTOR shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation including without limitation Chapter 23 CFR 635. The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the CITY, may determine to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

38.2 It is a condition of this Agreement, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Agreement (if authorized), that the CONTRACTOR and any subcontractor shall not permit any employee, in performance of the

contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

38.3 Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

39. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Applicable to all federally funded contracts and any subcontracts of \$100,000 or more).

39.1 By execution of this Agreement, CONTRACTOR, if applicable, will be deemed to have stipulated as follows:

- (a) Any CITY facility or property that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- (b) CONTRACTOR agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (c) CONTRACTOR shall promptly notify the CITY of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a CITY facility or property that is or will be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities.

40. SCRUTINIZED COMPANIES

40.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

40.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or

if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

40.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

40.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

40.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

40.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

41. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONTRACTOR shall:

40.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

40.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

40.3. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

40.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

40.5. Be aware that a violation of section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited), shall be grounds for termination of this Agreement; and,

40.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONTRACTOR may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

42. SURVIVABILITY

42.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Planned Equipment Maintenance (Annual Maintenance Service and Inspections of Generators) on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR: Cummins Inc.

By: Brian Mestepey

[Corporate Seal]

Print Name: Brian Mestepey

Title: Territory Manager

STATE OF _____)
COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 29th day of September 2022, by Brian Mestepey, as the Territory manager [title] of Florida Cummins Inc. a corporation authorized to do business in the State of Florida, who is personally known to me or who has produced personally known as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

[Signature]
Notary Public Signature

Notary Seal:



Exhibit "A"

Contractor's Proposal (9 pages)



8/26/2022

CITY OF LAKE WORTH
7 N DIXIE HWY
LAKE WORTH, FL 33460
RE: Planned Maintenance Proposal

Dear Garry E. Baker II,

Cummins Sales and Service is a premier engine and power generation systems provider committed to delivering fast and proven solutions to our customers. We are pleased to offer you a Planned Maintenance Proposal for your review and approval. Due to the critical nature of your standby power system, this Agreement was developed based on your specific needs and equipment to ensure maximum performance and reliability.

Benefits of Planned Maintenance

- Improves system reliability.
- Maintenance performed by certified technicians specifically trained in power generation.
- PM customers receive preferred service for unscheduled emergency repairs.
- Creation of a service record for customer equipment.
- Additional maintenance recommendations documented at that time.
- Scheduling managed by Cummins Sales and Service to ensure timely maintenance intervals.
- Eliminates administrative burden, covers equipment from multiple vendors.

Please sign, date and return the enclosed Agreement to our office along with any purchase documentation necessary so we can tend to your servicing needs. Planned Maintenance Agreements are "auto-renewed" annually prior to the end of your agreement. Should you have any questions or require additional information on this or any other subject relating to your equipment, please feel free to contact me. We look forward to the opportunity to earn your trust and business.

Sincerely,

Brian Mestepey

Brian Mestepey
PEM Territory Manager
Office: (786) 719-7562
Cell: (786) 719-7562
Email: brian.mestepey@cummins.com



Cummins Inc. dba Cummins Sales and Service
 3777 Interstate Park Road
 Riviera Beach, FL 33404
 Phone: (561)840-7281
 Fax: (404) 763-0711

PLANNED EQUIPMENT MAINTENANCE AGREEMENT

Customer Address	Customer Contact	Quote Information	
CITY OF LAKE WORTH	Name: Garry E. Baker II	Quote Date:	8/26/2022
7 N DIXIE HWY	Phone: 561-586-1713	Quote Expires:	10/25/2022
LAKE WORTH, FL 33460	Cell:	Quote ID:	QT-16757
Customer #: 373460	Fax: (561) 586-1656	Quoted By:	Brian Mestepey
Payment Type: Pay As You Go	E-mail: gabaker@lakeworthbeachfl.gov	Quote Term:	5 Year

Site Name: LAKE WORTH CASINO

(10 S OCEAN BLVD LAKE WORTH FL 33462)

Unit	Month of	Year	1st Service	Service Type	Qty	Sell Price	Extended Price	
GENERATOR UNIT #1 -								
Name: 60KW		1	August	Inspection	3	\$431.20	\$1,293.60	
Make: Cummins		1	February	Full Service	1	\$645.75	\$645.75	
Model: 60.0GGHE		1	February	Loadbank (4 Hrs)	1	\$872.00	\$872.00	
S/N: B120300237							Year 1 Total:	\$2,811.35
Size: 60kW		2	August	Inspection	3	\$441.50	\$1,324.50	
ATS Qty: 1		2	February	Full Service	1	\$662.49	\$662.49	
Notes:		2	February	Loadbank (4 Hrs)	1	\$895.76	\$895.76	
FULL SERVICE AND 4HR LOAD		2	February	Battery	1	\$215.33	\$215.33	
BANK TOGETHER IN FEBRUARY							Year 2 Total:	\$3,098.08
2023. PM INSPECTION STARTING		3	August	Inspection	3	\$452.10	\$1,356.30	
IN AUGUST 2022, NOVEMBER		3	February	Full Service	1	\$679.72	\$679.72	
2022 AND MAY 2023.		3	February	Loadbank (4 Hrs)	1	\$920.23	\$920.23	
							Year 3 Total:	\$2,956.25
		4	August	Inspection	3	\$463.02	\$1,389.06	
		4	February	Full Service	1	\$697.46	\$697.46	
		4	February	Loadbank (4 Hrs)	1	\$945.44	\$945.44	
							Year 4 Total:	\$3,031.96
		5	August	Inspection	3	\$474.27	\$1,422.81	
		5	February	Full Service	1	\$715.75	\$715.75	
		5	February	Loadbank (4 Hrs)	1	\$971.40	\$971.40	
		5	February	Battery	1	\$235.30	\$235.30	
							Year 5 Total:	\$3,345.26

Site Name: LAKE WORTH UTILITIES

(501 COLLEGE ST LAKE WORTH FL 33460)

Unit Name:	Month of	Year	1st Service	Service Type	Qty	Sell Price	Extended Price	
GENERATOR - 100KW								
Make: Cummins		1	August	Inspection	3	\$378.15	\$1,134.45	
Model: DGFA		1	February	Full Service	1	\$765.98	\$765.98	
S/N: H060957625		1	February	Loadbank (4 Hrs)	1	\$901.54	\$901.54	
Size: 100kW							Year 1 Total:	\$2,801.97
ATS Qty: 1		2	August	Inspection	3	\$387.35	\$1,162.05	
Notes:		2	February	Full Service	1	\$786.81	\$786.81	
FULL SERVICE AND 4HR LOAD		2	February	Loadbank (4 Hrs)	1	\$924.39	\$924.39	
BANK TOGETHER IN FEBRUARY								

2023. PM INSPECTION STARTING
IN AUGUST 2022, NOVEMBER
2022 AND MAY 2023.

2	February	Battery	1	\$386.42	\$386.42
				Year 2 Total:\$3,259.67	
3	August	Inspection	3	\$396.82	\$1,190.46
3	February	Full Service	1	\$808.27	\$808.27
3	February	Loadbank (4 Hrs)	1	\$947.92	\$947.92
				Year 3 Total:\$2,946.65	
4	August	Inspection	3	\$406.58	\$1,219.74
4	February	Full Service	1	\$830.38	\$830.38
4	February	Loadbank (4 Hrs)	1	\$972.16	\$972.16
				Year 4 Total:\$3,022.28	
5	August	Inspection	3	\$416.64	\$1,249.92
5	February	Full Service	1	\$853.14	\$853.14
5	February	Loadbank (4 Hrs)	1	\$997.12	\$997.12
5	February	Battery	1	\$422.25	\$422.25
				Year 5 Total:\$3,522.43	

Unit Name: GENERATOR - 275KW
Make: Cummins
Model: DGFC
S/N: O60944376
Size: 275kW
ATS Qty: 1
Notes:
FULL SERVICE AND 4HR LOAD
BANK TOGETHER IN FEBRUARY
2023. PM INSPECTION STARTING
IN AUGUST 2022, NOVEMBER
2022 AND MAY 2023.

Year	Month of	Service Type	Qty	Sell Price	Extended Price
1	August	Inspection	3	\$388.30	\$1,164.90
1	February	Full Service	1	\$976.87	\$976.87
1	February	Loadbank (4 Hrs)	1	\$1,092.00	\$1,092.00
				Year 1 Total:\$3,233.77	
2	August	Inspection	3	\$397.80	\$1,193.40
2	February	Full Service	1	\$1,004.03	\$1,004.03
2	February	Loadbank (4 Hrs)	1	\$1,115.76	\$1,115.76
2	February	Battery	1	\$391.65	\$391.65
				Year 2 Total:\$3,704.84	
3	August	Inspection	3	\$407.59	\$1,222.77
3	February	Full Service	1	\$1,032.01	\$1,032.01
3	February	Loadbank (4 Hrs)	1	\$1,140.23	\$1,140.23
				Year 3 Total:\$3,395.01	
4	August	Inspection	3	\$417.68	\$1,253.04
4	February	Full Service	1	\$1,060.83	\$1,060.83
4	February	Loadbank (4 Hrs)	1	\$1,165.44	\$1,165.44
				Year 4 Total:\$3,479.31	
5	August	Inspection	3	\$428.06	\$1,284.18
5	February	Full Service	1	\$1,090.51	\$1,090.51
5	February	Loadbank (4 Hrs)	1	\$1,191.40	\$1,191.40
5	February	Battery	1	\$427.97	\$427.97
				Year 5 Total:\$3,994.06	

Site Name: MASTER PUMP STATION
(202 GOLF VIEW LAKE WORTH FL 33461)

Unit Name: GENERATOR - 1750KW
Make: Cummins
Model: 1750DQKB
S/N: K050851176
Size: 1750kW
ATS Qty: 1
Notes:
FULL SERVICE AND 4HR LOAD
BANK TOGETHER IN FEBRUARY
2023. PM INSPECTION STARTING

Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price
1	August	Inspection	3	\$531.47	\$1,594.41
1	February	Full Service	1	\$2,883.48	\$2,883.48
1	February	Loadbank (4 Hrs)	1	\$2,892.31	\$2,892.31
				Year 1 Total:\$7,370.20	
2	August	Inspection	3	\$545.27	\$1,635.81
2	February	Full Service	1	\$2,967.84	\$2,967.84
2	February	Loadbank (4 Hrs)	1	\$2,926.58	\$2,926.58

IN AUGUST 2022, NOVEMBER
2022 AND MAY 2023.

2	February	Battery	1	\$1,463.31	\$1,463.31
				Year 2 Total:\$8,993.54	
3	August	Inspection	3	\$559.48	\$1,678.44
3	February	Full Service	1	\$3,054.73	\$3,054.73
3	February	Loadbank (4 Hrs)	1	\$2,961.88	\$2,961.88
				Year 3 Total:\$7,695.05	
4	August	Inspection	3	\$574.12	\$1,722.36
4	February	Full Service	1	\$3,144.23	\$3,144.23
4	February	Loadbank (4 Hrs)	1	\$2,998.23	\$2,998.23
				Year 4 Total:\$7,864.82	
5	August	Inspection	3	\$589.20	\$1,767.60
5	February	Full Service	1	\$3,236.41	\$3,236.41
5	February	Loadbank (4 Hrs)	1	\$3,035.68	\$3,035.68
5	February	Battery	1	\$1,599.00	\$1,599.00
				Year 5 Total:\$9,638.69	

Site Name:NORTH BOOSTER STATION

(22ND AVE. & NORTH LAKE WORTH FL 33460)

Unit Name: NORTH BOOSTER -
250KW
Make: Cummins
Model: DQDAA
S/N: H070096898
Size: 250KW

Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price
1	August	Inspection	3	\$403.70	\$1,211.10
1	February	Full Service	1	\$944.71	\$944.71
1	February	Loadbank (4 Hrs)	1	\$1,005.00	\$1,005.00
				Year 1 Total:\$3,160.81	

ATS Qty: 0

Notes:
FULL SERVICE AND 4HR LOAD
BANK TOGETHER IN FEBRUARY
2023. PM INSPECTION STARTING
IN AUGUST 2022, NOVEMBER
2022 AND MAY 2023.

2	August	Inspection	3	\$414.00	\$1,242.00
2	February	Full Service	1	\$971.24	\$971.24
2	February	Loadbank (4 Hrs)	1	\$1,028.76	\$1,028.76
2	February	Battery	1	\$674.52	\$674.52
				Year 2 Total:\$3,916.52	
3	August	Inspection	3	\$424.60	\$1,273.80
3	February	Full Service	1	\$998.56	\$998.56
3	February	Loadbank (4 Hrs)	1	\$1,053.23	\$1,053.23
				Year 3 Total:\$3,325.59	
4	August	Inspection	3	\$435.52	\$1,306.56
4	February	Full Service	1	\$1,026.70	\$1,026.70
4	February	Loadbank (4 Hrs)	1	\$1,078.44	\$1,078.44
				Year 4 Total:\$3,411.70	
5	August	Inspection	3	\$446.77	\$1,340.31
5	February	Full Service	1	\$1,055.69	\$1,055.69
5	February	Loadbank (4 Hrs)	1	\$1,104.40	\$1,104.40
5	February	Battery	1	\$737.07	\$737.07
				Year 5 Total:\$4,237.47	

Site Name:RO2 WATER PLANT

(301 COLLEGE ST LAKE WORTH FL 33460)

Unit Name: GENERATOR - 2000KW
Make: Cummins
Model: 2000.0DQKAB-4963138
S/N: I100156507

Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price
1	August	Inspection	3	\$586.30	\$1,758.90
1	February	Full Service	1	\$3,037.29	\$3,037.29
1	February	Loadbank (4 Hrs)	1	\$3,070.00	\$3,070.00

ATS Qty: 1

Size: 2000kW

Year 1 Total:\$7,866.19

ATS Qty: 1

Notes:
 FULL SERVICE AND 4HR LOAD
 BANK TOGETHER IN FEBRUARY
 2023. PM INSPECTION STARTING
 IN AUGUST 2022, NOVEMBER
 2022 AND MAY 2023.

2	August	Inspection	3	\$601.74	\$1,805.22
2	February	Full Service	1	\$3,126.26	\$3,126.26
2	February	Loadbank (4 Hrs)	1	\$3,109.60	\$3,109.60
2	February	Battery	1	\$1,471.68	\$1,471.68
				Year 2 Total:\$9,512.76	
3	August	Inspection	3	\$617.65	\$1,852.95
3	February	Full Service	1	\$3,217.91	\$3,217.91
3	February	Loadbank (4 Hrs)	1	\$3,150.39	\$3,150.39
				Year 3 Total:\$8,221.25	
4	August	Inspection	3	\$634.04	\$1,902.12
4	February	Full Service	1	\$3,312.30	\$3,312.30
4	February	Loadbank (4 Hrs)	1	\$3,192.40	\$3,192.40
				Year 4 Total:\$8,406.82	
5	August	Inspection	3	\$650.91	\$1,952.73
5	February	Full Service	1	\$3,409.52	\$3,409.52
5	February	Loadbank (4 Hrs)	1	\$3,235.67	\$3,235.67
5	February	Battery	1	\$1,608.14	\$1,608.14
				Year 5 Total:\$10,206.06	

Site Name:SOUTH BOOSTER STATION

(1600 S E ST LAKE WORTH FL 33460)

Unit Name: SOUTH BOOSTER - 250KW
 Make: Cummins
 Model: DQDAA
 S/N: H070096899
 Size: 250kW

Year	Month of 1st Service	Service type	Qty	Sell Price	Extended Price
1	August	Inspection	3	\$414.70	\$1,244.10
1	February	Full Service	1	\$955.71	\$955.71
1	February	Loadbank (4 Hrs)	1	\$1,005.00	\$1,005.00
				Year 1 Total:\$3,204.81	

ATS Qty: 1

Notes:
 FULL SERVICE AND 4HR LOAD
 BANK TOGETHER IN FEBRUARY
 2023. PM INSPECTION STARTING
 IN AUGUST 2022, NOVEMBER
 2022 AND MAY 2023.

2	August	Inspection	3	\$425.00	\$1,275.00
2	February	Full Service	1	\$982.24	\$982.24
2	February	Loadbank (4 Hrs)	1	\$1,028.76	\$1,028.76
2	February	Battery	1	\$674.52	\$674.52
				Year 2 Total:\$3,960.52	
3	August	Inspection	3	\$435.60	\$1,306.80
3	February	Full Service	1	\$1,009.56	\$1,009.56
3	February	Loadbank (4 Hrs)	1	\$1,053.23	\$1,053.23
				Year 3 Total:\$3,369.59	
4	August	Inspection	3	\$446.52	\$1,339.56
4	February	Full Service	1	\$1,037.70	\$1,037.70
4	February	Loadbank (4 Hrs)	1	\$1,078.44	\$1,078.44
				Year 4 Total:\$3,455.70	
5	August	Inspection	3	\$457.77	\$1,373.31
5	February	Full Service	1	\$1,066.69	\$1,066.69
5	February	Loadbank (4 Hrs)	1	\$1,104.40	\$1,104.40
5	February	Battery	1	\$737.07	\$737.07
				Year 5 Total:\$4,281.47	

Year 1 Total:*	\$30,449.10
Year 2 Total:*	\$36,445.93
Year 3 Total:*	\$31,909.39
Year 4 Total:*	\$32,672.59
Year 5 Total:*	\$39,225.44

Total Agreement Amount:* **\$170,702.45**

****Quote does not include applicable taxes***



Cummins Inc. dba Cummins Sales and Service
 3777 Interstate Park Road
 Riviera Beach, FL 33404
 Phone: (561)840-7281

PLANNED EQUIPMENT MAINTENANCE AGREEMENT

Customer Address	Customer Contact	Quote Information
CITY OF LAKE WORTH 7 N DIXIE HWY LAKE WORTH, FL 33460 Customer #: 373460 Payment Type: Pay As You Go	Name: Garry E. Baker II Phone: 561-586-1713 Cell: Fax: (561) 586-1656 E-mail: gabaker@lakeworthbeachfl.gov	Quote Date: 8/26/2022 Quote Expires: 10/25/2022 Quote ID: QT-16757 Quoted By: Brian Mestepey Quote Term: 5 Year

Total Agreement Amount:*

\$170,702.45

**Quote does not include applicable taxes*

Total Agreement Amount Does Not Include Applicable Taxes. Please call 404-763-0151 or Email Southern.PEM@cummins.com for invoice total prior to sending payment.

Planned Equipment Maintenance Agreements are designed with an automatic renewal provision. Details of this provision are listed in the "Planned Equipment Maintenance Agreement Terms and Conditions". If you do not wish to participate in the auto renew option, please check the box below to opt out.

Opt out of Automatic Renewal.

Selection Required for Load Bank Test

Readings will be taken every 15 minutes, unless otherwise specified.

*If no selection is made, we will perform this option by default

- *Combined Annual and 36 Month Load Bank Test, NFPA 110, 8.4.9 The generator set will be loaded to a load factor of not less than 50% of the EPS kW nameplate rating for 30 minutes, load will then be increased to a load factor not less than 75% of the EPS kW nameplate rating for 60 minutes. The remaining 2.5 hours the generator will be loaded to a load factor of not less than 30% of the EPS kW rating for a total run time of 4 continuous hours.
- 30% of the EPS nameplate kW rating for 30 minutes, followed by 50% of the EPS nameplate kW rating for 30 minutes, followed by 75% of the EPS nameplate kW rating for 180 minutes for a total of 4 continuous hours
- 80% of the EPS nameplate kW rating for 4 continuous hours
- Other – Please Specify _____

Please return signed agreement to:

Cummins Inc
 5125 Hwy 85
 Atlanta, Ga 30349
 Tel #: 404-763-0151

Email: Southern.PEM@cummins.com

Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to buy from Seller, the foregoing products/services upon the terms and conditions set forth in the "Planned Equipment Maintenance Agreement Terms and Conditions" attached hereto, which are hereby incorporated herein by reference.

Customer Approval (Quote ID QT-16757)

Cummins Inc. dba Cummins Sales and Service Approval

Signature: _____

Signature: Brian Mestepey

Date: _____

Date: 09/29/2022

PLANNED MAINTENANCE AGREEMENT TERMS AND CONDITIONS

These Planned Maintenance Agreement Terms and Conditions, together with the Quote on the front side and the Scope of Services, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the Quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous agreement or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of Products to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of or serves to explain or interpret this Agreement. Electronic transactions between Customer and Cummins will be solely governed by this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, any terms and conditions related thereto: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES. Cummins shall perform the maintenance ("Services") on the equipment identified in the Quote ("Equipment") in accordance with the schedule specified in the Quote. The Services include those services defined in the "Service Event" section of the Quote. No additional services or materials are included in this Agreement unless agreed upon by the parties in writing. Unless otherwise indicated in the Quote, Cummins will provide the labor and tools necessary to perform the Services and shall keep Customer's property free from accumulation of waste materials caused by Cummins' operations. Either party may terminate this Agreement with or without cause by providing thirty (30) days written notice to the other.

2. CUSTOMER OBLIGATIONS. Customer shall provide Cummins safe access to Customer's site and arrange for all related services and utilities necessary for Cummins to perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to facility occupants, customers, invitees, or any third party and or property damage or work interruption arising out of the Services. Customer shall make all necessary arrangement to address and mitigate the consequences of any electrical service interruption which might occur during the Services. **CUSTOMER IS RESPONSIBLE FOR OPERATING AND MAINTAINING THE EQUIPMENT IN ACCORDANCE WITH THE OWNER'S MANUAL FOR THE EQUIPMENT.**

3. PAYMENT TERMS. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Services. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Unless otherwise stated, the Quote excludes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer and shall be stated on the invoice.

4. DELAYS. Any performance dates indicated in this Agreement are estimated and not guaranteed. Cummins shall not be liable for any delays in performance however occasioned, including any that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, or labor disputes. *AS A RESULT OF THE OUTBREAK OF THE DISEASE COVID-19 ARISING FROM THE NOVEL CORONAVIRUS, TEMPORARY DELAYS IN DELIVERY, LABOUR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOUR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE.*

5. WARRANTY. Cummins shall perform the Services in a reasonable and workmanlike manner. Parts and components supplied under this Agreement are governed by the express written manufacturer's limited warranty. No other warranty for parts or components is provided under this Agreement. All Services shall be free from defects in workmanship for a period of ninety (90) days after completion of Services. In the event of a warrantable defect in workmanship of Services supplied under this Agreement ("Warrantable Defect"), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of any Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New parts supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such parts. The remedies set forth in this Section 5 shall not be deemed to have failed of their essential purpose so long as Cummins is willing to correct defective Services or refund the purchase price therefor.

6. LIMITATIONS OF WARRANTIES AND LIABILITY. THE REMEDIES PROVIDED IN THE LIMITED WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.

NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, AND DAMAGES CAUSED BY DELAYS) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF PARTS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF PARTS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

7. INDEMNITY. Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

8. CONFIDENTIALITY. Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

9. GOVERNING LAW. This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.

10. INSURANCE. Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

11. ASSIGNMENT. This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

12. INTELLECTUAL PROPERTY. Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

13. MISCELLANEOUS. Cummins shall be an independent contractor with respect to the Services performed under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote. No amendment of this Agreement shall be valid unless it is writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof.

14. ON-CALL SERVICES. Upon Customer's request, Cummins shall provide on-call services (repair, emergency work or other) on the Equipment ("On-call Services"). Any On-call Services shall be invoiced to the Customer at the Cummins current hour rate (including traveling) and shall be governed by the terms and conditions of this Agreement.

15. PRICING. To the extent allowed by law, actual prices may vary from the price at the time of order placement, as the same will be based on prices prevailing on the date of shipment. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input and labor cost changes and other unforeseen circumstances beyond Cummins' control.

16. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.

Generator

Planned Equipment Maintenance

INSPECTION