

**AGREEMENT WITH CUMMINS INC. dba CUMMINS POWER SOUTH  
(Annual Service Maintenance and Inspections of Generators)**

THIS AGREEMENT is made this 6<sup>th</sup> day of February, 2018, between the City of Lake Worth, Florida, a municipal corporation, hereinafter the "CITY", with its office located at 7 North Dixie Highway, Lake Worth, Florida 33460, and Cummins, Inc. dba Cummins Power South a corporation authorized to do business in the State of Florida, hereinafter the "CONTRACTOR", with its office located at: 5125 Highway 85, Atlanta GA, 30349-5976.

**RECITALS**

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

WHEREAS, the CITY is in need of a CONTRACTOR to perform annual maintenance services and inspections on the generators listed on Exhibit "A";

WHEREAS, CONTRACTOR submitted a proposal to provide the goods and services as requested as a sole source provider;

WHEREAS, the CITY desires to accept the CONTRACTOR's proposal in order for CONTRACTOR to render the goods and services to the CITY as provided herein;

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 approving the proposal with the CONTRACTOR as described herein 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 shall commence upon the approval of the Agreement by the City and a Notice to Proceed has been issued and shall extend for a period of three years with the option, upon approval of the City Manager for two one year renewals.

**2. SCOPE OF WORK**

2.1 The scope of work includes all things necessary for the maintenance of the generators (listed on Exhibit "A", attached hereto and incorporated herein), as more

specifically set forth in the scope of work attached hereto and incorporated herein as Exhibit "B" (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 materials 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 terms and conditions set forth in the IFB and this Agreement.

### **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. MATERIALS**

4.1 The CONTRACTOR shall provide all materials as more specifically set forth in the Scope of Work.

## **5. FEE AND ORDERING MECHANISM**

5.1 This Agreement is for the annual service maintenance and inspections of the generators listed on Exhibit "B". The cost for each generator annual service and inspections shall be as set forth on CONTRACTOR'S proposal, attached hereto and incorporated herein as Exhibit "C".

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

5.3 The CITY's ordering mechanism for the Scope of Work performed under this Agreement may be a CITY Purchase Order; however, the terms and conditions stated in a CITY Purchase Order shall not apply. CONTRACTOR shall not exceed amounts expressed on any Purchase Order. Note that the CITY's Fiscal Year ends on September 30<sup>th</sup> of each calendar year. The CITY cannot authorize the purchase of goods or services beyond September 30<sup>th</sup> of each calendar year, prior to the annual budget being approved by the 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 for required and approved goods and/or services.

## **6. MAXIMUM COSTS**

6.1 The CONTRACTOR expressly acknowledges and agrees that the total cost to complete the Scope of Work provided in Exhibit "B" to this Agreement shall not exceed the amounts set forth in Exhibit "C", 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 work.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any 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, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

## **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 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 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, 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 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' written notice. 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 de-mobilization, 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. 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" as an "Additional Insured", 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 ("Indemnitee(s)"), from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) resulting from claims brought against Indemnitee(s) to the extent arising out of or alleged to have arisen out of the acts, omissions or neglect 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.

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. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

16.1 This Agreement consists of the terms and conditions provided herein, and the CONTRACTOR's proposed terms and conditions, attached hereto and incorporated here in as Exhibit "C". 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. Wherever possible, the provisions of such documents shall be

construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 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.

## **17. ASSIGNMENT**

17.1 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 of 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.

17.2 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.

## **18. SUCCESSORS AND ASSIGNS**

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

## **19. OF TRIAL BY JURY**

19.1 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.

## **20. GOVERNING LAW AND REMEDIES**

20.1 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 in Palm Beach County, Florida.

20.2 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.

**21. TIME IS OF THE ESSENCE**

21.1 Time is of the essence in the completion of the Scope of Work as specified herein.

**22. NOTICES**

22.1 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 (3<sup>rd</sup>) 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:

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

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

Cummins Power South  
5125 Highway 85  
Atlanta, GA 30349-5976

**23. SEVERABILITY**

23.1 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.

**24. DELAYS AND FORCES OF NATURE**

24.1 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 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.

24.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

## **25. COUNTERPARTS**

25.1 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. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Agreement.

## **26. LIMITATIONS OF LIABILITY**

26.1 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. In no event, shall either party's total liability shall exceed

\$1,000,000. The foregoing limitation shall not apply to the extent claims are covered by insurance the parties are required to carry under the terms of this Agreement.

## **27. PUBLIC ENTITY CRIMES**

27.1 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.

## **28. PREPARATION**

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

## **29. PALM BEACH COUNTY INSPECTOR GENERAL**

29.1 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.

## **30. ENFORCEMENT COSTS**

30.1 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.

## **31. PUBLIC RECORDS**

CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, 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 tie 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, [DANDREA@LAKEWORTH.ORG](mailto:DANDREA@LAKEWORTH.ORG), OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH, FLORIDA 33460.**

## **32. COPYRIGHTS AND/OR PATENT RIGHTS**

32.1 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.

## **33. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH**

33.1 CONTRACTOR certifies that all material, equipment, etc., contained in this bid 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.

#### **34. FEDERAL AND STATE TAX**

34.1 The City of Lake Worth 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 of Lake Worth 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.

#### **35. PROTECTION OF PROPERTY**

35.1 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.

#### **36. DAMAGE TO PERSONS OR PROPERTY**

36.1 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 to the extent caused by the acts and omissions of CONTRACTOR.

#### **37. WARRANTY**

37.1 CONTRACTOR warrants and guarantees to the CITY that the Scope of Work provided under this Agreement shall be in accordance with the Agreement and the other documents specifically included in this Agreement. CONTRACTOR warrants that all materials and parts supplied under the Scope of Work and this Agreement shall be free from defects in materials and workmanship for a minimum of one year from the final completion of the Scope of Work. CONTRACTOR guarantees that all services and labor performed under the Scope of Work and this Agreement will be free from defects in materials and workmanship for a minimum of ninety (90) days from the final completion of the Scope of Work. CONTRACTOR shall provide to the CITY any and all manufacturers' warranties for the goods and services being provided under the Scope of



Work, as well as CONTRACTOR's limited service warranty. Except as provided for herein, no other warranties exist, express or implied, including any warranties for merchantability or fitness for particular purpose.

**38. SURVIVABILITY**

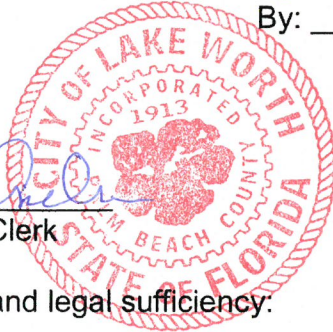
38.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**  
**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the day and year first above written.

CITY OF LAKE WORTH, FLORIDA

By: *Pam Triolo*  
Pam Triolo, Mayor



ATTEST:

*Debbie Andrea*  
Debbie Andrea, City Clerk

Approved as to form and legal sufficiency:

*Glen J. Torcivia* For  
Glen J. Torcivia, City Attorney

CONTRACTOR: CUMMINS, INC. dba CUMMINS POWER SOUTH

By: *Sheila Gross*

[Corporate Seal]

Print Name: *Sheila Gross*

Title: *PM Administrator Supervisor*

STATE OF *Georgia*  
COUNTY OF *Gwinnett*

The foregoing instrument was acknowledged before me this *26* day of *Jan.*, 20*19* by *Sheila Gross*, as *PM Admin Sup.* (title), of CUMMINS, INC. dba CUMMINS POWER SOUTH, a corporation authorized to do business in the State of Florida, and who is personally known to me or who has produced the following \_\_\_\_\_ as identification.

Notary Public



Print Name: *KATHERINE E. JUHAN ARNOLD*  
My commission expires: *02.9.2020*

Exhibit A



Cummins Inc. db/a Cummins Power South  
 3777 Interstate Park Road  
 Riviera Beach FL 33404  
 Phone (561)840-7281  
 Fax (404)765-8568

**PLANNED EQUIPMENT MAINTENANCE AGREEMENT**

Customer Address	Customer Contact	Quote Information
City Of Lake Worth	Name: Tim Sloan	Quote Date: 1/23/2018
7 N Dixie Hwy	Phone: (561) 586-1636	Quote Expires: 3/24/2018
Attn: Accounts Payable	Cell:	Quote ID: QT-2973
Lake Worth FL 33460	Fax: (561) 586-1656	Quoted By: Marty Delmas
Customer #: 1064477	E-mail: tsloan@lakeworth.org	Quote Term: 3 Year
Payment Type: Undetermined		

Site Name: RO2 WATER PLANT						
(301 COLLEGE ST LAKE WORTH FL 33461)						
Unit Name	Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price
Unit Name: RO2 Water Plant						
Make: Cummins						
Model: 2000 ODOKAB-49631381	1	May	Inspection	2	\$352.35	\$704.70
S/N: 1100156507	1	February	Full Service	1	\$2,299.38	\$2,299.38
Size: 2000kW	1	February	Loadbank (4 Hrs)	1	\$2,998.22	\$2,998.22
ATS Qty: 1	1	February	Battery	1	\$1,181.09	\$1,181.09
Notes:	1	Unknown	Belts & Hoses	1	\$8,832.98	\$8,832.98
	1	Unknown	Coolant Exchange	1	\$4,503.41	\$4,503.41
	1	Unknown	New Air Filters	1	\$780.35	\$780.35
	Year 1 Total					\$21,300.13
	2	May	Inspection	3	\$361.78	\$1,085.34
	2	February	Full Service	1	\$2,367.22	\$2,367.22
	2	February	Loadbank (4 Hrs)	1	\$3,033.39	\$3,033.39
	2	February	Battery	1	\$1,215.38	\$1,215.38
	2	Unknown	New Air Filters	1	\$803.76	\$803.76
	Year 2 Total					\$8,505.09
	3	May	Inspection	3	\$371.49	\$1,114.47
	3	February	Full Service	1	\$2,437.10	\$2,437.10
	3	February	Loadbank (4 Hrs)	1	\$3,069.61	\$3,069.61
	3	February	Battery	1	\$1,250.70	\$1,250.70
	3	Unknown	New Air Filters	1	\$827.87	\$827.87
	Year 3 Total					\$8,699.75
	4	May	Inspection	1	\$381.50	\$381.50
	Year 4 Total					\$381.50

**Total Agreement Amount:\*** **\$38,886.49**  
 \*Quote does not include applicable taxes



Cummins Inc. db/a Cummins Power South  
 3777 Interstate Park Road  
 Riviera Beach, FL 33404  
 Phone (561)840-7281  
 Fax (404)765-8568

**PLANNED EQUIPMENT MAINTENANCE AGREEMENT**

Customer Address	Customer Contact	Quote Information
City Of Lake Worth 7 N Dixie Hwy Attn Accounts Payable Lake Worth, FL 33460 Customer # 1064477 Payment Type: Undetermined	Name: Tim Sloan Phone: (561) 586-1636 Cell: Fax: (561) 586-1656 E-mail: tsloan@lakeworth.org	Quote Date: 1/23/2018 Quote Expires: 3/24/2018 Quote ID: QT-2972 Quoted By: Marty Delmas Quote Term: 3 Year

Site Name: NORTH BOOSTER STATION 22ND AVE. & NORTH LAKE WORTH FL 33460						
Unit Name	Make	Model	S/N	Size	ATS Qty	Notes
North Booster Station	Cummins	DQDAA	H070096898	250kW	1	
Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price	
1	May	Inspection	2	\$269.36	\$538.72	
1	February	Full Service	1	\$779.38	\$779.38	
1	February	Loadbank (4 Hrs)	1	\$756.53	\$756.53	
1	February	Battery	1	\$514.02	\$514.02	
1	Unknown	Coolant Exchange	1	\$547.69	\$547.69	
1	Unknown	Belts & Hoses PKGE	1	\$2,419.37	\$2,419.37	
1	Unknown	New Air Filter	1	\$180.20	\$180.20	
				Year 1 Total \$5,735.91		
2	May	Inspection	3	\$276.07	\$828.21	
2	February	Full Service	1	\$801.39	\$801.39	
2	February	Battery	1	\$529.44	\$529.44	
2	Unknown	New Air Filter	1	\$185.61	\$185.61	
				Year 2 Total \$2,344.65		
3	May	Inspection	3	\$282.99	\$848.97	
3	February	Full Service	1	\$824.07	\$824.07	
3	February	Loadbank (4 Hrs)	1	\$789.63	\$789.63	
3	February	Battery	1	\$545.32	\$545.32	
3	Unknown	New Air Filter	1	\$191.17	\$191.17	
				Year 3 Total \$3,199.16		
4	May	Inspection	1	\$290.11	\$290.11	
				Year 4 Total \$290.11		

**Total Agreement Amount:\*** **\$11,569.85**  
 \*Quote does not include applicable taxes





Cummins Inc. d/b/a Cummins Power South  
 3777 Interstate Park Road  
 Riviera Beach FL 33404  
 Phone (561)840-7281  
 Fax (404)765-8568

**PLANNED EQUIPMENT MAINTENANCE AGREEMENT**

Customer Address	Customer Contact	Quote Information
City Of Lake Worth	Name Tim Sloan	Quote Date 1/23/2018
7 N Dixie Hwy	Phone (561) 586-1636	Quote Expires 3/24/2018
Attn Accounts Payable	Cell	Quote ID QT-2975
Lake Worth FL 33460	Fax (561) 586-1656	Quoted By Marty Delmas
Customer # 1064477	E-mail tsloan@lakeworth.org	Quote Term 3 Year
Payment Type Undetermined		

**Site Name: SOUTH BOOSTER STATION**  
 1600 SOUTH E Street LAKE WORTH FL 33460

Unit Name	Make	Model	S/N	Size	ATS Qty	Notes	Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price
South Booster Station	Cummins	DQDAA	H070096899	250kW	1		1	May	Inspection	2	\$294.45	\$588.90
							1	February	Full Service	1	\$804.47	\$804.47
							1	February	Loadbank (4 Hrs)	1	\$756.53	\$756.53
							1	February	Battery	1	\$514.02	\$514.02
							1	Unknown	Coolant Exchange	1	\$572.78	\$572.78
							1	Unknown	Belts & Hoses Pakge	1	\$2,444.46	\$2,444.46
							1	Unknown	New Air Filter	1	\$180.20	\$180.20
Year 1 Total											\$5,861.36	
							2	May	Inspection	3	\$301.80	\$905.40
							2	February	Full Service	1	\$827.12	\$827.12
							2	February	Battery	1	\$529.44	\$529.44
							2	Unknown	New Air Filter	1	\$185.61	\$185.61
Year 2 Total											\$2,447.57	
							3	May	Inspection	3	\$309.37	\$928.11
							3	February	Full Service	1	\$850.45	\$850.45
							3	February	Loadbank (4 Hrs)	1	\$789.63	\$789.63
							3	February	Battery	1	\$545.32	\$545.32
							3	Unknown	New Air Filter	1	\$191.17	\$191.17
Year 3 Total											\$3,304.68	
							4	May	Inspection	1	\$317.17	\$317.17
Year 4 Total											\$317.17	

**Total Agreement Amount: \$11,930.81**  
 \*Quote does not include applicable taxes



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**PLANNED EQUIPMENT MAINTENANCE AGREEMENT**

Customer Address	Customer Contact	Quote Information
City Of Lake Worth	Name Tim Sloan	Quote Date 1/23/2018
7 N Dixie Hwy	Phone (561) 586-1636	Quote Expires 3/24/2018
Attn Accounts Payable	Cell	Quote ID QT-2974
Lake Worth FL 33460	Fax (561) 586-1656	Quoted By Marty Delmas
Customer # 1064477	E-mail tsloan@lakeworth.org	Quote Term 3 Year
Payment Type Undetermined		

Site Name: LAKE WORTH UTILITIES (501 COLLEGE STREET LAKE WORTH FL 33461)						
Unit Name	Make	Model	S/N	Size	ATS Qty	Notes
Lake Worth Utilities	Cummins	DGFA	H06957625	100kW	1	
Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price	
1	May	Inspection	2	\$273.16	\$546.32	
1	February	Full Service	1	\$456.57	\$456.57	
1	February	Loadbank (4 Hrs)	1	\$616.53	\$616.53	
1	February	Battery	1	\$293.25	\$293.25	
1	Unknown	Coolant Exchange	1	\$551.49	\$551.49	
1	Unknown	Belts & Hoses	1	\$1,039.03	\$1,039.03	
1	November	New Air Filter	1	\$73.83	\$73.83	
				Year 1 Total	\$3,577.02	
2	May	Inspection	3	\$279.87	\$839.61	
2	February	Full Service	1	\$468.79	\$468.79	
2	February	Battery	1	\$302.05	\$302.05	
2	November	New Air Filter	1	\$76.04	\$76.04	
				Year 2 Total	\$1,686.49	
3	May	Inspection	3	\$286.79	\$860.37	
3	February	Full Service	1	\$481.37	\$481.37	
3	February	Loadbank (4 Hrs)	1	\$649.63	\$649.63	
3	February	Battery	1	\$311.11	\$311.11	
3	November	New Air Filter	1	\$78.33	\$78.33	
				Year 3 Total	\$2,380.81	
4	May	Inspection	1	\$293.91	\$293.91	
				Year 4 Total	\$293.91	

**Total Agreement Amount: \$7,938.22**  
*\*Quote does not include applicable taxes*



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**PLANNED EQUIPMENT MAINTENANCE AGREEMENT**

Customer Address	Customer Contact	Quote Information
City Of Lake Worth	Name: Tim Sloan	Quote Date: 1/23/2018
7 N Dixie Hwy	Phone: (561) 586-1636	Quote Expires: 3/24/2018
Attn: Accounts Payable	Cell:	Quote ID: QT-2971
Lake Worth, FL 33460	Fax: (561) 586-1656	Quoted By: Marty Delmas
Customer #: 1064477	E-mail: tsloan@lakeworth.org	Quote Term: 3 Year
Payment Type: Undetermined		

**Site Name: LAKE WORTH UTILITIES**

(1500 LAKE OSBORNE DR, LAKE WORTH, FL 33461)

Unit Name	Make	Model	S/N	Size	ATS Qty	Notes	Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price
Lake Worth Utilities	Cummins	DGFC	O60944376	275kW	1		1	May	Inspection	2	\$261.76	\$523.52
							1	February	Full Service	1	\$896.37	\$896.37
							1	February	Loadbank (4 Hrs)	1	\$924.11	\$924.11
							1	February	Battery	1	\$703.30	\$703.30
							1	Unknown	Belts & Hoses	1	\$4,454.51	\$4,454.51
							1	Unknown	Coolant Exchange	1	\$1,002.60	\$1,002.60
							1	Unknown	New Air Filter	1	\$382.90	\$382.90
Year 1 Total											\$8,887.31	
							2	May	Inspection	3	\$268.47	\$805.41
							2	February	Full Service	1	\$922.12	\$922.12
							2	February	Battery	1	\$723.26	\$723.26
							2	Unknown	New Air Filter	1	\$394.39	\$394.39
Year 2 Total											\$2,845.18	
							3	May	Inspection	3	\$275.39	\$826.17
							3	February	Full Service	1	\$948.64	\$948.64
							3	February	Loadbank (4 Hrs)	1	\$959.80	\$959.80
							3	February	Battery	1	\$743.82	\$743.82
							3	Unknown	New Air Filter	1	\$406.22	\$406.22
Year 3 Total											\$3,884.65	
							4	May	Inspection	1	\$282.51	\$282.51
Year 4 Total											\$282.51	

**Total Agreement Amount: \$15,899.64**  
*\*Quote does not include applicable taxes*



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**PLANNED EQUIPMENT MAINTENANCE AGREEMENT**

Customer Address	Customer Contact	Quote Information
City Of Lake Worth	Name Tim Sloan	Quote Date 1/23/2018
7 N Dixie Hwy	Phone (561) 586-1636	Quote Expires 3/24/2018
Attn Accounts Payable	Cell	Quote ID QT-2969
Lake Worth FL 33460	Fax (561) 586-1656	Quoted By Marty Delmas
Customer # 1064477	E-mail tsloan@lakeworth.org	Quote Term 3 Year
Payment Type Undetermined		

**Site Name: MASTER PUMP STATION**

(202 GOLF VIEW LAKE WORTH FL 33461)

Unit Name	Make	Model	S/N	Size	ATS Qty	Notes	Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price
Master Lift	Cummins	1750DQKB	K050851176	1750kW	1		1	May	Inspection	2	\$352.35	\$704.70
							1	February	Full Service	1	\$2,299.38	\$2,299.38
							1	February	Loadbank (4 Hrs)	1	\$2,998.22	\$2,998.22
							1	February	Battery	1	\$1,181.09	\$1,181.09
							1	Unknown	New Air Filter	1	\$689.76	\$689.76
Year 1 Total											\$7,873.15	
							2	May	Inspection	3	\$361.78	\$1,085.34
							2	February	Full Service	1	\$2,367.22	\$2,367.22
							2	February	Loadbank (4 Hrs)	1	\$3,033.39	\$3,033.39
							2	February	Battery	1	\$1,215.38	\$1,215.38
							2	Unknown	New Air Filter	1	\$710.45	\$710.45
Year 2 Total											\$8,411.78	
							3	May	Inspection	3	\$371.49	\$1,114.47
							3	February	Full Service	1	\$2,437.10	\$2,437.10
							3	February	Loadbank (4 Hrs)	1	\$3,069.61	\$3,069.61
							3	February	Battery	1	\$1,250.70	\$1,250.70
							3	Unknown	New Air Filter	1	\$731.77	\$731.77
Year 3 Total											\$8,603.65	
							4	May	Inspection	1	\$381.50	\$381.50
Year 4 Total											\$381.50	

**Total Agreement Amount: \$25,270.10**

*\*Quote does not include applicable taxes*



Phone (561)840-7281  
 Fax (404)765-8568

**PLANNED EQUIPMENT MAINTENANCE AGREEMENT**

Customer Address	Customer Contact	Quote Information
City Of Lake Worth	Name Tim Sloan	Quote Date 1/23/2018
7 N Dixie Hwy	Phone (561) 586-1636	Quote Expires 3/24/2018
Attn Accounts Payable	Cell	Quote ID QT-2970
Lake Worth FL 33460	Fax (561) 586-1656	Quoted By Marty Delmas
Customer # 1064477	E-mail tsloan@lakeworth.org	Quote Term 3 Year
Payment Type Undetermined		

**Site Name: LAKE WORTH CASINO**  
 (7 N Dixie Hwy Attn Accounts Payable Lake Worth FL 33460)

Unit Name	Make	Model	S/N	Size	ATS Qty	Notes	Year	Month of 1st Service	Service Type	Qty	Sell Price	Extended Price
Lake Worth Casino	Cummins	60 0GGHE	B 120300237	60kW	1		1	May	Inspection	2	\$181.44	\$362.88
							1	February	Full Service	1	\$346.03	\$346.03
							1	February	Loadbank (4 Hrs)	1	\$624.14	\$624.14
							1	February	Battery	1	\$308.68	\$308.68
							1	Unknown	Coolant Exchange	1	\$707.50	\$707.50
							1	Unknown	Belts & Hoses	1	\$1,872.27	\$1,872.27
							1	May	New Air Filter	1	\$97.84	\$97.84
Year 1 Total											\$4,319.34	
							2	May	Inspection	3	\$186.40	\$559.20
							2	February	Full Service	1	\$355.93	\$355.93
							2	February	Battery	1	\$317.94	\$317.94
							2	May	New Air Filter	1	\$100.78	\$100.78
Year 2 Total											\$1,333.85	
							3	May	Inspection	3	\$191.52	\$574.56
							3	February	Full Service	1	\$366.13	\$366.13
							3	February	Battery	1	\$327.48	\$327.48
							3	May	New Air Filter	1	\$103.80	\$103.80
Year 3 Total											\$1,371.97	
							4	May	Inspection	1	\$196.78	\$196.78
Year 4 Total											\$196.78	

**Total Agreement Amount: \$7,221.94**  
*\*Quote does not include applicable taxes*

Exhibit B

	FY2018	FY2019	FY2020	FY2021
RO	\$ 21,300.13	\$ 8,505.09	\$ 8,699.75	\$ 381.50
North Booster	\$ 5,735.91	\$ 2,344.65	\$ 3,199.16	\$ 290.11
South Booster	\$ 5,861.36	\$ 2,447.57	\$ 3,304.68	\$ 317.17
F1	\$ 3,577.02	\$ 1,686.49	\$ 2,380.81	\$ 293.91
F2	\$ 8,887.31	\$ 2,845.18	\$ 3,884.65	\$ 282.51
Miscellaneous Repairs	\$ 15,000.00	\$ 15,000.00	\$ 15,000.00	\$ 5,000.00
<b>FY Total</b>	<b>\$ 60,361.73</b>	<b>\$ 32,828.98</b>	<b>\$ 36,469.05</b>	<b>\$ 6,565.20</b>
	FY2018	FY2019	FY2020	FY2021
Master Lift Station	\$ 7,873.15	\$ 8,411.78	\$ 8,603.65	\$ 381.50
Miscellaneous Repairs	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 2,000.00
<b>FY Total</b>	<b>\$ 12,873.15</b>	<b>\$ 13,411.78</b>	<b>\$ 13,603.65</b>	<b>\$ 2,381.50</b>
	FY2018	FY2019	FY2020	FY2021
Lake Worth Casino	\$ 4,319.34	\$ 1,333.85	\$ 1,371.97	\$ 196.78
Miscellaneous Repairs	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 500.00
<b>FY Total</b>	<b>\$ 5,819.34</b>	<b>\$ 2,833.85</b>	<b>\$ 2,871.97</b>	<b>\$ 696.78</b>