



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia Contract

Order Date: 01-31-2023

CORRECT ORDER NUMBER MUST APPEAR
ON ALL PACKAGES, INVOICES, AND
SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

Order Number:	CCT 0211 4019 GSD2300000005 1	Procurement Folder:	1144012
Document Name:	Bldg. 19 Generator Extended Warranty & Service Agreement	Reason for Modification:	Award of CSSD GSD2300000003.
Document Description:	Bldg. 19 Generator Extended Warranty & Service Agreement		
Procurement Type:	Central Sole Source		
Buyer Name:	Melissa Pettrey		
Telephone:	(304) 558-0094		
Email:	melissa.k.pettrey@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2023-03-30
Free on Board:		Effective End Date:	2028-03-29

VENDOR				DEPARTMENT CONTACT	
Vendor Customer Code:		VS0000014089		Requestor Name:	David K Parsons
CUMMINS INC				Requestor Phone:	304-352-5486
602 New Goff Mtn Rd				Requestor Email:	david.k.parsons@wv.gov
Cross Lanes		WV	25313-1428		
US					
Vendor Contact Phone:		304-769-1012	Extension:	58321	
Discount Details:					
	Discount Allowed	Discount Percentage	Discount Days		
#1	No	0.0000	0		
#2	Not Entered				
#3	Not Entered				
#4	Not Entered				
				23 FILE LOCATION _____	

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION GENERAL SERVICES DIVISION 103 MICHIGAN AVENUE CHARLESTON WV 25305 US	DEPARTMENT OF ADMINISTRATION GENERAL SERVICES DIVISION BLDG 19 313 JEFFERSON AVENUE CHARLESTON WV 25305 US

2-7-23 BAF

Total Order Amount: \$487,703.20

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION DATE: <i>Tina H. 2/6/2023</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM <i>John D. Gron</i> DATE: <i>2-8-2023</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION <i>Beverly Tolen</i> DATE: <i>2-8-2023</i> ELECTRONIC SIGNATURE ON FILE
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Extended Description:

Direct Award

This Purchase Order constitutes the acceptance of contract made by and between the State of West Virginia for the Agency, West Virginia Department of Administration, General Services Division and the Vendor, Cummins Inc., of Cross Lanes, WV for a contract to provide Five (5) year extended warranty, and an established planned service agreement for Three (3) generators of Building 19, per the Vendor's proposal and the terms and conditions as attached.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	72101517	0.00000		0.000000	\$95,811.19
Service From		Service To	Manufacturer	Model No	
2023-03-30		2024-03-29			

Commodity Line Description: Year One Service Agreement

Extended Description:

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	72101517	0.00000		0.000000	\$98,027.60
Service From		Service To	Manufacturer	Model No	
2024-03-30		2025-03-29			

Commodity Line Description: Year Two Service Agreement

Extended Description:

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
3	72101517	0.00000		0.000000	\$100,025.62
Service From		Service To	Manufacturer	Model No	
2025-03-30		2026-03-29			

Commodity Line Description: Year Three Services Agreement

Extended Description:

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
4	72101517	0.00000		0.000000	\$97,476.40
Service From		Service To	Manufacturer	Model No	
2026-03-30		2027-03-29			

Commodity Line Description: Year Four Service Agreement

Extended Description:

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
5	72101517	0.00000		0.000000	\$96,362.39
Service From		Service To	Manufacturer	Model No	
2027-03-30		2028-03-29			

Commodity Line Description: Year Five Service Agreement

Extended Description:

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

Initial Contract Term: The Initial Contract Term will be for a period of Five (5) years. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to _____ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for _____ years;

☐ the contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in _____

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

☐☐☐☐

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancellation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the

Contract. ☐ **Pollution Insurance** in an amount of: _____ per

☐ occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

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9. WORKERS' COMPENSATION INSURANCE: Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. VENUE: All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence regarding all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

Revised 09/12/2022

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. NO DEBT CERTIFICATION: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

38. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

39. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) Lisa Keefer

(Address) 301 Jackson Street Columbus, Indiana

(Phone Number) / (Fax Number) 317-560-8013

(email address) lisa.keefe@cummins.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

Cummins Sales & Service

(Company)

(Signature of Authorized Representative)

Robert Meyer

Digitally signed by Robert Meyer
Date: 2023.01.19 12:01:59 -0500

(Printed Name and Title of Authorized Representative) (Date)

Bob Meyer (Cummins IGB Aftermarket Manager North America)

(Phone Number) (Fax Number)

315-345-5660 bob.w.meyer@cummins.com

(Email Address)

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): General Services Division

Vendor: Cummins Inc.

Contract/Lease Number ("Contract"): CCT GSD2300000005

Commodity/Service: Bldg. 19 Generator Extended Warranty & Service Agreement

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.

7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.

8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.

9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.

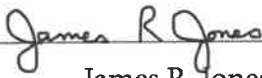
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.

11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikes through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: General Services Division

By: 

Printed Name: James R. Jones

Title: Procurement Administrator

Date: 1/23/2023

Vendor: Cummins Sales & Service

By: Robert Meyer Digitally signed by Robert Meyer
Date: 2023.01.19 12:04:44 -05'00'

Printed Name: Bob Meyer

Title: IGB Aftermarket Mgr. North America

Date: 1/19/2023

WV Capitol building – Charleston, WV
5 years or 15,000hrs Proposed Service Agreement on the
C1000N6 and 5 years or 1000 hrs on the C750N6

Cummins is pleased to offer the following service agreement for the Cummins **C1000 N6** and **C750N6** engine-generator and associated equipment as detailed below. This agreement does not include any unscheduled service.

Cummins will provide the services described below for the gas genset for 5 years or 15000 hours and 5 years or 1000hrs whichever comes first per unit. The Scheduled Maintenance service for the site is based on the engine-generator set operating between 70% and 100% load, and on pipeline quality natural gas. This agreement would commence after the current service is completed.

Services Provided by Cummins:

Scheduled maintenance services as defined by equipment manufacturer for the engine-generator set specified below:

- 1.1 Cummins shall Provide parts, labor and travel expenses for scheduled maintenance events on the Cummins manufactured goods in accordance with Cummins guidelines (from Monday to Friday on normal Business working hours – 8:00am to 5:00pm) See Appendix 1.
- 1.2 The **O&M Manual** provides a description of tasks that are included in Scheduled Maintenance. The actual tasks performed and frequency of any specific maintenance event may be altered by Cummins pending results of component inspections or gas quality; but, any altered tasks will not have a material impact to the Genset performance for the intended application.
- 1.3 Review oil analysis contained in reports provided with respect to oil samples taken every 250 hours by Cummins.
- 1.4 Cummins shall provide oil filters, makeup oil, oil for lubricating oil changes and disposal of used lubricating oil for both the natural gas and diesel units.
- 1.5 Cummins shall provide inspection but not limited to the following Balance of Plant items:
 - Gas Train
 - Battery Charger and starting batteries
 - Lube oil make up system
 - Remote radiator
 - Alternator termination box

- 1.6 Cummins shall execute regular site visits including monitoring of limited parameter on unit to ensure optimum performance.
- 1.7 Cummins shall perform all services with a highly qualified service technician.
- 1.8 Cummins shall provide remote monitoring capability of the system to keep track of system performance and run hours.
- 1.9 Appendix 1 outlines the service intervals for the duration of this proposal.

Customer Responsibilities:

The Customer is responsible for operating the Maintained Equipment and shall perform all daily, weekly, bi-weekly, and monthly checks as described in the O&M Manual. Operator functions include, but are not limited to:

- 2.1 Starting and stopping of the Maintained Equipment as required for normal plant operation
- 2.2 Performing daily checks of the Maintained Equipment routinely checking fluid levels, temperatures and pressures, excessive use of coolant, fuel, or lubricating oil, leaks, unusual engine noise, and warnings & fault codes.
- 2.3 Maintaining daily operations reports including the recording of any inspections or maintenance activities of unit.
- 2.4 Understanding all safety procedures, precautions, and warnings relating to the safe operation and maintenance of the Maintained Equipment.
- 2.5 Initial determination of faults, warnings or shutdowns and determination of need to call additional resources for repair.
- 2.6 Customer shall perform the lubricating oil sampling and deliver to a laboratory which is approved by Cummins. Cummins to provide Oil Sampling Kit.
- 2.7 Customer to perform all maintenance and repairs to any equipment not specifically mentioned above.
- 2.8 Customer shall maintain and operate the unit in accordance with the O&M manual.

Pricing for Services:

- 1 In consideration of the Services listed above, CUSTOMER will agree to pay the following amounts;

A yearly fee (the “**Annual Fee**”) of **Ninety-five thousand, eight hundred and eleven dollars, Nineteen cents (\$95,811.19)** for the Scheduled maintenance services for **both natural gas units and the single 750KW unit**. Above price excludes additional services on the C750KW

	Annual PM Fee Per Unit	Annual PM Fee (Both units)	Total PM fee for 5 Years
C1000N6	\$46,956.00	\$93,912.00	\$469,560.00
C750N6	\$1,899.19	N/A	\$9,495.19

Additional Services on the **C750N6**

- Air Filter change
- Catalyst Cleaning
- Belt replacement
- Spark plug and overhead set
- Battery replacement

C750N6	Year 1	Year 2	Year 3	Year 4	Year 5
PM Services	\$1,899.19	\$1,899.19	\$1,899.19	\$1,899.19	\$1,899.19
Additional Services	N/A	\$2,216.41	\$4,214.43	\$1,665.21	\$551.20
Total	\$1,899.19	\$4,115.60	\$6,113.62	\$3,564.40	\$2,450.39

Extended Warranty (Parts, Labor and Travel)

5yrs / 25,000hrs: \$49,720 Per **Unit (C1000N6)**

- Additional Work and billable amounts shall be based on the following 2022 rates adjusted and submitted to CUSTOMER annually.
 - Cummins Field Service Engineer – **[\$1,850.00]** per day plus travel expenses
 - Cummins local distributor technician – portal to portal
 - Labor Rate: \$160.00
 - Overtime: \$240.00
 - Mileage Rate: \$3.00
- All Service Fees above are stated excluding any and all taxes.
- All Service Fees are represented in US dollars as November, **2022** and will be valid for 60 days. The Service Fees set are subject to an annual inflation adjustment based on the greater of 3% or the **Producer Price Index 1173-09** [Parts and supplies for motors and generators] of the previous Contract Year. All annual inflation adjustments shall be applicable at the start of every Contract Year.

Excluded Services:

- All unscheduled activities except those stated above are excluded and will be charged as "Additional Work"
- Any other services on the engine-generators and controls not listed above.

This budgetary maintenance proposal is expressly conditioned upon acceptance of the terms and conditions of Cummins' Maintenance Agreement.

Thank you for providing Cummins this opportunity. If you need any further assistance or



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clarification, please do not hesitate to contact me.

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-

Name James R. Jones

Signature James R Jones

Date 1/23/2023

Cummins Inc Approval-

Name _____

Signature Bob Meyer Cummins IGB

Aftermarket Manager North America

Date January 20, 2023

Appendix 1**Generator Model C1000 N6 Using Standard Pipeline Gas****Maintenance Procedures at Daily Interval (Customer)**

- Coolant Level - Check
- Lubricating Oil Level - Check.
- Gearbox – Check (If equipped)
 - External Condition
 - Leakage
 - Lubricating Oil Filter
 - Lubricating Oil Level
 - Lubricating Oil Pressure
 - Noise
 - Breather
 - Vibration

Maintenance Procedures at Early Life Inspection (One time 250 hr service)

- Emissions Testing - Test
- Lubricating Oil and Filters - Change
- Valve Stem - Measure • Overhead Set (OBC) - Adjust.

Maintenance Procedures at Interval 1²

- Lubricating Oil Analysis – Test
- Batteries – Check
- Waste Oil Reservoir - Check

Maintenance Procedures at Interval 3³

- Cooling System Hoses - Check
- Crankcase Breather Tube - Check
- Electrical Connection, Engine - Check
- Flexible Hose - Check
- Lubricating Oil and Filters - Change
- Overhead Set (OBC) - Adjust
- Spark Plugs (Non Shielded) – Replace
- Coil-on-Plug - Replace (Rubber Boot).

Maintenance Procedures at Interval 4⁴

- Air Leaks, Air Intake and Exhaust Systems - Inspect for Reuse
- Valve Stem - Measure
- Emissions Testing - Check.

Maintenance Procedures at Interval 5⁵

- Coolant Filter - Change
- Engine Mounts - Check
- Fuel Line Seals, NG - Check
- Gear Cover Trunnion Sleeve – Check
- Supplemental Coolant Additive (SCA) - Check.

Maintenance Procedures at Interval 6⁶

- Coil-on-Plug - Inspect for Reuse
- Coil-on-Plug - Replace (Rubber Boot)
- Engine - Clean
- Turbocharger Axial Clearance - Measure
- Turbocharger Radial Bearing Clearance - Measure.

Maintenance Procedures at Top End Overhaul⁷

- Aftercooler - Check
- Cam Follower Assembly - Check
- Camshaft - Check
- Coolant Thermostat - Replace
- Cooling System - Flush
- Cylinder Head - Replace
- Fuel Line Seals, NG - Replace
- Gear Train Backlash, Front - Measure
- Low Temperature Aftercooler (LTA) Water Pump - Replace
- Push Rods or Tubes - Check
- Rocker Lever Assembly - Check
- Water Pump - Replace
- Coil-on-Plug - Replace (Extension)
- Charge Air Piping - Replace (O-rings and Tie Bars)



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- Throttle Body Driver Module Isolation Grommets - Replace.

1. 250 Hour Interval
2. 250 Hours or 14 Day Interval
3. 750 Hour Interval
4. 1500 Hour Interval
5. 3000 Hour Interval
6. 6000 Hour Interval
7. 12,000 Hour Interval

1 MW Service schedule

See run hours-based service schedule below

	Year 1				
	250	750	1500	2250	3000
Early Life (Once) 250 hrs	X				
750 hrs		X	X	X	X
1500 hrs			X		X
3000 hrs					X
6000 hrs					
Top End (12,000 hrs)					

	Year 2				
	3000	3750	4500	5250	6000
750 hrs	X	X	X	X	X
1500 hrs	X		X		X
3000 hrs	X		X		X
6000 hrs					X
Top End (12,000 hrs)					

	Year 3				
	6000	6750	7500	8250	9000
750 hrs	X	X	X	X	X
1500 hrs	X		X		X
3000 hrs	X				X
6000 hrs	X				
Top End (12,000 hrs)					



	Year 4				
	9000	9750	10500	11250	12000
750 hrs	X	X	X	X	X
1500 hrs	X		X		X
3000 hrs	X				X
6000 hrs					X
Top End (12,000 hrs)					X

	Year 5				
	12000	12750	13500	14250	15000
750 hrs	X	X	X	X	X
1500 hrs	X		X		X
3000 hrs	X		X		X
6000 hrs	X				
Top End (12,000 hrs)	X				

750KW Service Schedule

Five (5) full services (Oil and Filter change) for the duration of this agreement

Three (3) inspections yearly of the diesel unit.

Year 1				
Service	January	April	July	October
Inspection		X	X	X
Full service	X			

Year 2				
Service	January	April	July	October
Inspection		X	X	X
Full service	X			
Additional Services				
Battery Replacement	X			
Air Filter Change	X			
Catalyst Cleaning	X			

Year 3				
Service	January	April	July	October
Inspection		X	X	X
Full service	X			
Additional Services				
Belt Replacement	X			
Spark Plug and Overhead set	X			

	Year 4			
Service	January	April	July	October
Inspection		X	X	X
Full service	X			
Additional Services				
Battery Replacement	X			
Air Filter Change	X			

	Year 5			
Service	January	April	July	October
Inspection		X	X	X
Full service	X			
Additional Services				
Catalyst Cleaning	X			



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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. and supersedes any previous agreement or understanding (oral or written) between the parties with respect to the subject matter of this Agreement.

1. SCOPE OF SERVICES; PERFORMANCE OF SERVICES. Cummins Inc. 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 supplemental documentation. Cummins Inc. shall provide the Services in a safe and workmanlike manner. Cummins Inc. has licenses, permits, authorizations, or registrations necessary to perform the Services. Unless otherwise indicated in the Quote, Cummins Inc. 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 Inc.' operations.

Customer shall provide Cummins Inc. safe access to Customer's site and arrange for all related services and utilities necessary for Cummins Inc. 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 for any and all safety issues that an electrical service interruption might cause, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services.

2. PAYMENT TERMS. If Customer has approved credit, as determined by Cummins Inc., payment terms are net ninety (90) days from the date of invoice unless otherwise specified in the Quote. If payment is not received when due, in addition to any rights Cummins Inc. has under the law and charges that Cummins Inc. may levy against Customer under statute (including attorney fees and costs of collection), Cummins Inc. will request late payments paid in full. If Customer does not have approved credit payment shall be due immediately at the time of invoice.

3. DELAYS. Cummins Inc. shall not be liable for any delays in performance that result directly or indirectly from acts of Customer or causes beyond Cummins Inc.' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, labor disputes, and/or union mandated procedures resulting in a loss of time and productivity in services being performed.

4. WARRANTY. Limited warranties apply for select parts and components as defined by the respective component manufacturer's limited warranties. 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, Cummins Inc.' obligation shall be limited to correcting the defective workmanship. Cummins Inc. shall correct the nonconforming Services where (i) such nonconformity becomes apparent to Customer during the warranty period; (ii) Cummins Inc. receives written notice of any nonconformity within thirty (30) days following discovery by Customer; and (iii) Cummins Inc. has determined that the Services are nonconforming. Services corrected or re-performed shall be subject to the remaining warranty period of the original warranty of the Services. New parts supplied during correction or re-performance of Services 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 4 shall not be deemed to have failed of their essential purpose so long as Cummins Inc. is willing to correct defective Services or refund the purchase price therefor.

5. LIMITATIONS ON WARRANTIES AND REMEDIES.

Cummins Inc. expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability and warranty for fitness of a particular purpose, to the extent permitted by law. The warranties set forth herein are the sole warranties made by Cummins Inc. Some states do not allow limitation on warranties, so these limitations may not apply to you.

6. Limitations. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE HEREUNDER FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENT 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. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR'S TOTAL AND CUMULATIVE LIABILITY EXCEED TWO MILLION DOLLARS (\$2,000,000.00). NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.