

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO AN AGREEMENT WITH CUMMINS, INC. FOR CERTAIN EQUIPMENT NECESSARY FOR PUMP STATION NUMBER 2 (SOURCEWELL CONTRACT NUMBER 092222-CMM); AND TO DECLARE AN EMERGENCY

WHEREAS, this Council desires to authorize the Mayor and Finance Director to enter into a purchase agreement with Cummins, Inc. for the purchase of certain equipment necessary for Richfield Pump Station Number 2 (Sourcewell Contract No. 092222-CMM) in an amount not to exceed \$219,218.00, in accordance with the proposal attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, County of Summit, State of Ohio that:

SECTION 1. The Mayor and Finance Director are hereby authorized to enter into a purchase agreement with Cummins, Inc. for one certain equipment necessary for Pump Station Number 2 (Sourcewell Contract No. 092222-CMM) in an amount not to exceed \$219,218.00, in accordance with the proposal attached hereto as Exhibit A.

SECTION 2. Because this purchase is made through a governmental cooperative purchasing program (Sourcewell), pursuant to Section 141.03(f)(7) of the Codified Ordinances of the Village of Richfield, Council hereby waives all competitive bidding requirements that ordinarily apply to such transactions.

SECTION 3. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4. This Resolution is hereby declared to be an emergency measure for the reason that it is immediately necessary to execute the purchase agreement; wherefore, this Resolution shall take immediate effect, provided that it receives the requisite number of votes needed to pass as an emergency measure; otherwise, it shall take effect at the earliest date allowed by law.

PASSED: _____

4-2-2024



President of Council

Mahal Ushaka
Mayor

Dated: 4/2/2024

ATTEST:
[Signature]
Clerk of Council



February 21, 2024

Village of Richfield

Attention: Scott Keserich

We are pleased to provide you this quotation based on your inquiry.

Item	Description	Qty
1	C300N6 Genset - Spark Ign, Natural Gas, 60Hz, 300kW ENG GTA855EICS, 470 HP, 8.5:0, Factory Certified for Emissions CAT Catalyst, 5" Flange, NSPS 2/4/1 A331-2 DutyRating - Standby Power L090-2 Listing - UL 2200 C002-2 Natural Gas B269-2 Generator - S4L1D-F41 (ADS #627), 60Hz, Winding 311 - 12 Wire, 120C, 0.8pf, Per Gensize Sizing Calculation R002-2 Voltage - 277/480, 3ph B184-2 Exciter / Regulator - PMG, 3 Phase Sensor KX21-2 Set Control - Power Command 3.3 MLD H608-2 Controls Facing Right E082-2 Radiator Cooled H389-2 Shutdown - Low Coolant Level H557-2 Coolant Heater_40°FMinimum Ambient Temp E098-2 Sightglass on Radiator A366-2 Engine Governor - Electronic, Isochronous Only 1 A334-2 Engine Starter - 24 VDC Motor A333-2 Battery Charging Alternator Normal Output D041-2 Engine Air Cleaner - Normal Duty H706-2 Lube Oil, Engine Filled Prior to Shipment H669-2 Anti-Freeze - 50/50 Mix, System Filled Prior to Shipment A466-2 Critical Grade Silencer, Carbon Steel H268-2 Extension - Oil Drain E089-2 Extension Engine Coolant Drain H606-2 Bargraph - AC Analog Meters KA08-2 Alarm - Audible, Engine Shutdown L050-2 Manuals in English F149-2 Vibration Isolators CK-2-6 (QTY 6) C8DXH Batteries - C8DXH Wet (QTY 2) F065-2 Battery Rack A465-2 Battery Charger, 120/240 VAC Input, 12A / 24VOutput MM-2-15 Flexible Fuel Connection - Gaseous, 2in NPT K631-2 Relays - Genset Status (User Configured) KP74-2 Switch - Emergency Stop, External M127-2 Circuit Breaker - Lsi 600A 100%, 600/525V L189-2 Genset Warranty - Standby, 5 yr / 2500 hours, parts, labor and travel F997-02 Std CB Mounting Option	1
2	Service - start up & testing during normal working hours.	1
3	FOB first destination, unloading by others.	1
4	Planned Equipment Maintenance	1

5	<p>ATS-1 Model No : RTS03-ATB8003AMF1 Withstand: 3 Cycle Switch Type: Transfer Switch Configuration : Dual Motor Bypass Type: No Bypass Operation:Automatic Poles: 3 Amperage: 800 Voltage: 277/480 Hertz: 60 Wire:4 Phase: 3 Lugs: Mechanical Mounting: Freestanding Enclosure: NEMA 1 Closing and Withstand rating: 65,000 RMS Approximate Dimensions: 50" W x24" D x 91.5" H</p> <p>The dual operator automatic transfer switch shall be provided with the following accessories: CES - Form "C" contact to initiate engine starting or other customer functions. Quantity of two CS1A Form "C" contact to indicate source 1 availability. This relay action is before engine starting time delay, with source 1 status relay. Quantity of two CS1P - Auxiliary contact closed to source 1 positions, wired to terminal strip for customer connection. Quantity of two CS2A Form "C" contact to indicate source 2 availability with source 2 status relay. Quantity of two CS2P - Auxiliary contact closed on source 2 position, wired to terminal strip for customer connection. Quantity of two CS2PC - Auxiliary form "C" contact to indicate switch in source 2 position, wired to terminal strip. Quantity of two. EMO - External manual operator to allow for safe manual operation without opening the enclosure door. ELEV3 - Elevator Form "C" contacts to change state " X" seconds prior to transfer in either direction. The contacts will revert back to the original state "Y" seconds after transfer in either direction. The timers "X" and "Y" are each independently adjustable between 0-9999seconds. Quantity of two EXF - Plant exerciser with (10) 7 day programmable events for any day of the week and (24) programmable calendar events for any month to automatically exercise the generating plant. Programmable in 1 minute increments with programmable function to select either "NO LOAD" (switch will not transfer), "LOAD" (switch will transfer), "ON" (places the exerciser in functional mode to allow a load test) or "OFF" (no exercise operation takes place) exercise period. Keypad initiated. LT1 - Green LED on Operator Interface Panel to indicate switch in source 1 position LT2 - Red LED on Operator Interface Panel to indicate switch</p>	1
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Item	Description	Qty
	<p>in source 2 position LT3 - Green LED on Operator Interface Panel to indicate source 1 power available LT4 - Red LED on Operator Interface Panel to indicate source 2 power available LT6 - Green LED to indicate source 1 power available. (1) Nameplate marked: "SOURCE 1 POWER AVAILABLE" LT7 - Red LED to indicate source 2 power available. (1) Nameplate marked: "SOURCE 2 POWER AVAILABLE" LT8 - Green LED to indicate switch in source 1 position. (1) Nameplate marked: "SOURCE 1 POSITION." LT9 - Red LED to indicate switch in source 2 position. (1) Nameplate marked: "SOURCE 2 POSITION." LT20 - Red LED to indicate transfer inhibit. LT21 - Red LED to indicate alarm condition. RPTCS - Russelectric RPTCS Configuration 5 controller with power metering and both serial and Ethernet communication. Power metering includes CTs and shorting block, to display Voltage (both sources), Current, Frequency, PF, KW, KVA, KVAR, MWH, Voltage and Current Imbalance, Voltage and Current Harmonics (% THD up to 8 th order) SE - Service entrance rated, molded case, fixed mounted, 100% rated breaker bussed to the top of the ATS and located in a separate Nema 1 enclosure TDEC - Engine overrun to provide unloaded engine operation after retransfer to source 1 (Delay for engine cool down), programmable 0.0-60.0 min:ss, factory set at 5 minutes TDES - Time delay to override momentary source 1 power outages to delay engine start signal and transfer switch operation. Programmable 0.0-259.0 min:ss, factory set at 3.0 seconds (A time setting greater than 10 seconds requires an external 24 volt DC, 1 amp power supply) TDNNP - Time delay to control contact transition time from neutral to non-preferred source. Programmable 0.0-10.0 min:ss, factory set at 1 second. TDNP - Time delay to control contact transition time from neutral to preferred source. Programmable 0.0-10.0 min:ss, factory set at 1 second. TDNPS - Time delay on transfer to non-preferred source. Programmable 0.0-259.0 min:ss factory set at 3.0 seconds TDPS - Time delay on retransfer to preferred source. Programmable 0.0-259.0 min:ss, factory set at 30 minutes VFS1 - Programmable set points: Under voltage sensing of source 1 to restore at 90% and fail at 80%. Over voltage sensing to pick up at 110% and drop out at 108%. Under frequency sensing is adjustable from 45 Hz to 60 Hz. Failure set at 59.0 Hz and restore set at 59.5 Hz. Over frequency sensing is adjustable from 60.1 Hz to 69.8 Hz. Failure set at 69.8 Hz and restore set at 66.0 Hz. VFS2 - Programmable set points: Under voltage sensing of source 2 to restore at 90% and fail at 80%. Over voltage sensing to pick up at 110% and drop out at 108%. Under frequency sensing is adjustable from 45 Hz to 60 Hz. Failure set at 59.0 Hz and restore set at 59.5 Hz. Over frequency sensing is adjustable from 60.1 Hz to 69.8 Hz. Failure set at 69.8 Hz and restore set at 66.0 Hz XP20 - Pushbutton to test all external LEDS. (1) Nameplate marked: "LAMP TEST" XT1G - Toggle operated load test switch with guard to simulate normal power failure. XX - Full five-year parts and labor warranty, commences at shipment XX - Factory field service start up, one trip during normal business hours (M-F 8A-5P)</p>	
6	<p>StormSwitch A mechanically interlocked manual transfer switch with CAM lock receptacles for quick, safe portable generator connection and operation 1 Model Number: SSD8-800H-800H-480-311-S-C Amperage: 800 Voltage: 277/480V Withstand: 35kAIC Mounting: Wall Mount Enclosure: NEMA 3R Breaker: 100% Rated, 3 Pole Permanent Generator Connection: Hard wire ((3) 3/0 - 500kcmil) Portable Generator Connection: Male Cam Style Receptacles: (2) A-Phase Brown, (2) B-Phase Orange, (2) C-Phase Yellow, (2) Neutral White, and (1) Ground Green Dimensions: 48"W x 24.30"D x 60"H · Mating plugs for Cam Receptacles not included · Strip heater · 20A receptacle · UL/ cUL 1008 Listed · Deadfront, padlockable door and handle cover · Not for Indoor use</p>	1
7	Generator Remote E-Stop. GS120-KIT.	1

TOTAL: \$ 219,218.00

Quote value does not include any tax.

EXCEPTIONS AND CLARIFICATIONS:

Quote based on drawings, specification provided, as well as sizing calculations and discussions with PTA Engineering.
Pricing per Sourcewell Contract #092222-CMM, flyer attached.

NOTES:

Proposal is for equipment only, offloading, rigging, and installation by others.
 Fuel and permits, unless listed above, is not included.
 Cummins Standard Start-up and testing is included. Additional tests, such as NETA testing, if required, is by others.
 Coordination Study not provided.



Lead Time

Current lead time for generator is 47-50 weeks, switches are 34-45 weeks, both after approval of drawings and release of order.

Please feel free to contact me if you require any additional information; or if you have any further questions or concerns that I may be of assistance with.

Thank you for choosing Cummins.

Submitted by:

Jeff Houlahan

Jeff Houlahan, Power Generation Sales
an135@cummins.com
(440) 591-2331

SUBMITTALS. An order for the equipment covered by this quotation will be accepted on a hold for release basis. Your order will not be released and scheduled for production until written approval to proceed is received in our office. Such submittal approval shall constitute acceptance of the terms and conditions of this quotation unless the parties otherwise agree in writing.

THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN. BY ACCEPTING THIS QUOTATION, CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.

Authorized Signature

Date

Company Name

Printed Name & Title

Purchase Order No

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TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT

These Terms and Conditions for Sale of Power Generation Equipment, together with the quote ("Quote"), sales order ("Sales Order"), and/or credit application ("Credit Application") on the front side or attached hereto, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the Quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of equipment to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, specifications, agreement (whether upstream or otherwise), or any other terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

1. SCOPE. Cummins shall supply power generation equipment and any related parts, materials and/or services expressly identified in this Agreement (collectively, "Equipment"). No additional services, parts or materials are included in this Agreement unless mutually agreed upon by the parties in writing. A Sales Order for Equipment is accepted on a hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received from Customer. A Quote is limited to the plans and specifications section specifically referenced in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated and mutually agreed to in writing by the parties. Unless otherwise agreed by Cummins in writing, this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ("Quote Validation Period"). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

2. SHIPPING; DELIVERY; DELAYS. Unless otherwise agreed in writing by the parties, Equipment shall be delivered FOB origin, freight prepaid to first destination. For consumer and mobile products, freight will be charged to Customer. Unless otherwise agreed to in writing by the parties, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. Cummins may deliver in installments. A reasonable storage fee, as determined in Cummins' sole discretion, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. In the event Customer fails to take any or all shipments of Equipment ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall have the right, in its sole discretion to either (i) charge a minimum storage fee in the amount of one and one-half percent (1.5%) per month of the total quoted amount; or (ii) consider the Equipment abandoned and, subject to local laws, may (a) make the Equipment available for auction or sale to other customers or the public, or (b) otherwise use, destroy, or recycle the Equipment at Customer's sole cost and expense. The foregoing remedies shall be without prejudice to Cummins' right to pursue other remedies available under the law, including without limitation, recovery of costs and/or losses incurred due to the storage, auction, sale, destruction, recycling, or otherwise of the Equipment. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use commercially reasonable efforts to meet estimated dates, but shall not be liable to customer or any third party for any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or any unforeseen event, circumstance, or condition beyond Cummins' reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. *AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOR OR SERVICE. WHILE CUMMINS SHALL MAKE COMMERCIALY REASONABLE EFFORTS TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE. IN THE EVENT DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IS DELAYED, HOWEVER OCCASSIONED, DUE TO EVENTS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE EQUIPMENT OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.*

3. PAYMENT TERMS; CREDIT; RETAINAGE. Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins,

as solely determined by Cummins, payments are due in advance or at the time of supply of the Equipment. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay Cummins' costs and expenses (including reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) postpone delivery of any undelivered Equipment in Cummins' possession and/or suspend its services until payment for unpaid invoices is received.

4. TAXES; EXEMPTIONS. Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.

5. TITLE; RISK OF LOSS. Unless otherwise agreed in writing by the parties, title and risk of loss for the Equipment shall pass to Customer upon delivery of the Equipment by Cummins to freight carrier or to Customer at pickup at Cummins' facility.

6. INSPECTION AND ACCEPTANCE. Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's reasonable satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

7. LIEN; SECURITY AGREEMENT. Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.

05.01.2023

8. CANCELLATION; CHARGES. Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. If Customer seeks to cancel all or a portion of an order placed pursuant to this Agreement, and Cummins accepts such cancellation in whole or in part, Customer shall be assessed cancellation charges as follows: (i) 10% of total order price if cancellation is received in Cummins' office after Cummins has provided submittals and prior to releasing equipment to be manufactured; (ii) 25% of total order price if cancellation is received in Cummins' office after receipt of submittal release to order, receipt of a purchase order for a generator already on order with the factory, or is asked to make any hardware changes to the equipment already on order with the factory; (iii) 50% of total order price if cancellation is received in Cummins' office sixty (60) or fewer days before the scheduled shipping date on the order; or (iv) 100% of total order price if cancellation is received in Cummins' office after the equipment has shipped from the manufacturing plant.

9. TERMINATION. Cummins may, at any time, terminate this Agreement for convenience upon sixty (60) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Equipment or services supplied under this Agreement, in accordance with the payment terms detailed in Section 3. If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience.

10. MANUALS. Unless otherwise stated, electronic submittals and electronic operation and maintenance manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

11. TRAINING; START UP SERVICES; INSTALLATION. Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks

for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

12. MANUFACTURER'S WARRANTY. Equipment purchased hereunder is accompanied by an express written manufacturer's warranty ("Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Equipment. A copy of the Warranty is available upon request. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

13. WARRANTY PROCEDURE. Prior to the expiration of the Warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

14. LIMITATIONS ON WARRANTIES.

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

The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

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

16. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY OR NEGLIGENCE), FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF EQUIPMENT UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF EQUIPMENT SUPPLIED UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

17. DEFAULT; REMEDIES. Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or

becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins. Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under applicable law; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

18. CUSTOMER REPRESENTATIONS; RELIANCE. Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer's purchase of Equipment from Cummins under this Agreement is based, in whole or in part, on specifications, technical information, drawings, or written or verbal advice of any type from third parties, Customer has sole responsibility for the accuracy, correctness and completeness of such specifications, technical information, drawings, or advice. Cummins make no warranties or representations respecting the accuracy, correctness and completeness of any specifications, technical information, drawings, advice or other information provided by Cummins. Cummins makes no warranties or representations respecting the suitability, fitness for intended use, compatibility, integration or installation of any Equipment supplied under this Agreement. Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

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

20. GOVERNING LAW AND JURISDICTION. This Agreement and all matters arising hereunder shall be governed by, interpreted, and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the federal and state courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement or any related matter, and hereby waive any right to claim such forum would be inappropriate, including concepts of forum non conveniens.

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

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

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

24. PRICING. To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment due to economic and market conditions at the time of shipment. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

25. MISCELLANEOUS. Cummins shall be an independent contractor under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is writing and signed by an authorized representative of the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for, and

Customer has agreed to purchase of the Equipment pursuant to these Terms and Conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such Terms and Conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event Cummins incurs additional charges hereunder due to the acts or omissions of Customer, the additional charges will be passed on to the Customer, as applicable. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof. The Parties' rights, remedies, and obligations under this Agreement which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 16. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement.

26. COMPLIANCE. Customer shall comply with all laws applicable to its activities under this Agreement, including, without limitation, any and all applicable federal, state, and local anti-bribery, environmental, health, and safety laws and regulations then in effect. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

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

