

ELVIN MCCORVEY MEMORIAL WATER PRODUCTION FACILITY  
FORMERLY WEST WATER TREATMENT FACILITY, BOOSTER STATION AND GAC  
SYSTEM

ECUA PROJECT NUMBER RW819

BID NO. CC2024-02

November 22, 2023

**ADDENDUM NO. 2**

This addendum consists of twenty-one (21) pages, forms a part of the Contract Documents and modifies the original Specifications dated October 2023, as noted below. Acknowledge receipt of this Addendum in the space provided on the Bid Form. Failure to do so may subject Bidder to disqualification. This addendum consists of:

This Notice to extend the last day to submit questions until 30 November and postponing the Bid Opening until 2:00 P.M., 07 December in the same location. All Requests for Additional Information should be sent to Cecil Jernigan, email: [cjernigan@bowman.com](mailto:cjernigan@bowman.com)

A copy of the Pre-Bid Meeting Minutes

A copy of the Calgon Carbon Proposal for your information

A copy of the ECUA Purchase Order for the GAC Vessels for your information

A copy of the Proposal for the Generator for your information

**RESPONSES TO QUESTIONS:**

1. Bid Form Line Item 7 shows a quantity of 1 but there are 2 Antenna Towers shown on the plans. Are there 2 towers?  
Response: Yes, 2 towers.
2. Drawing E-119 calls out a 2711P-T7C4D7 which is a 7" Panel View. Similar projects in the past have utilize a 12" Panel View. Should the Panel View be 12"?  
Response: 12" Panel View.
3. Drawing E-119 calls out a 1769-OB16 for the Digital Outputs. Similar projects in the past have utilize a 1769-OW16. Should the Digital Outputs be 1769-OW16?  
Response: Yes, 1969-OW16.

4. The Specifications call for 18 Pulse VFDs for anything over 100HP. The plans call for Power Flex 753s or P1000. Are 18 Pulse VFDs required?  
Response: PowerFlex 753 or Yaskawa P1000 is preferred. 18 Pulse VFD is an outdated standard and we are not sure if it's available anymore.
5. Similar projects in the past have utilized the Hoffman Sequestr series Enclosures for VFDs. Are the Sequestr panels required on this project?  
Response: Yes, Sequestr series Panels for ARC Flash Safety.

Changes to the Project Manual:

A. Section 11214 Vertical Turbine Pumps

1. Item 1.04E  
Change the range of lateral and torsional critical analyses from 25 percent to 20 percent above and below the maximum pump speed.
2. Item 2.02.B.5.a  
Add the following:  
Test levels are Hydraulic Institute level 1U
3. Table 11214-1  
Change:  
Maximum NPSHR at Design Capacity (feet): 30'  
Minimum Run Out capacity (gpm): 2600 gpm  
Pump Shut-Off Head at Design Speed (feet) (Min): 229

B. Section 11215

1. Item 1.04E  
Change the range of lateral and torsional critical analyses from 25 percent to 20 percent above and below the maximum pump speed.
2. Item 2.02.B.1 Delete this Paragraph
3. Item 2.02.B.2 Change the Speed Range to 80% to 100%
4. Item 2.02.B.3 Change "Intermediate" to "Design"
5. Item 3.04.B Factory Pump Tests  
Tests shall be run on each pump.

C. GAC Filters:

The Base Bid is for installation of four GAC Absorbers (Filters) that will be furnished and delivered to the site by the Owner. The associated pipework and

Tank Manifold (Valve Tree) shall be furnished and installed by the Contractor. The Tank Manifold shall be manufactured by the Absorber manufacturer. All above ground GAC pipework shall be 304 Stainless Steel.

Alternate Bids are for ductile iron and welded steel, above ground GAC pipework including the Tank Manifold.

**-END OF ADDENDUM- (attachments follow)**

**ELVIN MCCORVEY MEMORIAL WATER PRODUCTION FACILITY**  
**ECUA CIP PROJECT NUMBER: RW819**  
**16 NOVEMBER 2023**  
**PREBID MEETING MINUTES**

INTRODUCE ATTENDEES:

ITEMS OF DISCUSSION:

Points of Contact

- 1) Emerald Coast Utilities Authority (ECUA): Tom Dawson, P.E., (850-969-3341), Daniel Corliss, P.E., (850-969-6677), Andrew Kelly (850-698-4758)
- 2) Bowman Consulting (850-433-6438). The point-of-contact for the office is Cecil Jernigan, P.E. (cell 850-748-6107), Frank Fabre P.E., (office 850-433-6438), Sharon Kimbrough, P.E., (cell 251-533-4464).
- 3) The chain of command shall be Owner-Engineer-Contractor and vice versa.
- 4) Permitting – FDEP permit being applied for, City of Pensacola and NFWFWMP permits have been obtained. Contractor will still need a City Building Permit and later will need a NPDES Permit.
- 5) Site visits - FDEP, City and NFWFMD personnel may visit the site at any time.
- 6) The Contractor is responsible for controlling erosion and sediment on site at all times. The current Contractor on the site has a NPDES Permit. The Contractor is responsible for abiding by the conditions of this permit. The Contractor is responsible for obtaining a new NPDES permit once the existing permit is terminated and abiding by the conditions.
- 7) Job site safety is solely the responsibility of the Contractor.
- 8) Contractor shall maintain traffic at all times and in accordance with the requirements of the City of Pensacola.
- 9) The Contractor is responsible for any dewatering permitting and testing as required by FDEP.
- 10) Subcontractors: contractor will need to gain approval from Engineer prior to using any subcontractor's whose work effort would constitute more than 5% of the total project cost.
- 11) Typical working hours for the Contractor are at 7:00 AM to 5:00 PM, 5 days per week. Weekend work requires pre-approval.
- 12) All Pay Requests shall be submitted to Bowman for processing. Pay Requests should be submitted by the 25<sup>th</sup> of each month. ECUA will pay the Contractor no more than once per month.
- 13) Utility locates shall be requested for all utilities prior to beginning construction.
- 14) Notify ECUA and Bowman 72 hours prior making utility tie-ins. ECUA and Bowman shall be notified 24 hours before any testing, so that they can be there to witness and certify.
- 15) Water lines shall be pre-tested prior to calling for an inspection. ECUA will provide the required bacteriological testing for all potable water lines prior to placing them into service.

**ELVIN MCCORVEY MEMORIAL WATER PRODUCTION FACILITY**  
**ECUA CIP PROJECT NUMBER: RW819**  
**16 NOVEMBER 2023**  
**PREBID MEETING AGENDA**

Any defective materials will be rejected and shall be removed from the site immediately.

- 16) Any open pipe must be plugged and trenches backfilled at the end of each day's work and over the weekend.
- 17) As-built drawings are critical and shall be submitted to the Engineer prior to approval of each pay request. The Contractor shall provide water line fittings and main location from two directions and note any deviations from the proposed design.
- 18) A video of the existing site conditions shall be completed prior to construction and provided in the format noted in the General Notes.
- 19) Contractor will be furnished digital plans and specifications.
- 20) The Contractor shall provide one electronic set of shop drawing submittals.
- 21) The Contract provides for a 555 day construction time.
- 22) Change orders and time extensions must be documented.
- 23) Warranties shall be provided in accordance with the Contract Documents.
- 24) Water for testing and flushing will be provided by the owner. The Contractor shall acquire a hydrant meter and backflow from ECUA Service Department at his cost.
- 25) From January 1, 2014 going forward all brass fittings shall be lead free to be in compliance with the Federal Mandate.
- 26) Items of Discussions:
  - a. Contract will not go to the Board until the January meeting so award would probably be in February and NTP in March.
  - b. We will clarify the Buy American policy in the Addendum.
  - c. We will clarify the stainless steel question in the Addendum.
  - d. Contractor will prepare the Concrete Pads for the Generator and GAC Vessels and coordinate and handle unloading when they arrive.
  - e. The GAC filter valve trees shall be provided by the GAC filter manufacturer and paid for and installed by the Contractor.
  - f. The contracts for the Generator and the GAC Vessels will be provided in the Addendum for your information.
  - g. As-Built drawings will be reviewed onsite with each Pay Request or submitted electronically with the Pay Request.

Note: We plan to send out an Addendum tomorrow extending the last day to submit questions until 30 November and postponing the Bid Opening until 2:00 P.M., 07 December in the same location. All Requests for Additional Information should be sent to Cecil Jernigan, email: [cjernigan@bowman.com](mailto:cjernigan@bowman.com)

## McCormick Projects

NAME	Company	EMAIL
Sam Howard	Morrow Water	showarda@morrowwater.com
Paul Nobles	ECUA Purchasing	paul.nobles@ECUA.fl.gov
Tony Howard	ECUA	Tony.howard@ECUA.FL.GOV
Rena Smith	Moody Electric	rsmith@moodyelectric.net
Brian Bryars	Moody Electric	bbryars@moodyelectric.net
ERIC COLEY	ACS	eric.coley@autoconserv.com
DANIEL CORLISS	ECCA	DANIEL.CORLISS@ECUA.fl.gov
Chris Argus	DAU Electrical	Chris.Argus@DAUElectrical.com
Jeb Smith	PPEI	jeb@pumpandprocess.com
Pete DiMario	Consolidated Pipe	pete.dimario@cpspipe.com
Justin Hinote	Ferguson	justin.hinote@ferguson.com
Rick Nesius	Talcom	Rnesius@talcomgroup.com
Cody Mills	Sawcross	Bids@Sawcross.com
Jason Touchstone	Bill Smith Electric	Jason@BillSmithElectric.com

# CALGON CARBON CORPORATION

## PROPOSAL FOR EQUIPMENT/SYSTEM PURCHASE



Customer Name:	Emerald Coast Water Utilities
Location:	Pensacola, FL
Date:	March 27, 2023

ITEM	DESCRIPTION	PRICE
1	Four (4) Model 10 Adsorption Vessels w/SS Septas 1. Price includes delivery of the systems to site.	\$391,022.00
2	Eight (8) 4" Sharpe SS Ball Valves	\$10,264.00
3	Eight (8) 4" Hose Connections / Camlocks	\$439.00
4	Four (4) SS Carbon Fill & Discharge Lines excluding the 4" Sharpe SS Ball Valves & Hose Connections	\$15,278.00
5	(4) Sets of Sample Tap Assemblies	\$4,464.00
6	Four (4) SS Strainer Baskets	\$835.00
Grand Total		\$422,302.00

### SCHEDULE

TIMING	ITEM
2 weeks after final execution of purchase order/contract	Provide Approval Submittal
2 weeks after return of submittal with any comments requiring re-submittal	Provide re-submittal for Approval
26 to 28 weeks after approval of submittal / release to fabricate, subject to shop loading at time of submittal approval	Deliver systems to site

### PROPOSAL NOTES

1. Pricing and delivery are based on Calgon Carbon's standard specifications.
2. Pricing does not include applicable Sales Tax; Sales Tax added to applicable items unless Tax Exemption Documentation provided
3. Proposal is valid for sixty (60) days from date of this proposal.
4. This offer is made under and is governed by the attached Calgon Carbon Corporation Engineered Systems Terms and Conditions.
5. Calgon Carbon Corporation asserts that this adsorption system offering falls outside the scope of the American Iron and Steel Act of 2014. Calgon Carbon's assertion is based upon a review of the guidance issued by the U.S. Environmental Protection Agency (specifically, EPA's March 20, 2014 AIS Guidance and EPA's Q&A Part 2) concerning the scope of the requirements of the American Iron and Steel Act of 2014.
6. Pricing does not include any Payment or Performance Bonds or Letters of Credit. Costs for any such bonds, if requested by the Buyer, will be added to the quoted pricing.
7. Upon receipt of a Purchase Order, the Buyer will be requested to complete a Credit Application and provide Tax Exemption Documentation.
8. Receipt, off-loading and installation of the GAC vessel to be the responsibility of the site.
9. Utilities for GAC transfer provided by site

# CALGON CARBON CORPORATION

## PROPOSAL FOR EQUIPMENT/SYSTEM PURCHASE



10. Buyer and Calgon Carbon Corporation shall agree to the Delivery Schedule for the order. The Delivery Schedule shall be mutually agreed upon during the purchase order acceptance process. Changes to the Delivery Schedule will only be permitted upon mutual agreement between Buyer and Calgon Carbon Corporation, provided that no changes will be permitted after commencement of fabrication. Notwithstanding any provision to the contrary, delivery requirements not reflected in the Delivery Schedule shall not be subject to liquidated damages. Buyer shall accept delivery of equipment according to the Delivery Schedule. If for any reason Buyer cannot accept delivery in accordance with the Delivery schedule, Buyer shall pay Calgon Carbon Corporation for storage fees incurred by Calgon Carbon Corporation at a rate of \$50 per calendar day per system for up to 45 days. If for any reason Buyer cannot accept delivery of equipment within 45 days of the date reflected in the Delivery Schedule, CCC will arrange, at Buyer's expense, to transport the equipment to the location of Buyer's choice (the "Storage Location"). All transportation and additional storage costs related to delayed delivery acceptance shall be paid by Buyer. Risk of loss shall transfer from CCC to Buyer upon delivery of the equipment to the Storage Location. For the avoidance of doubt, the parties agree that all liability for such equipment shall transfer to Buyer at the Storage Location and any damage incurred thereafter, including without limitation damage incurred as a result of storage or further transportation, shall be for the account of Buyer.
11. You may accept this offer by submitting a purchase order referencing this offer, provided that such acceptance shall be on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth in the Calgon Carbon Corporation Engineered Systems Terms and Conditions. Any different or additional terms contained in any document, including the PO, issued by Buyer are expressly rejected, and Buyer acknowledges and agrees that the terms set forth herein and in the Calgon Carbon Corporation Engineered Systems Terms and Conditions shall control.
12. Send the Purchase Order to:  
Calgon Carbon Corporation 3000  
GSK Drive  
Moon Township, PA 15108  
Attention: Michael Prevade  
Michael.prevade@kuraray.com

### ATTACHMENTS:

1. Calgon Carbon Corporation Engineered Systems Terms and Conditions

CALGON CARBON CORPORATION

Date: March 27, 2023

*Michael Prevade*

Name: Michael Prevade

Phone: 724-417-0405

E-mail: Michael.Prevade@Kuraray.com





or otherwise be relieved of any obligations as the result of such delay. If any delivery is delayed for more than thirty (30) days beyond the originally scheduled delivery date and such delay is caused by Buyer, Buyer will be subject to storage charges from the scheduled shipment date of two percent (2%) of the sale price per month; and such storage charge shall be due monthly on the first day of each month. Storage by Seller shall be at Buyer's risk and expense.

#### **8) SERVICES:**

(a) All orders which include services (including installation supervision, startup, training, testing, etc.) as stated in the Documentation will require the completion of the Pre-Visit Checklist and Service Request Form prior to scheduling the visit. If there are delays, cancellations, or failures by Buyer to meet service personnel at designated times, then fees will be assessed to the customer at Seller's then-applicable per hour rate for each hour of delay for each person. For domestic or international travel, additional fees will apply.

(b) Buyer shall make the premises, where services are to be performed (the "Premises"), available to Seller at all reasonable times as Seller may request, such that Seller shall be able to perform the services in a timely manner. Buyer shall bear all risk and liability associated with its inability to make the Premises available to Seller to perform the services. Prior to the commencement of services, Buyer shall ensure that the Premises are in good repair and in safe condition, and shall notify Seller of any dangerous, unsafe or hazardous conditions associated with the Premises, such that Seller can take the appropriate safeguards. Prior to the commencement of any work, Buyer shall notify Seller of any special workplace requirements, safety standards, operating procedures or other conditions imposed on persons performing work at the Premises.

(c) Any spent activated carbon covered by this Agreement will be subjected to reactivation acceptance testing by Seller as described in Seller's Guidelines for Return for Reactivation of Granular Activated Carbon, which Seller may update from time to time in its sole discretion. Buyer will provide any information required by Seller relative to evaluating carbon acceptance. Seller reserves the right to reject any and all activated carbon if, in its judgment, it is unsuitable for reactivation. Further, Seller will periodically retest the spent activated carbon to assure it remains acceptable for reactivation and that it does not contain constituents that were not in the carbon acceptance sample and/or Adsorbate Profile Document. Seller reserves the right to apply a surcharge for reactivation of spent carbon with quality that creates excessive corrosion, slagging, exothermic reactions, or other operational problems including lower furnace operating rates. If the spent activated carbon becomes unacceptable for reactivation, disposal of the carbon will be the responsibility of Buyer. Seller reserves the right to reactivate the spent carbon at any of its reactivation facilities where carbon acceptance exists.

**9) PERMITS, LICENSES AND FEES:** Buyer shall be responsible, at its sole expense, for all environmental permits, applications, regulatory approvals, and other permits or licenses that may be required for installation and/or operation of the Products.

**10) CHANGES:** Any changes requested by Buyer after signing the Documentation will be separately designed and priced by Seller. No change will be made without receipt of a written change order accepted in writing by Seller.

#### **11) CANCELLATION; TERMINATION:**

(a) In the event that Buyer cancels its order prior to approving the design drawings submitted by Seller, Buyer shall pay to Seller as liquidated damages ten percent (10%) of the total purchase price of the Products, in addition to any progress payments invoiced. Following the acceptance of the design drawings by Buyer, Buyer shall not be permitted to cancel its order without Seller's written consent, and then only upon payment of Seller's cancellation charges which shall be equal to Seller's direct costs of goods sold, plus direct labor costs and fixed charges relating to the design and manufacturing of the Products, plus ten percent (10%) of the total purchase price as liquidated damages.

(b) Seller may cancel this Agreement if any of the following occurs: (i) Buyer becomes insolvent; (ii) Buyer ceases to conduct its operations in the normal course of business; (iii) Buyer is unable to meet its obligations as they mature, or admit in writing such inability or fails to provide adequate assurances of its ability to perform its obligations hereunder; (iv) Buyer files a voluntary petition in bankruptcy; (v) Buyer suffers the filing of an involuntary petition in bankruptcy and the same is not dismissed within thirty (30) days after filing; (vi) a receiver, custodian or trustee is appointed for Buyer or for a substantial part of its property; (vii) Buyer fails to make payment on the terms and within the time specified in this Agreement, or breaches any other obligations under this Agreement; or (viii) Buyer executes an assignment for the benefit of its creditors. In the event of such cancellation, Seller shall have all rights and remedies set forth in the Uniform Commercial Code of any applicable jurisdiction and all other remedies available at law or in equity. Sections 2, 11, 12, 13, 15, 16, 17, 19, 20 and 21 shall survive termination or expiration of this Agreement.

#### **12) LIMITED WARRANTIES:**

(a) Unless otherwise specifically provided for in the Documentation, Seller warrants that the (i) System shall be free from defects in material and workmanship, and shall be manufactured in accordance with the specifications agreed to in writing by the parties in the Documentation or any subsequent written change order, for a period of twelve (12) months from startup or eighteen (18) months from the date of shipment, whichever is earlier, (ii) any Goods delivered hereunder shall, at the time of delivery, conform to the specifications agreed to in writing by the parties in the Documentation or any subsequent written change order, and (iii) any services provided for hereunder shall be performed in a workman-like manner, and in accordance with industry standards. Corrosion or other chemical action is specifically excluded as a defect covered hereunder.

(b) Seller agrees during the respective warranty periods specified above, to repair or replace, at Seller's option, defective Products so as to cause the same to comply materially with the agreed to specifications, and to provide corrective services so as to cause such services to be performed in accordance with the terms hereof, provided that Buyer shall promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization, which may include biohazard decontamination procedures and other product-specific handling instructions. Then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the delivery provisions of these Terms and Conditions, freight charged to Seller. Any Goods removed in connection with such replacement may be reactivated or disposed of at Seller's sole discretion.

(c) In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) external causes such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products, or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates. **ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.**

(d) Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

(e) THE OBLIGATIONS CREATED BY THIS WARRANTY TO REPAIR OR REPLACE DEFECTIVE GOODS OR SYSTEMS OR TO PROVIDE CORRECTIVE SERVICES SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF DEFECTIVE PRODUCTS. THERE ARE NO WARRANTIES MADE WITH REGARD TO THE PRODUCTS OTHER THAN THOSE CONTAINED IN THIS SECTION. ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

(f) This warranty does not cover any charges for replacement of parts, adjustments or repairs, or any other work unless such charges shall be assumed or authorized in advance in writing by the Seller.

(g) The sale of any Products pursuant to this Agreement does not include any license, express or implied, to practice any intellectual property owned or licensed by any third party. Buyer agrees not to use the Products for any patented use not set forth expressly in this Agreement, absent a separate license from the holder of such patent. Additionally, Buyer agrees not to resell or sublicense the use of Products for any use not expressly granted hereunder. Any warranty obligations do not apply to any specific use of the Products, application of the Products, modification of the Products, or combination of the Products with any product manufactured by any third party. Seller, except as noted herein, does not and will not warrant, indemnify, or in any other way share responsibility for Buyer's use, application, modification, or combination of the Products.

**13) LIMITATION OF LIABILITY:** Notwithstanding any provision to the contrary herein, except with respect to a breach of the confidentiality obligations set forth in Section 16 hereof, the parties hereto agree that in no event shall either party be liable to the other party for any indirect, special, consequential, incidental or punitive damages, or lost profits, as a result of a breach of any provision of this Agreement or for any other claim of any kind arising out of or relating to this Agreement, whether in contract, in tort or otherwise. Notwithstanding any provision to the contrary herein, for all losses, damages, liabilities or expenses (including attorney's fees and costs), whether for indemnity or negligence, including errors, omissions or other acts, or willful misconduct, or based in contract, warranty (including any costs and fees for repairing, replacing or re-performing services or curing a breach hereof), or for any other cause of action (individually, a "Claim"; collectively, "Claims"), Seller's liability, including the liability of its insurers, employees, agents, directors, and officers and all other persons for whom Seller is legally responsible, shall not, to the maximum extent permitted by law, exceed in the cumulative aggregate with respect to all Claims arising out of or related to this Agreement, the lesser of (a) the total amount of compensation paid to Seller hereunder, and (b) One Million Dollars (\$1,000,000). All Claims of whatsoever nature shall be deemed waived unless made in writing within ninety (90) days of the occurrence giving rise to the Claim. Moreover, any failure of Buyer to notify Seller of unsatisfactory operation or any improper or unauthorized installation, maintenance, use, repair, adjustment or attempts to operate the System outside of the design limits shall relieve Seller of any further responsibilities hereunder.

**14) FORCE MAJEURE:** Notwithstanding any provision to the contrary herein, Seller shall have no liability to Buyer or its affiliates, and shall have the right to suspend performance (including, without limitation, shipments) hereunder, in the event of war, riot, terrorism, accident, explosion, sabotage, flood, acts of God, fire, court order, strike, labor disturbance, work stoppage, national defense requirements, act of governmental authority, pandemic, epidemic, extraordinary failure of equipment or apparatus, inability to obtain electricity or other type of energy, raw material, labor, equipment or transportation, or other causes beyond Seller's reasonable control. It is understood and agreed that settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of Seller and that nothing in this Agreement shall require the settlement of strikes, lockouts and labor disputes when such course is inadvisable in the sole discretion of Seller.

**15) EXPORT CONTROLS:** Buyer acknowledges that the Products and related technology are subject to U.S. export control and economic sanctions laws and regulations, which may include the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR) and regulations promulgated by the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC). Buyer further acknowledges that the re-export of the Products and/or related technology to a third country or retransfer to an unapproved end user may require a license or other authorization from the Government of the United States. Such licenses or other authorizations may impose further restrictions on the re-export or retransfer of the Products and/or related technology. U.S. law also restricts the re-export or retransfer of U.S.-origin goods, technology, or services to countries or persons subject to U.S. sanctions or embargoes. Buyer represents and warrants that it is in compliance with and agrees to comply with all such applicable export control and economic sanctions laws and regulations. It is the sole responsibility of Buyer to apply for and obtain any necessary licenses or other authorizations prior to any re-export or retransfer of the Products and/or related technology. Seller makes no warranty that any such licenses or other authorizations will be granted, and shall have no liability for Buyer's inability to obtain such licenses or other authorization or for any violation by Buyer of any applicable export control and/or economic sanctions laws and regulations. Buyer will indemnify Seller and hold it harmless from any liability resulting from Buyer's violation of this provision or applicable export laws or regulations. Notwithstanding any other provision in this Agreement, Seller shall have the right to terminate this Agreement immediately upon the determination by Seller, in Seller's sole discretion, that Buyer has breached, intends to breach, or insists upon breaching any of the provisions in the above clauses.

**16) CONFIDENTIALITY:** Other than in the performance of the terms of this Agreement, neither Buyer nor its agents, employees, or subcontractors shall use or disclose to any person or entity any confidential information of Seller (whether written, oral, electronic or other form) that is obtained or otherwise prepared or discovered in connection with this Agreement. Buyer agrees that all pricing, discounts, design drawings and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller, whether or not otherwise identified as such. The obligations under this section continue perpetually and survive the termination or expiration of any underlying agreement between the parties. The provisions of this section relating to use and disclosure shall not apply to any information that: (a) is or becomes generally available to the public other than as a result of a disclosure by Buyer under this Agreement; (b) becomes available to Buyer from a source other than Seller without breach of any obligation of confidentiality; (c) was independently developed by Buyer without violation of Seller's rights and without reference to the confidential information, as evidenced by written records, maintained in the ordinary course of business by Buyer; (d) is used or disclosed with the prior written approval of Seller; (e) is information previously known to Buyer as evidenced by written records maintained by Buyer in the ordinary course of business, and not otherwise subject to any confidentiality restrictions; or (f) Buyer becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoenas, investigative demands or similar process) to disclose. The burden of proof that the information resides within one of the exceptions set forth above shall be on Buyer. If Buyer becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoenas, investigative demands or similar process) to disclose any of the confidential information, Buyer shall provide Seller with prompt written notice so that Seller may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained, or if Seller waives compliance with the provisions of this Agreement, Buyer shall furnish only that portion of the confidential information which Buyer is legally required to disclose and shall exercise its reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded the confidential information. Buyer shall not undertake any qualitative or quantitative analysis, reverse engineering or replication of any of Seller's products, samples or prototypes without Seller's specific written authorization.

**17) SECURITY INTEREST:** Buyer hereby grants Seller a security interest in the System and the Goods to secure the payment of the purchase price, and shall not sell, lease, transfer or encumber the Products and will keep the Products free from any and all liens and security interests until Seller has been paid in full. Buyer shall execute any and all documents reasonably requested by Seller to protect such security interests.

**18) MANAGEMENT OF CHANGE:** Seller is constantly striving to improve its products and capabilities and to provide the best product to its customers. Seller may from time to time develop product improvements or alterations with respect to the Products hereunder (the "Product Improvements"), and Seller may implement such Product Improvements without notice to Buyer so long as the performance of the Products will not be materially diminished, as determined in Seller's sole discretion, and so long as Seller has not separately agreed in writing to provide such notification to Buyer. In the event that Seller has agreed in writing to provide notice of Product Improvements to Buyer (the "Notice"), then Seller shall provide such Notice in accordance with the terms set forth in the separate writing.





EMERALD COAST UTILITIES AUTHORITY  
9255 STURDEVANT ST  
PENSACOLA, FL 32514

## ECUA Purchase Order

Fiscal Year 2023 Page 1 of 1

**THIS NUMBER MUST APPEAR ON ALL INVOICES,  
PACKAGES, AND SHIPPING PAPERS.**

Purchase Order Number **20231396-001**

Purchase Order Date **04/12/2023**

Department **WATER OPERATIONS**

Bill To **AP**

Emerald Coast Utilities Authority  
Attn: Accounts Payable  
PO 17089  
Pensacola FL 32522-7089

Ship To **OP**

SYSTEMS SUPPORT BUILDING  
9300 STURDEVANT STREET  
ELLYSON INDUSTRIAL PARK  
PENSACOLA, FL 32514

Vendor **2283**

CALGON CARBON CORP INC  
PO BOX 347037  
PITTSBURGH, PA 15251-4037

Emerald Coast Utilities Authority purchase order terms and conditions are incorporated herein by reference. Acceptance of this purchase order confirms vendor acknowledgement and agreement with these terms and conditions which are available at [ecua.fl.gov/work-with-us/vendors-purchasing](http://ecua.fl.gov/work-with-us/vendors-purchasing).

VENDOR PHONE NUMBER	VENDOR EMAIL	VENDOR NUMBER	REQUISITION NUMBER	BUYER NAME	DELIVERY REFERENCE
412-787-6738	<a href="mailto:MICHAEL.PREVADE@KURARAY.COM">MICHAEL.PREVADE@KURARAY.COM</a>	2283	23001753	Paul Nobles	

### NOTES

West Well GAC Vessels

The Above Purchase Order Number Must Appear On All Correspondence - Packing Sheets And Bills Of Lading

WATER PRODUCTION

DANIEL CORLISS

WEST WELL GAC VESSELS

THE PURCHASE ORDER NUMBER MUST APPEAR ON ALL CORRESPONDENCE - PACKING SHEETS AND BILLS OF LADING

THE ECUA BOARD GENERAL RESOLUTION GR#23-01 DATED 01/23/2023 APPROVED THIS VENDOR AS SOLE SOURCE PROVIDER.

IN ACCORDANCE WITH QUOTES OBTAINED THIS JOB IS APPROVED BY THE ECUA BOARD GENERAL RESOLUTION GR#23-39 DATED 03/28/2023

CHANGE ORDER #1 DATED 5-5-2023 PER DANIEL CORLISS TO ADD 320 STAINLESS STEEL SEPTA TO THE GAC VESSELS FOR FOUR (4) VESSELS ADDING \$23,200.00 FOR A NEW TOTAL OF \$422,302.00 PRN

ITEM #	DESCRIPTION	QUANTITY	UOM	UNIT PRICE	EXTENDED PRICE
1	West Well 4 GAC Vessels Ship Email: <a href="mailto:Daniel.corliss@ecua.fl.gov">Daniel.corliss@ecua.fl.gov</a> GL #: 401-90-9021-536-563002-000-00- Project # : E-RW819 -CONSTRUCT -	1.0000	EACH	\$422,302.0000	\$422,302.00

Approver Name: Bruce Woody

Approval Date: 04/12/2023

  
Purchasing and Stores Manager

Total Ext. Price \$422,302.00

**Purchase Order Total \$422,302.00**

August 8, 2023

To

Gerry Piscopo  
EMERALD COAST UTILITIES Authority  
2980 OLD CHEMSTRAND RD  
CANTONMENT Florida 32533-8967

Prepared by

Paul Bordelon  
504-559-1943  
paul.bordelon@cummins.com

Sourcewell Contract # 120617-CM

ECUA ID# 19660

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

Item	Description	Qty
1	<b>GENSET, SPARK-IGNITED - 60 HZ, 600 KW-750 KVA</b> Genset - Spark Ign, Natural Gas, 60Hz, 600kW GTA50E, 1135 HP, 8.5:1, Factory Certified for Emissions Catalyst, 10" Flange, NSPS 2/4/1 Duty Rating - Standby Power Listing - UL 2200 Natural Gas Generator - HCI504F (ADS #308), 60Hz, Winding 311 - 12 Wire, 105C, 0.8pf Voltage - 277/480, 3ph Exciter / Regulator - PMG, 3 Phase Sensor Set Control - Power Command 3.3 MLD Controls Facing Left Radiator Cooled Shutdown - Low Coolant Level Coolant Heater_40°F MinAmbientTemp Sightglass on Radiator Engine Governor - Electronic, Isochronous Only Engine Starter - 24 VDC Motor Battery Charging Alternator - Normal Output Engine Air Cleaner - Normal Duty Lube Oil, Engine Filled Prior to Shipment Anti-Freeze - 50/50 Mix, System Filled Prior to Shipment Extension - Oil Drain Extension - Engine Coolant Drain Bargraph - AC Analog Meters Alarm - Audible, Engine Shutdown Manuals in English Vibration Isolators CK-2-6 (QTY 10) Batteries - C8DXH Wet (QTY 4)	1

	Battery Rack Battery Charger, 120/240 VAC Input, 12A / 24V Output Fuel Strainer - Gaseous, 4in NPT Flexible Fuel Connection - Gaseous, 4in NPT Ground Fault Indicator w/ Alarm Output Contact Circuit Breaker - Li_1200A_80%, 600/525V Genset Warranty - Standby Power 2 year / 1000 hours Std CB Mounting Option	
2	<b>HVHZ ENCLOSURE</b>	1
3	<b>OTEC, OTEC Transfer Switch-Electronic Control: 1000 AMP</b> OTEC1000, Transfer Switch, PowerCommand, 1000 Amp Listing - UL 1008/CSA Certification Application - Utility to Genset Cabinet - Type 12 Poles - 4 (Switched Neutral) Frequency - 60 Hz System - 3 Phase, 3 or 4 Wire Voltage - 480 Volts AC Genset Starting Battery - 24V DC PC40 Control Auxiliary Relay - Switch in Emergency Position - 24 Volts DC Auxiliary Relay - Switch In Normal Position - 24 Volts DC Interface - Communications Network, MODBUS RTU Module Transfer Switch Warranty - 1 Year Comprehensive	1
4	<b>Service - start up &amp; testing</b>	1

**TOTAL: \$ 561,661.34**

Quote value does not include any tax.

**NOTES:**

- Current Submittal Lead Time: **xx** weeks
- Current Production Lead Time (*after receipt of approved submittal and accepted PO*):
  - Transfer Switch(es): **17-19** weeks
  - Generator: **65-67** weeks
- Proposal based upon supplied **xxxx** documents dated **xx/xx/xxxx** only.
- Price quoted is F.O.B. factory with freight allowed to the first U.S. destination.
- Price does not include any applicable taxes unless listed above.
- All ship loose items installed by others.
- Unloading, installation, and fuel are not included and will be the responsibility of others.
- **Indoor Generator:**
  - All exhaust and fuel piping provided by others. All calculations for determining of sizing of exhaust and fuel piping sizes provided by others.
  - Providing **xx** grade muffler and stainless-steel flex connector(s) only. All other piping, accessories and installation are provided by others.
- **Natural Gas or LP Gas Generator:**
  - Main gas regulator, flex piping and stepdown regulator provided by others. Installation of main gas regulator not done by Cummins Personnel
  - Gas Pressure – For generators between 20kW-200kW 6-14 inches H2O to engine, for generators 250kW - 750kW 15-20 inches H2O to engine– Main gas supply should be 5 PSI+ feeding a step-down regulator located as close to the engine as possible. Line should be dedicated to the generator.
- **Warranty:**Cummins **x**-year warranty begins at the successful completion of startup and testing in lieu of acceptance or



substantial completion.

- **Startup & Training:**
  - Providing Cummins standard startup and the specific testing listed above only. All other testing including NETA testing is provided by others.
  - Our proposal includes **xx** trips during normal business hours to complete the onsite services listed above. If additional trips or after-hours trips are required, additional cost will be incurred.
  - Training for maintenance personnel will be concurrent at time of startup unless otherwise noted.
  - No videotaping is included with this quotation. All taping is supplied by others.
- **PMA:**Generator Maintenance Agreement is not included and will be negotiated directly with the owner once equipment has been successfully started up and tested.
- **NOTICE:** *As a result of the outbreaks of the disease COVID-19 arising from the novel coronavirus, temporary delays in delivery, labor, or services from Cummins and its sub-suppliers or subcontractors may occur. Among other factors, Cummins' delivery is 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 every commercially reasonable effort to meet the delivery, service, or completion described herein, such date(s) is(are) subject to change.*

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:**

**Jason Klotz, Commercial Sales Representative**

[cr506@cummins.com](mailto:cr506@cummins.com)

**(251) 895-1588**

**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 OCCASIONED, 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.**