

CITY OF NEWPORT
GOODS AND SERVICES CONTRACT
GENERATOR SERVICE AGREEMENT

BASED UPON the quotes submitted in response to a request for quotes for GENERATOR SERVICES, as issued and administered by City of Newport (City), City and Peterson Power Systems Inc. (Contractor) hereby enter into a contract for services in accordance with the specifications and quote provided.

All terms of the following exhibits are hereby incorporated by reference into this Contract, and Contractor agrees to comply with each:

- ~~(1) Exhibit A – Request for Quotes~~
- (2) Exhibit B – Contractor Quote
- (3) Exhibit C – Oregon Public Contracting Requirements for Goods and Service Contracts

1. Term. The term of this Contract shall extend from its execution to project completion, unless extended for additional periods of time upon written mutual agreement of both parties. Notwithstanding this Term, City reserves the right to terminate this Contract as outlined in this Agreement.

2. Scope of Work. Contractor shall provide all materials, labor, equipment, and all other services and facilities necessary for the services specified in the attached Exhibits A and B (Project).

3. Compensation.

3.1 Basis of Payment. Contractor shall complete Project as defined above and in the attached exhibits for the prices in Exhibit B, with an estimated total fee of \$22,875 annually.

3.2 Invoices. Payments shall be based upon Contractor's invoices submitted to City, detailing the previous month's fees and costs.

a. City will review Contractor's invoice and within ten (10) days of receipt notify Contractor in writing if there is a disagreement or dispute with the invoice or Project. If there are no such disputes, City shall pay the invoice amount in full within thirty (30) days of invoice date, subject to a five percent (5%) retainage to be paid only after full performance and acceptance by City.

b. If City fails to make any payment due Contractor for services and expenses within thirty (30) days of the date on Contractor's invoice therefore, late

fees will be added to amounts due Contractor at the rate of 1.0 percent (1%) per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute.

4. Permits. City will be responsible for obtaining all permits, approvals and authorizations necessary for Contractor's performance.
5. Termination for Convenience.

This Contract may be terminated by mutual consent of the parties upon written notice. In addition, City may terminate all or part of this Contract upon determining that termination is in the best interest of City by giving seven (7) days' prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Upon termination under this paragraph, Contractor shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) City has against Contractor. Pursuant to this paragraph, Contractor shall submit an itemized invoice for all unreimbursed Contract work completed before termination and all Contract closeout costs actually incurred by Contractor. City shall not be liable for any costs invoiced later than thirty (30) days after termination unless Contractor can show good cause beyond its control for the delay.

6. Termination for Cause. City may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

6.1 If City funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.

6.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

6.3 If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

7. Termination for Default. Either City or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

If Contractor fails to perform in the manner called for in this Contract or if Contractor fails to comply with any other provisions of the Contract, City may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Contractor setting forth the manner in which Contractor is in default. Contractor shall be paid the Contract price only for equipment installed and services performed in accordance with the manner of performance as set forth in this Contract.

8. **Remedies.** In the event of breach of this Contract, the parties shall have the following remedies:

8.1 If terminated under paragraph 7 by City due to a breach by Contractor, City may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to City the amount of the reasonable excess.

8.2 In addition to the above remedies for a breach by Contractor, City also shall be entitled to any other equitable and legal remedies that are available.

8.3 If City breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

8.4 City shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.

8.5 Upon receiving a notice of termination, and except as otherwise directed in writing by City, Contractor shall immediately cease all activities related to the services and work under this Contract.

9. **Standard of Care.** Contractor warrants that the work to be performed pursuant to this Contract shall be done in a good and workmanlike manner and will conform to the highest standards prevalent in the industry or business most closely involved in providing the equipment and services City is purchasing.
10. **Reports.** The Contractor shall provide City with reports as detailed in Contractor's proposal, at a minimum of once per month, outlining the Project progress, issues of concern and budget status.
11. **Change Orders.** Contractor and City reserve the right to order changes to the equipment and services to be provided herein. Contractor and City shall determine a fair and equitable cost and, if required, additional time for such changes. All such changes shall be ordered and agreed to in writing by both parties.

12. **Confidentiality.** Contractor shall maintain the confidentiality, both external and internal, of any confidential information to which it is exposed by reason of this Contract. Contractor warrants that its employees assigned to this Contract shall maintain necessary confidentiality.
13. **Security and Substance Check.** Contractor agrees that each of its employees and subcontractor's employees involved in this Project may, at the option of City and in compliance with Contractor policy, be subject to a security background check and/or substance abuse testing.
14. **Access to Records.** For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.
15. **Notice.** Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

CITY:

City of Newport
 ATTN: Timothy Gross
 SW Coast Highway
 Newport, OR 97365
 Phone: (541) 574-3366
 t.gross@newportoregon.gov

CONTRACTOR:

Peterson Power Systems Inc.
 ATTN: Ron Camacho
 2828 Teagraden Street
 San Leandro, CA 94577
 Phone: 503-280-1539
 racamacho@petersonpower.com

16. **Warranty.** Contractor's warranty is as stated within Exhibit B. Contractor further warrants that all materials, equipment, and/or services provided under this Agreement shall be fit for the purpose(s) for which intended, for merchantability, that material and equipment shall be properly packaged, that proper instructions and warnings shall be supplied, and that the Project shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by City shall not alter or affect the obligations of Contractor or the rights of City.
17. **Insurance.** Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of

Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

17.1. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

Coverage	Limit
General Aggregate	\$1,300,000
Products-Completed Operations Aggregate	\$1,300,000
Personal & Advertising Injury	\$1,300,000
Errors & Omissions	\$1,300,000
Each Occurrence	\$1,300,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

17.2. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,200,000.

17.3. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

17.4. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City as an additional insured with respect to this Agreement.

17.5. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The Contractor shall notify the City 30 days prior to cancellation of the policy.

17.6. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

17.8. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

17.9. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Agreement.

The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement.

18. **Indemnity**. To the extent permitted by law, Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Agreement or Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory

authorization or permit, except for damages resulting from the sole negligence of City.

19. **Force Majeure.** This section applies in the event that either party is unable to perform the obligations of this Agreement because of a Force Majeure event as defined herein, to the extent that the Agreement obligation must be suspended. A Force Majeure event is an event that prohibits performance and is beyond the control of the party. Such events may include natural or man-made disasters, or an action or decree of a superior governmental body which prevents performance. Should either party suffer from a Force Majeure event and be unable to perform, such party shall give notice to the remaining party as soon as practical and shall do everything possible to resume performance. Upon receipt of such notice, the parties shall be excused from such performance as it is effected by the Force Majeure event for the period of such event. If such event effects the delivery date or warranty provisions of this Agreement, such date or warranty period shall automatically be extended for a period equal to the duration of such event.
20. **Independent Contractor.** It is the intention and understanding of the parties that Contractor is an independent contractor and that City shall be neither liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax that may arise as an incident of employment. Contractor shall pay all income and other taxes as due. Industrial or other insurance that is purchased for the benefit of Contractor shall not be deemed to convert this contract to an employment contract. It is recognized that Contractor may or will be performing work during the term for other parties and that City is not the exclusive user of the services that Contractor provides.
21. **Assignment.** Contractor shall not assign or subcontract any of its obligations under this Agreement without City's prior written consent, which may be granted or withheld in City's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Agreement. City's consent to any assignment or subcontract shall not release Contractor from liability under this Agreement or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.
22. **Governing Law.** This Agreement is to be governed by and under the laws of the State of Oregon.
23. **Consent to Jurisdiction.** The parties hereby consent to jurisdiction of the Lincoln County Circuit Court, Lincoln County, Oregon, over all legal matters pertaining to this Agreement, including, but not limited to, its enforcement, interpretation or rescission.
24. **Public Contracting Requirements.** Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this agreement, including, without limitation, applicable provisions of the Oregon Public

Contracting Code including ORS 279B.020, 279B.220, 279B.230, and 279B.235, as more particularly set forth in Exhibit C, attached hereto and incorporated herein by this reference.

25. **Arbitration.** If any disputes, disagreements, or controversies arise between the parties pertaining to the interpretation, validity, or enforcement of this Agreement, the parties shall, upon the request of City, submit such dispute to binding arbitration under the Oregon Uniform Arbitration Act, ORS 36.600 et seq. Arbitration shall be requested by delivering to the other party a written request for arbitration. Within five (5) days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within five (5) days, an arbitrator may be appointed by the presiding judge of the Lincoln County Circuit Court, upon the request of either party submitted in accordance with ORS 36.645. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall adopt rules for the arbitration. The arbitrator's decision shall be binding upon the parties.
26. **Attorney Fees.** If suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for City to incur the services of an attorney to enforce any provision of this Agreement without initiating litigation, Contractor agrees to pay City's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.
27. **Facsimile Signatures.** The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.
28. **Entire Agreement.** This Agreement shall be the exclusive agreement between the parties for the Project. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties, except as otherwise authorized herein.

29. Signatures. This Agreement is not effective unless and until it is approved, signed and dated by an authorized representative of each party.


CITY:

CONTRACTOR:

CITY OF NEWPORT

Peterson Power Systems Inc.

By: 

By: 

Title: City Manager

Title: Product support sales MGR

Date: 12-3-2019

Date: 12-3-2019



Date: 06/07/2019
 Proposal #: RAC190607R
 Prevailing Wage

**Service Agreement
 Prepared for City Of Newport**

Acct. #: 7332420
 Contact: Various by Department
 Timothy Gross - Public Works
 Director
 Email: T.Gross@newportoregon.gov
 Phone:
 Fax:

Prepared by: Ron Camacho
 Email: racamacho@petersonpower.com
 Phone: (503) 280-1539
 Cell Phone: (503) 209-2363
 Fax: (503) 867-8567
 Business Address: 2828 Teagarden Street
 San Leandro, CA 94577

Billing Address: 169 SW Coast Hwy
 Newport, OR 97365

Peterson Power Systems, Inc. agrees to perform the services listed below for City Of Newport. The agreement will be for a period of ONE year with the option to extend pricing for THREE years, commencing on acceptance date. These services will be performed on the units listed below at the stated price.

The units are located at: various locations, Newport, OR. The services have been designed around the Manufacturer's Recommended Standards, will be performed on a flat fee basis and include labor, travel and service parts as indicated below. Taxes, if applicable, are not reflected. Following is a summary of charges for the agreement.

Unit	Loc	Make	Model	Serial	\$ Inspection x Freq	Annual	Green Annual	Load Test	3 Yr Service	Battery Replace	Megger	Other	Total
1	City Of Newport			SEE ATTACHMENT PRICING WORKSHEET RAC190607R - CITY OF NEWPORT.PDF* FOR UNIT DETAILS	x 0	0	0	0	0	0	0	0	\$0
Total						\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

NOTES

1) Pricing on attachment is per unit, per year. To lock in pricing and protect against future parts/labor/oil increases for a period of THREE years, please initial below.

*Water Dept *JH* *Collections Dept *JH* * Wastewater Dept *JH*

2) Several optional additional services based on Manufacturer recommendation, NFPA, and industry best practices are listed on pricing worksheet. If desired, please notify Peterson inside product support representative Ron Camacho to have them amended into pricing spreadsheet.

3) Annual services include SOS-1 oil and coolant samples. Mid level SOS-CSA fuel samples for diesel generators (tests for water, sediment, microbe growth)

4) Inspections will be built using Cat Inspect software. Report to be emailed to customer live from site. Any

additional recommended repair items will be presented to customer.

The services listed above include, but are not limited to, the following. For a complete listing of service options available through Peterson Power please see Attachment B.

An **Inspection** includes an individual inspection of each unit. The technician will verify the fluid levels (oil, coolant and fuel), service the batteries, ensure proper operation of battery charging system, perform an operational check of the engine and generator (as applicable), and provide a completed service report detailing the service and any potential problems that should be addressed.

An **Annual Service** includes a full inspection (see description above) of each unit and a full service which includes; the replacement of engine oil, oil filters and fuel filters. Air filters are replaced on an as needed basis for an additional charge. Please contact your PSSR if you would like your air filters replaced.

A **Green Annual Service** is the same as an Annual Service (see description above) without the oil change. Oil Filters are changed and oil is tested to ensure fluid integrity while extending oil drain intervals.


Load Bank Testing is recommended annually for any generator that is not run "under load" (maintaining a load of at least 30% of its kilowatt (kW) rating) regularly, to ensure the proper operation of your generator. A Load Bank Test will include the connection of a portable resistive Load Bank. The load will be varied in steps for a 1.5 hour duration.

Every three years, engine manufacturers recommend replacement of cooling system belts, coolant and hoses. In addition, the (PM-3) includes upgrading block heater hoses to high temperature silicone hoses. Block heater isolation ball valves will be installed on any engine not already equipped. Engine thermostat and radiator cap are also replaced.

Batteries are recommended for replacement on a three year cycle, and will be replaced with Maintenance Free batteries unless otherwise specified by the customer.

Notes and/or Exclusions:

Results of services will be forwarded to you in a detailed report listing any components and/or areas requiring further attention for repair.

 _____ Date 12-3-19 Purchase Order GEN-001 (see attached)

THANK YOU FOR THE OPPORTUNITY TO SERVE ALL OF YOUR POWER NEEDS

The pricing in this proposal is valid for 90 days from the date above. The Purchaser identified above accepts and agrees, upon the signing of this proposal, to purchase and pay for the products and labor furnished by Peterson Power Systems, Inc., specifically for the above-identified equipment in this proposal. Services are quoted to be performed during normal working hours. Peterson Power Systems, Inc. will bill upon completion of the service. Any repair work required over and above the quoted service will be performed on a time-and-material basis, subject to the customer's written authorization. Warranty and Customer Registry coverage on Caterpillar parts, where applicable, will apply as a credit to the customer. The Purchaser will be charged for travel time and mileage associated with any service cancelled on the same date it was scheduled. For further terms and conditions please see Peterson Power Systems, Inc. Customer Service Agreement Terms and Conditions please see Attachment A..

**PETERSON POWER SYSTEMS
TERMS AND CONDITIONS**

Attachment A

1. **Terms and Conditions.** These Terms and Conditions ("Terms") govern the purchase of the goods (including, but not limited to, new and used equipment, trucks, attachments, components, technology and parts (collectively, "Goods") and services ("Services") from Peterson Power Systems, Inc., a California corporation ("Company") by the individual or entity identified on the Customer Service Agreement on the reverse side hereof as Customer (the "Customer"), together with any Change Orders, exhibits, schedules, attachments and appendices making up a part of such Customer Service Agreement (collectively, the "CSA"). Company and Customer are sometimes referred to herein individually as a "Party" and collectively as the "Parties". Unless otherwise agreed to in a writing signed by an authorized signatory of Company, Company hereby expressly rejects the terms of any purchase order or any other document submitted by Customer to Company, unless such purchase order or document is signed by Company's authorized representative. The placing of an order with Company or the receipt or acceptance of Services by Customer constitutes Customer's acceptance of these Terms as set forth herein. For purposes of the CSA, the term "authorized signatory of Company" means any one of the corporate or executive officers of the Company (i.e., CEO, President, Vice President, Secretary, CFO, or Treasurer) or Branch Manager.

2. **Term and Termination.** The CSA shall commence as of the date of the last signature on the reverse side hereof and shall continue until the delivery of the Goods and/or completion of the Services, as applicable, unless sooner terminated in accordance with these Terms. Company may terminate this CSA upon written notice if Customer (a) fails to pay any amount due under this CSA when due, in which event this CSA will terminate upon the termination date set forth in such letter or if no such date is included, then three (3) business days of delivery by Company of such notice; (b) becomes insolvent, enters into voluntary or involuntary bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors (or assigns its interest to a third party creditor), or ceases to conduct business, in which event this CSA will terminate immediately; or (c) otherwise breaches this CSA and such breach remains uncured (either as a result of the failure or refusal of Customer to cure such breach or because such breach is incapable of cure) for thirty (30) days of delivery of such notice. Additionally, Company may terminate this CSA at any time upon sixty (60) days written notice to Customer. Customer may terminate this CSA upon written notice if Company materially breaches any provision of the CSA and such breach remains uncured through no fault of Customer, within sixty (60) days of written notice by Customer to Company. In the event of termination of this CSA, Customer will remain obligated for payment for any Goods delivered and any Services performed by Company prior to the effective date of termination and for any cancellations charges for work in progress as of and prior to such effective date of termination.

3. **Order and Delivery of Goods or Performance of Services.** All orders for Goods and Services are subject to credit approval, which is subject to final acceptance by Company in its sole discretion. Customer shall have no right to cancel orders for Goods once a purchase order is issued to Company; provided, however, some parts may be returnable to Company in accordance with Company's then current parts return policy. Company will exercise commercially reasonable efforts to meet any performance dates set forth in the CSA, which such dates are estimates only. Company will have no liability for any loss associated with the delay in the delivery of Goods or performance of Services under the CSA. Additionally, Company will not be deemed in breach of its obligations under this CSA or otherwise liable for any costs, charges, losses sustained or incurred by Customer for any delay in the delivery of Goods or performance of Services arising out of, caused by or in any way related or connected with any circumstances beyond its reasonable control, including, but not limited to delays caused by acts or omissions to acts by Customer or its Agents, acts of God, acts of war or terrorism, fire or other casualty, storms or adverse weather, strikes, labor shortages or disturbances, shortages of materials, manufacturer delays, theft or vandalism, transport and handling accidents, or revisions to laws, regulations or governmental requirements. As used herein, the term "Agents" means principals, employees, contractors, subcontractors, consultants, agents, representatives and any persons within the direction or control of Customer or acting on behalf of or for the benefit of Customer in connection with the Goods and Services hereunder.

Customer understands and acknowledges that the CSA or Proposal made by Company to Customer has been made by Company in reliance on representations made by Customer regarding, among other things, the cleanliness, functionality, operational status, condition, prior use, contents and nature of the equipment or machinery that will be subject to the Services. Should any of the representations on which Company relied in preparing the Services be for any reason false or incomplete, or if Company shall reasonably determine in the course of performing the Services that additional repair, maintenance or improvement services are necessary to satisfy its obligations hereunder, Company will promptly provide to Customer an estimated cost of the additional work necessary to satisfy its obligations hereunder ("Additional Work"). If Customer either declines or fails to agree to modify the Proposal and scope of Services to include the Additional Work within thirty (30) days, Company will be entitled to terminate without penalty this CSA in accordance with these Terms. Additional Work approved or accepted by Customer shall be deemed part of the Services hereunder and subject to these Terms (except as otherwise provided in such Additional Work - i.e., estimated costs). Company reserves the right to charge for any cancellation by Customer of any scheduled Services. Customer will pay for any partially completed work based on time and materials at Company's prevailing rates. Additional handling and storage fees may apply to partially completed work.

4. **Customer's Obligations.** Customer shall comply with Applicable Law in connection with its use, handling, maintenance, storage and operation of the machinery and equipment and shall cause its Agents (defined below) to comply with all such Applicable Law. As used herein "Applicable Law" means all applicable federal, state and local laws pertaining to its covenants and obligations under the CSA and its performance of the same, together with these Terms and all rules, regulations, standards, procedures and protocols pertaining or related to the machinery or equipment subject to the CSA, as stated or endorsed by Company or the manufacturer of such machinery or equipment. Customer shall cooperate with Company in all matters relating to the Goods and Services described subject to the CSA and to the extent Services are required, will make available to Company the machinery or equipment on which the Services are to be performed or provide such access to Customer's premises and facilities as may reasonably be requested by Company for the purposes of performing such Services. Customer shall provide directions, information, approvals, authorizations, decisions or materials that are reasonably necessary for Company to perform the Services. Customer shall maintain the premises on and around which the Services will be performed in a reasonably safe condition and shall notify Company in advance of any hazards, dangerous conditions and defects that cannot be abated. Customer warrants that the invoiced Goods or Services will be used for business or agricultural purposes and not for personal, family or household purposes. The representations and warranties of Customer under this CSA shall survive any expiration or termination of this CSA.

5. **Pricing.** Unless otherwise set forth in the CSA or a written proposal issued by Company ("Proposal"), the price for Goods shall be Company's list price for such Goods on the date such Goods are delivered to Customer. Unless otherwise set forth on a Proposal, the labor rates for Services shall be Company's standard labor rates for the applicable type of Service (including, but not limited to, field rates, shop rates, specialty rates or other rates, as applicable) in effect at the time the Services are performed. Unless expressly provided for on a Proposal, pricing and labor rates for future orders is subject to change without notice. Pricing and risk of loss for purchased Goods is FOB Company's site, unless purchased Goods are shipped to Customer directly from the manufacturer, in which case pricing and risk of loss is FOB factory. Any claims for shortages, damages, or delays must be made by Customer direct to the carrier.

6. **Taxes.** Customer will promptly pay to Company any taxes that Company is required to collect with respect to the purchase of Goods and Services or any amounts payable by Customer under the CSA, including, but not limited to, value added, personal property, sales, use, excise and similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity (collectively, "Taxes"). For any Taxes from which Customer claims exemption, Customer shall provide Company with properly completed exemption certificates and any documentation needed to validate the exemption. If Customer fails to provide an appropriate exemption certificate and supporting documentation, as determined by Company, Customer will remain liable for all such Taxes and will indemnify Company for any liability related to the same.

7. **Change Orders.** Subject to [Section 3](#), above, if either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other Party in writing. Company shall, within a reasonable time after such request, provide a written proposal to Customer of (i) the likely time required to implement the change and (ii) any necessary variations to the fees and other charges for the Services arising from the change. Within thirty (30) days after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing. Notwithstanding the above, Company may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the CSA or relevant Proposal or Change Order.

8. **Payment.** For Customers with an open credit account with Company, machine sales payments are due Net 10, and all other payments are due Net 30. For Customers who do not have an open credit account with Company, payment is due upon delivery of Goods or completion of Services. Company may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold Goods, completed Services or scheduled Services until receipt of full payment then owing by Customer to Company. If Customer fails to pay for Goods and Services as and when due, Customer shall pay a late charge of 1.5% of the invoice balance each month until charges are paid in full, and Customer shall pay Company all reasonable attorneys' fees and collection costs incurred by Company.

In addition to any other right of set-off or recoupment Company has under applicable law, Customer agrees that, with respect to any amounts due from Customer or Customer's affiliates to Company or Company's affiliates, Company and its affiliates may set-off such amounts against any amounts owing to Customer or Customer's affiliates. If Customer requests customization of machinery or equipment, Customer agrees to pay all parts and labor costs Company incurs in customizing the machinery or equipment, regardless of whether or not Customer completes the purchase of the customized machinery or equipment. Customer, at its sole expense, must pick up its machinery or equipment from Company's facility within two (2) business days after notification from Company of completion of Services. If Customer's equipment is not picked up within two (2) business days after such notification, Customer will be liable for storage charges of \$50.00 per day from the date of completion of Services until Customer's equipment is picked up.

9. **Late Payments.** Any amounts not paid by Customer when and as due will bear interest at the lesser of the rate of 1.5% per month (18% per annum) and the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full. In addition to all other remedies available under this CSA or at law (which Company does not waive by the exercise of any rights hereunder), Company will be entitled to suspend the provision of any Services if the Customer fails to pay any amounts when due hereunder.

10. **Invoice; Fees and Expenses.** Customer will (i) reimburse Company for all reasonable costs and expenses (including, but not limited to, Company's collection costs and reasonable attorneys' fees) incurred in connection with the Services or in collecting any late payments and (ii) pay all other amounts due under this CSA, in each case within thirty (30) days of receipt by the Customer of an invoice from Company. Failure to notify Company in writing of any dispute regarding an invoice within sixty (60) days of receipt thereof waives Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced is and will be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counter-claim.

11. **Warranties.** All warranties described herein, including any Extended Protection Plan that may be purchased by Customer are subject to the provisions of [Section 11\(d\)](#) and [Section 12](#).

(a) **Goods.** For new Goods purchased by Customer from Company, Customer acknowledges that (i) Company is not the manufacturer of the Goods; (ii) Company will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) any manufacturer's warranty is and will be subject to all terms, conditions and exclusions contained in these Terms. Notwithstanding anything contained to the contrary in this CSA, including this [Section 11\(a\)](#), Company makes no representation or warranty as to the Goods or any manufacturer's warranty of or for such Goods.

(b) **Services.** For Services purchased by Customer from Company, Company warrants that its Services will be performed and completed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, with such service warranty extending for a period of time expressly set forth in the service warranty (as the same may be extended by an applicable Extended Protection Plan), commencing from completion of the original Services. For example, if the service warranty is for a period of six months from completion of the original services, then if Company performs a repair pursuant to its service warranty, the warranty period remains six months from completion of the original Services; the six month service warranty period does not start over with the repair. If replacement parts used by Company in connection with the provision of Services include a manufacturer's warranty, Company will pass such warranty through to Customer to the extent permitted by the terms of the manufacturer's warranty. Company's service warranty will be voided in the event of any of the following: misuse or abuse of Goods by Customer, subsequent repairs performed by Customer or vendors other than Company, use beyond ordinary wear and tear, failure to maintain and operate Goods in accordance with the maintenance and operations manual of the manufacturer (including, but not limited to, use of fluids that do not meet the manufacturer's standards or failure to maintain fluid levels recommended by the manufacturer) or damage due to theft, vandalism or casualty. In the event of a conflict between the terms and conditions set forth in any applicable service warranty and these Terms, the provisions of the applicable service warranty shall control.

(c) **Extended Protection or Coverage.** Customer acknowledges that Customer may have the option of purchasing an equipment

protection plan or extended services coverage (each, an "Extended Protection Plan") and Customer agrees that if an Extended Protection Plan is available and purchased by Customer at the time of sale, the Extended Protection Plan will be subject to the terms, conditions and exclusions contained in such applicable Extended Protection Plan.

Disclaimer of Warranties. EXCEPT AS MAY BE EXPRESSLY DESCRIBED ABOVE, COMPANY MAKES NO WARRANTY WHATSOEVER HEREUNDER. COMPANY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A (a) PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. COMPANY IS NEITHER A MANUFACTURER OF ANY PARTS USED IN THE SERVICES NOR AN AGENT THEREOF. ALTHOUGH COMPANY MAY ADMINISTER WARRANTIES ISSUED BY A MANUFACTURER, CUSTOMER ACKNOWLEDGES AND AGREES THAT: (1) ANY EXPRESS WARRANTIES BY SUCH MANUFACTURER ARE NOT THE RESPONSIBILITY OF COMPANY; (2) SUCH MANUFACTURER'S WARRANTY MAY CONTAIN LIMITATIONS; AND (3) CUSTOMER MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES BY COMPANY WHICH ARE NOT COVERED BY SUCH MANUFACTURER'S WARRANTY. Any warranty by Company shall be null and void and have no legal effect if Customer has failed to pay for the Services at issue. Except for any express warranties contained hereunder, no other representation or warranty of any kind or nature will be binding on or obligate Company.

12. **Limitation of Liability.**

(a) IN NO EVENT SHALL COMPANY, ANY COMPANY ENTITIES OR ITS PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS BE LIABLE TO CUSTOMER, ITS AGENTS OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUE, LOST BUSINESS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING WHETHER OR NOT THAT PARTY WAS AWARE OF THE POSSIBILITY OF THOSE DAMAGES AND DESPITE THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS CSA.

(b) EXCEPT FOR DAMAGES FOR PERSONAL INJURY, INCLUDING DEATH AND PROPERTY DAMAGE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF COMPANY OR ANY COMPANY ENTITY OR THE PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF COMPANY OR ANY COMPANY ENTITIES, IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY OR ANY COMPANY ENTITIES ARISING OUT OF THIS CSA EXCEED THE LESSER OF THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO COMPANY UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE SUBJECT CLAIM OR ONE MILLION DOLLARS \$1,000,000.

(c) EXCEPT FOR THE BREACH OF OBLIGATIONS OF CUSTOMER OR ITS AGENTS UNDER SECTION 8 (PAYMENT), CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER THIS CSA AND DAMAGES FOR PERSONAL INJURY, INCLUDING DEATH AND PROPERTY DAMAGE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF CUSTOMER OR ANY OF ITS AGENTS, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CUSTOMER OR CUSTOMER'S AGENTS ARISING OUT OF THIS CSA EXCEED THE GREATER OF THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO COMPANY UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE SUBJECT CLAIM.

(d) THE PARTIES AGREE THAT THIS SECTION 12 REPRESENTS A REASONABLE ALLOCATION OF RISK.

(e) THE PROVISIONS OF THIS SECTION 12 SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CSA.

13. **Indemnification.** Each Party agrees to indemnify, defend and hold harmless the other Party for, from and against any third party claims related to the Goods or Services to the extent and only to the extent such third party claims (including, but not limited to, claims related to the death or injury of any person(s) or damage to property) are caused by the indemnifying party's negligent acts or omissions, subject to the limitations set forth in Section 14 below. The foregoing indemnity shall not apply to claims asserted by employees of either party. To the fullest extent permitted by Applicable Law, except to the extent of the gross negligence or willful misconduct of Company, Customer agrees to indemnify, defend and hold harmless Company, its affiliates, parent company and subsidiaries, and all of their respective owners, directors, officers, managers, employees, agents or representatives for, from and against any and claims, losses, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages (including, but not limited to, damages for personal injury, including death, and real and personal property damage), liabilities, costs, penalties, taxes, assessments, charges, punitive damages and expenses (including, but not limited to, reasonable attorneys' fees, expert witness fees, costs and expenses) of whatever kind (collectively, the "Claims") that are caused by, arising from or related in any way to (a) any breach or failure to comply with any representation, warranty, covenant or obligation hereunder by Customer or its Agents; (b) any act or omission to act of Customer or its Agents with respect to the Goods or Services purchased by Customer, including, but not limited to, the acts or omissions of Customer or its Agents with respect to such person's use, handling or maintenance of the any machinery or equipment purchased by Customer or serviced at the request of or for the benefit of Customer hereunder that conflicts with or does not conform to the usage for such machinery or equipment as specified by Company, the manufacturer of such machinery or equipment.

14. **Insurance.** During the term of this CSA, each Party shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (a) commercial general liability in occurrence form with a minimum limit of \$1,000,000 per occurrence, plus a minimum \$2,000,000 general aggregate limit; (b) workers' compensation in an amount no less than the minimum required by law and employers' liability in a sum no less than \$1,000,000; and (c) any additional insurance Company may reasonably require, in each case with financially sound and reputable insurers. Upon either Party's request, the other Party shall provide the requesting Party with a certificate of insurance from such Party's insurer evidencing the insurance coverage required under these Terms. The certificate of insurance shall name the requesting party as an additional insured. The insured Party shall provide the requesting Party with thirty (30) days' advance written notice in the event of a cancellation or material change in the insured Party's insurance policy. Customer acknowledges that additional insurance required by Company under subsection (c) shall be deemed reasonable where the Goods or Services under the CSA are, or have or may become, in the commercially reasonable discretion of Company of such nature, scope, or volume to warrant such additional insurance. A certificate of insurance from Customer's insurer evidencing such additional insurance shall be delivered to Company upon Company's request.

15. **Force Majeure.** Company shall not be liable, nor be deemed to have defaulted or breached this CSA, for any failure or delay in fulfilling or performing any term of this CSA to the extent such failure or delay is caused by or results from acts or circumstances beyond Company's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution,

insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), restraints or delays affecting carriers, and inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.

16. Privacy Statement. Customer consents to the collection, use, retention and disclosure of information by Company and/or the Company Entities in accordance with Company's Privacy Statement, which is posted on Company's website (as such statement may be revised from time to time), and agrees that such information may be accessed by the Company Entities and their partners and manufacturers with a legitimate business reason to access it, as well as third parties who may process such information on their behalf.

17. Entire Agreement. This CSA and the exhibits and attachments hereto, represent and constitute the entire agreement between the parties, may only be amended in writing signed by both parties, and supersede all prior agreements and understandings with respect to the matters covered by this CSA.

18. Binding Effect. This CSA shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

19. Severability. If any provision of this CSA is found unenforceable or invalid, the remainder of the CSA will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.

20. Counterparts. This CSA may be executed in any number of counterparts, including facsimile, PDF and other electronic copy, each of which when taken together shall constitute one instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

21. Assignment. Neither Party may assign, convey or transfer this CSA, or any portion thereof, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, except that Company may assign this CSA or any portion thereof without the prior consent of Purchaser to a person or entity controlling, controlled by or affiliated with Company or its parent company.

22. No Waiver. A waiver of any term, right or condition of this CSA by a party must be in writing to be effective and will in no way be construed as a waiver of any later breach of that provision. No express waiver of any term, right or condition of this CSA shall operate as a waiver of any other term, right or condition.

23. Relationship of the Parties. No employment, agency, joint venture, or similar arrangement is created or intended between Customer and Company.

24. Construction. Words used herein, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. The provisions of this CSA and the documents and instruments referred to herein, have been examined by the parties and no implication shall be drawn nor made against any party hereto by virtue of drafting this CSA. The term "including" used herein shall mean "including, but not limited to". The subject headings of the sections and subsections of this CSA are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein. Each Party acknowledges that they have read this CSA, have had an opportunity to review with an attorney of their respective choice, and have agreed to all of its terms, including these Terms. Each Party agrees that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this CSA and that in the event of any ambiguity in any provisions of this CSA, including any Exhibits or attachments or agreed upon Change Orders hereto and whether or not placed of record, such ambiguity shall not be construed for or against any Party hereto on the basis of such Party did or did not author the same.

25. No Third Party Beneficiaries. Unless otherwise expressly provided, no provisions of this CSA are intended or will be construed to confer upon or give to any person or entity other than Customer and Company any rights, remedies or other benefits under or by reason of this CSA.

26. Attorneys' Fees; Enforcement Costs and Expenses. If any claim or action is brought by either party hereunder against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other relief granted, reasonable attorneys' fees and the expense of litigation.

27. Governing Law; Venue. (a) This CSA and any attachments or documents related thereto shall be governed, construed and enforced in accordance with (i) the laws of the State of California, excluding conflict of law rules, for all sales made or accepted by Company at its offices within such state, (ii) with the laws of the State of Oregon, excluding conflict of law rules, for all sales made or accepted by Company at its office within such state, and (iii) with the laws of the State of Washington, excluding conflict of law rules, for all sales made or accepted by Company at its office within such state. For agreements made or accepted by Company in the State of California, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Alameda County, California and the United States District Court for the Northern District of California, for the purposes of any action, proceeding, suit or claim arising out of this CSA. For agreements made or accepted by Company in the State of Oregon, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Multnomah County, Oregon and the United States District Court for the District of Portland in Portland, Oregon. For agreements made or accepted by Company in the State of Washington, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Cowlitz County, Oregon and the United States District Court for the Western District of Washington in Seattle, Washington. (b) Each party irrevocably and unconditionally waives any objection to the laying of venue as described herein.

28. Survival. Notwithstanding anything contained herein to the contrary, Sections 6, 11(d), 12, 13, 14, 15, 16, 24, 26, 27, and 28 will survive any termination or expiration of this CSA.

**Peterson Power Systems
Detail of Service Options
Attachment B**

Inspection Service

Before Starting Engine:

- Check engine oil and coolant levels
- Check block heater (should maintain a coolant temperature of 90° F in the block)
- Check fuel level in storage tank
- Check battery water level and top as necessary
- Check battery terminals for corrosion and connections for tightness (lead acid)

With Engine Running:

- Check oil pressure
- Check fuel pressure
- Check oil level and add oil as required
- Check RPM (frequency)
- Check generated voltage
- Check for leaks or unusual noises

After Stopping Engine:

- Check/verify all switches are in proper positions for automatic start.
- Check fuel level in tank
- Record battery charger volts, check for proper operation
- Remove, clean and reinstall all battery connections (lead acid)
- Inspect generator for cleanliness

Reporting:

- Provide written service report for each visit
- Advise customer of any/all unusual situations or potential problems which will require further attention
- Advise when main fuel tank is below ¾ full

Annual Service

Includes all Inspection Services and the following:

- Drain crankcase oil and replace with new oil
- Remove and replace oil and fuel filters
- Inspect air filter(s)
- Check generator output
- Take oil sample for analysis

Green Annual Service

Includes all Inspection Services and the following:

- Oil is NOT Changed
- Remove and replace oil filters and fuel filters
- Inspect air filter(s)
- Check generator output
- Take oil sample for analysis

Load Test

- Start engine and load with contractor supplied resistive load bank. As per NFPA 110 Code 8.4.2.3 (2013 Edition)

Three Year Service (PM-3)

- Replace all rubber coolant hoses
- Replace drive belts
- Replace block heater hoses
- Replace coolant regulators (Thermostat)
- Standard antifreeze will be replaced every three years

Extended life coolants will be upgraded after the first three years and replaced after six years

Additional Services Upon Request

Thermal Image Inspections:

Thermo Images reveal temperature variations that signal electrical and mechanical problems before they become failures.

Fuel Conditioning:

Extend life of stored diesel fuel by adding CAT Diesel Fuel Conditioner and polishing with high efficiency kidney loop filtration system.

ATS Hot Inspection:

Inspect enclosure, anchorage, door seal, connections for thermal variance, loose or damaged wires, overheating or mechanical malfunction, and indicator lamps. Record serial number, set points, voltage drop across contacts, and amps per phase (access permitting). Transfer load up to 30 minutes (as permitted). Replace 9V battery (as applicable).

ATS Major:

Visual and electrical/mechanical inspection of automatic transfer switch. Includes checking the following: Indication light; Lug Connections: Condition of main & Aux arcing contacts; Freedom of movement; Loose wiring; and Inphase monitor. Inspect and clean controller and relays; brush and vacuum enclosure. take infrared image for diagnostic heat detection.

Megger Testing:

Vibration, general usage or moisture can break down generator insulation and cause electrical shorts. Megohmmeter testing identifies decreasing generator insulation before it becomes a major repair or replacement. CAT recommends annual testing.

Emergency Servicing: Provide 24-hour emergency repair coverage **800.963.6446**

Pricing Worksheet RAC190607R - City Of Newport

*2019 - perform annual service and load test *

Division	Unit	Make	Model	Serial #	Semi-Annual Inspection	Annual Service	Load test	Other	Unit Totals
Water	40th Street	Caterpillar	G125G1	NGG00101	1 x \$0	\$610	\$358	\$0	\$968
Water **NEW	NE 7th Street	Cummins	GGHJ-1794922	J170258243	1 x \$0	\$610	\$358	\$0	\$968
Water	71st Street	Generac	SG0050	9833717	1 x \$0	\$610	\$358	\$0	\$968
Water	Lakewood	Cummins	GGHE-1409251	F140700655	1 x \$0	\$610	\$358	\$0	\$968
** Reports to: S.Stewart@NewportOregon.gov					SUBTOTALS	\$0	\$2,440	\$1,432	\$0
** Semi-annual inspection removed					Division Total				\$3,872

WW Collections	32nd St P.S.	John Deere	4045TF250	T04045T701339	1 x \$0	\$610	\$358	\$0	\$968
WW Collections	48th Street P.S.	John Deere	4045TF250	T04045T776208	1 x \$0	\$610	\$358	\$0	\$968
WW Collections	56th Street P.S.	Onan	GGDB-3386156	L990032205	1 x \$0	\$470	\$358	\$0	\$828
WW Collections	Bayfront P.S.	Cat/Olympian	D150P1	NAT00303	1 x \$0	\$610	\$358	\$0	\$968
WW Collections	Big Creek P.S.	Cummins	DQDAC-1623908	F160970444	1 x \$0	\$795	\$358	\$0	\$1,153
WW Collections	City Shop	Cummins	GGHH-1334060	G130538941	1 x \$0	\$610	\$358	\$0	\$968
WW Collections	Embarcadero	Onan	GGMA	A100080545	1 x \$0	\$470	\$358	\$0	\$828
WW Collections	HMSC P.S.	John Deere	4045TF001	T04045T514444	1 x \$0	\$610	\$358	\$0	\$968
WW Collections	Nye Beach P.S.	Cat/Olympian	D100P1	NPS00472	1 x \$0	\$610	\$358	\$0	\$968
WW Collections	Schooner Creek P.S.	John Deere	6068TF250	T06068T700648	1 x \$0	\$610	\$358	\$0	\$968
WW Collections	Southshore P.S.	Wisconsin	V465D1	94-466-AX	1 x \$0	\$610	\$358	\$0	\$968
** Reports to: S.Monre@NewportOregon.gov					SUBTOTALS	\$0	\$6,615	\$3,938	\$0
** Semi-annual inspections removed					Division Total				\$10,553

Wastewater	Intake	Cat	3512	CMJ00302	1 x \$0	\$2,550	\$1,045	\$0	\$3,595
Wastewater	Northside	Cat	3412	9EPO2146	1 x \$0	\$975	\$670	\$0	\$1,645
Wastewater	WWTP	Cat	3508	CNB00397	1 x \$0	\$2,165	\$1,045	\$0	\$3,210
** Reports to: A.Grant@NewportOregon.gov					SUBTOTALS	\$0	\$5,690	\$2,760	\$0
** Semi-annual inspections removed					Division Total				\$8,450

Optional Adders

ATS "Hot Inspection" (Performed on Energized Switch)	\$172 / Unit
ATS "Major Maintenance" (Requires complete de-energization)	\$520 / Unit
Cooling System Service (Belts, Hoses, Coolant, T-Stat(s) (Recommended every 3 years)	Varies by size
Batteries (Recommended every 3 years)	Varies by size
Megger Test (Test of gen end winding insulation, recommended annually)	\$585 / Unit

Service Agreement Total
Per year
\$ 22,875.00

ORS 279C REQUIREMENTS

- 1) Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
 - a) ORS 279C.580(3)(a) requires the prime contractor to include a clause in each subcontract requiring contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the prime contractor by the public contracting agency; and
 - b) ORS 279C.580(3)(b) requires the prime contractor to include a clause in each subcontract requiring contractor to pay an interest penalty to the first-tier subcontractor if payment is not made within thirty (30) days after receipt of payment from the public contracting agency.
 - c) ORS 279C.580(4) requires the prime contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a subcontractor and a lower-tier subcontractor or supplier.
- 2) Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.
- 3) Contractor shall not permit any lien or claim to be filed or prosecuted against the public contracting agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
- 4) A notice of claim on contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.
- 5) Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- 6) Contractor shall demonstrate to the Public Contracting Agency that an employee drug-testing program is in place within ten (10) days of receiving a Notice of Award.
- 7) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the public contracting agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by

reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the public contracting agency is unable to determine the validity of any claim for labor or material furnished, the public contracting agency may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

- 8) If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from the public contracting agency or contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is thirty (30) days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.
- 9) If the Contractor or a Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractor's Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- 10) Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- 11) Contractor shall employ no person for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four (4) consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540.

- 12) The Contractor must give notice to employees who work on this contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and the days per week that the employees may be required to work.
- 13) All employers, including Contractor, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
- 14) All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
- 15) The contract may be canceled at the election of public contracting agency for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
- 16) Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises in obtaining any required subcontractors.
- 17) Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
- 18) In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies.
- 19) Contractor certifies that all subcontractors performing construction work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaper Contractors Board in accordance with 701.035 to 701.055 before the subcontractors commence work under this contract.
- 20) In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the Owner has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES:

- Agriculture, Department of
- Forest Service
- Soil Conservation Service
- Defense, Department of
- Army Corps of Engineers

- Environmental Protection Agency
- Interior, Department of
- Bureau of Sport Fisheries and Wildlife
- Bureau of Outdoor Recreation
- Bureau of Land Management
- Bureau of Indian Affairs
- Bureau of Reclamation
- Labor, Department of
- Occupational Safety and Health Administration
- Transportation, Department of
- Coast Guard
- Federal Highway Administration

STATE AGENCIES:

- Agriculture, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Soil and Water Conservation Commission
- State Engineer
- State Land Board
- Water Resources Board

LOCAL AGENCIES:

- City Council
- County Court
- County Commissioners, Board of
- Port Districts
- Metropolitan Service Districts
- County Service Districts
- Sanitary Districts
- Water Districts
- Fire Protection Districts



Purchase Order

Print Form

City of Newport
169, SW Coast Hwy
Newport, OR 97365

P.O. Date:

P.O. Number:

Company:
Address:
City:
State: Zip:
Phone:
Fax:
Contact Name:

Deliver To:

Company:
Address:
City:
State: Zip:
Phone:
Fax:
Contact Name:

Item	Description	Quantity	Unit Price	Amount
1	generator services agreement dated 12-3-19 per attached			
				Total

THIS PURCHASE ORDER INCORPORATES THE TERMS ON THE REVERSE SIDE. BY ITS SIGNATURE HEREUNDER, CONTRACTOR AGREES TO PERFORM THE SERVICES/PROVIDE THE PRODUCTS DESCRIBED IN CITY'S RFP OR SOLICITATION AND VENDORS RESPONSE THERETO, ALL OF WHICH ARE ATTACHED, FOR THE FEE/AMOUNT SET FORTH THEREIN.

Fund/Dept	Line/GL Dept	Project Code	Charge Acct
601	3320	Water	63200
602	3420	WW Collections	63200
602	3410	Wastewater	63200

Notes:

Authorizations:

[Signature]
Department Director

[Signature] 12/3/9
Finance Director

[Signature] 12/3/9
City Manager

Contractor's Authorized Signature

Contractor's Printed Name

TERMS OF CITY'S PURCHASE ORDER

1. In the course of providing Services under this Purchase Order, Contractor may have contact with the public. Contractor will maintain good relations with the public. The City may treat the failure to maintain good relations with the public as a non-curable breach of this Purchase Order and may disqualify Contractor from future work for the City.
2. Contractor shall be compensated as described in the Purchase Order. Unless otherwise set forth in the Purchase Order, Contractor shall begin Services on the Effective Date and shall complete Services no later than such date set forth in the Purchase Order or as agreed upon in writing by the parties.
3. Contractor certifies that: (a) Contractor is an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. In the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding. (b) Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265. (c) No employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with this Agreement, except as specifically declared in writing. (d) Contractor currently has a City business license or will obtain one prior to delivering Services under this Agreement.
4. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed with good workmanship and in accordance with generally accepted professional practices and standards of the industry in which Contractor operates as well as the requirements of applicable federal, state and local laws. Contractor's work will conform to the requirements of this Purchase Order. Acceptance of Contractor's work by City shall not operate as a waiver or release of this warranty. Contractor is fully liable for the acts and omissions of Contractor and Contractor's subcontractors which cause any damage, injury, death, property damage or loss to any person or property. Contractor will indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this Agreement. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.
5. Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.
6. At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the Agreement pursuant to this Section due to no fault of Contractor, City shall pay Contractor for all approved and undisputed services rendered up to the date of termination. City may modify or terminate this Agreement without cause effective upon delivery of written notice to Contractor, or at such later date as may be established by City.
7. For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.
8. Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, earthquake, fire, flood, epidemic, quarantine restriction, strike, freight embargo, unusually severe weather, provided that the parties so disabled shall notify the other party in writing of the cause of delay. Each party shall make reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.
9. Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations, including, but not limited to those in Exhibit A. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.
10. Contractor will perform additional work as may be necessary to correct errors in Services performed under this Agreement without undue delay and without additional cost.
11. The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement will be brought in the appropriate court of the State of Oregon. In any action arising under this Agreement, the losing party shall pay such sum as the court may adjudge including reasonable attorney fees and court costs. Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279, some provisions of which are attached to this Agreement as Exhibit A. All Contractor's work product accomplished under this Agreement, whether in the form of designs, drawings, as-builts, diagrams, specifications, reports, or other writings, shall become the exclusive property of the City. The City is the owner of any copyrights thereto, upon City's final payment to Contractor. This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

EXHIBIT A

279B.220 Conditions concerning payment, contributions, liens, withholding. The contractor shall: 1. Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract. 2. Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. 3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. 4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. 5. In addition to the conditions specific in subsection 1-4 above, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place. (279C.505)

279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints. 1. If the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing a municipality, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. 2. If the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within thirty days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90 day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed thirty percent. The amount of interest may not be waived. 3. If the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. 4. The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

279B.230 Condition concerning payment for medical care and providing workers' compensation. (see 279C.530 for public improvement contracts) 1. The contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. 2. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c].

279B.020, 279B.235; 279C.520, 279C.540 Conditions concerning hours of labor. 1. An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. 2. A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055 (or 279C.100) the employee shall be paid at least time and a half pay: (a) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (b) For all overtime in excess of ten hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (c) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020 (or 279C.540). 3. In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. 4. Persons employed shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

279C.830 Relating to prevailing rate of wage in public works contracts. 1. In the event this contract is a public works contract, the parties shall state in the contract the existing state prevailing rate of wage and if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract. When the prevailing rates of wage are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates. 2. Every contract and subcontract shall contain a provision that the workers shall contain a provision that the works shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840. 3. Contractor will pay to the Commissioner of the Bureau of Labor and Industries (BOLI) a fee as provided in ORS 279C.825(1). The fee shall be paid to the commissioner under the administrative rule of the commissioner. 4. Every contract for public works shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).