



**PERIODIC MAINTENANCE AGREEMENT
Engine and Generator Systems**

September 11, 2019

CITY OF DAYTONA BEACH (“Customer”), of **3651 LPGA BLVD, DAYTONA BEACH, FL 32124**, and **TAW POWER SYSTEMS, INC.**, (“Contractor or TAW”) of **4372 L B McLeod Road, Orlando, FL 32811** in consideration of the promises made in this Agreement and intending to be legally bound, agree as follows:

RECITALS

Customer owns a generator system, together with associated equipment (herein “System”), for use by Customer in providing emergency and other sources of electrical power to a facility or facilities owned or operated by Customer. Contractor is engaged in the service and maintenance of systems like the System owned or operated by Customer and has been requested to provide maintenance and/or testing to the System pursuant to the terms and conditions of this Agreement (the “Services”).

MAINTENANCE SERVICES

1. Contractor shall maintain and service the System, consisting of the equipment on Exhibit “A” attached to this Agreement and incorporated herein by reference (the “Equipment”), in accordance with schedule of Services described on Exhibit “A”. Contractor shall provide scheduled periodic maintenance, with the schedule to be based on the specific needs of the Equipment as determined by Contractor. In addition, Contractor may provide other remedial maintenance and/or testing at Customer’s request, as and when needed. Service maintenance and/or testing may include, without limitation, lubrication, adjustments, testing, and replacement of parts and components deemed necessary by Contractor. Scheduled Maintenance shall include those items of service and/or testing described on Exhibit “A” attached hereto, to be performed by Contractor at the intervals specified hereon. Other maintenance and/or testing requested by Customer and not described on Exhibit “A” shall include those items of service requested by Customer and agreed upon by Contractor.

EXCLUSIONS

1. Unless otherwise agreed by Contractor in writing, the service and maintenance performed pursuant to this Agreement shall not include any of the following:
- (a) Electrical work external to the Equipment
 - (b) Furnishing of supplies or accessories.
 - (c) Painting or refinishing the Equipment or Furnishing the material therefore.
 - (d) Making specification changes to the Equipment.
 - (e) Performing services connected with relocation of the Equipment.
 - (f) Repairing damage resulting from, or furnishing parts required as a result of causes other than ordinary wear and tear including, without limitation: neglect; misuse, including faulty repair or maintenance by persons other than the Contractor; accidents; failure of electrical power, air conditioning, humidity control or events outside the reasonable control of Contractor, such as, but not limited to, Acts of God.
 - (g) Adding, removing, servicing, or maintaining accessories, attachments, or other devices not furnished by Contractor, unless specifically scheduled on Exhibit “A”.
 - (h) Others: _____

PARTS

3. Contractor shall furnish parts as necessary at Contractor’s then current scheduled price or on an exchange basis, regardless of when installed and such parts shall be either new or equivalent to new in performance when used in the Equipment.

CHARGES

4. (A) Charges for the periodic maintenance described on Exhibit “A” are described herein.
(b) Charges for on-call, unscheduled service, or for Services otherwise requested by Customer, shall be at the rates then published and agreed upon by Contractor, in writing.

PAYMENT OF CHARGES

5. Customer agrees to pay Contractor immediately upon completion for the scheduled maintenance described on Exhibit “A”. Customer otherwise agrees to pay Contractor for all on-call, unscheduled or otherwise Customer requested maintenance charges immediately on completion unless otherwise agreed by Contractor in writing. If Contractor elects to accept payment from Customer other than on completion for the Services provided pursuant to this Agreement, Customer shall promptly comply with terms of payment granted by Contractor. Any payment due, shall entitle Contractor to seek, in addition to the principal amount owed, interest at eighteen percent (18%) per year or maximum rate allowable by Florida law.

TERM

6. This Agreement shall be effective from the date of its execution by Contractor and Customer and shall remain in force unless terminated, in writing, by either party giving the other thirty (30) days written notice as provided herein. However, the giving of notice of termination shall not relieve or eliminate the obligations of the Contractor and/or Customer occurring before the termination date, unless otherwise agreed by the parties hereto in writing.

WARRANTY; LIMITATION

7. (a) Contractor warrants that under normal conditions of use and operation, the Services furnished pursuant to this Agreement shall be free from defects in workmanship and that the parts furnished pursuant to this Agreement shall be free from defects in workmanship and material.

(b) Contractor's obligation under this warranty is limited to the repair or replacement, at its option, of any part that, within ninety (90) days after installation and acceptance, is established by Contractor not to be in conformity with the Equipment manufacturer's published specifications. Contractor further warrants that its Services rendered pursuant to this Agreement shall be free of defects in workmanship for ninety (90) days after performance of Services, but Contractor's obligation shall be limited to correction of the defective workmanship.

(c) The foregoing warranty and conditions shall apply only to any repaired or replaced product, part, or component supplied by Contractor, together with the workmanship as provided herein.

(d) THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE

(e) Customer agrees that the sole remedies for the breach of any warranties contained in this Agreement are those expressly stated in this provision. Customer further agrees that in no event shall Contractor's liability to Customer for damages of any nature exceed the total charges paid or payable for either (1) the total charges paid or payable for all Services during one (1) year under this Agreement if the liability arises from the provision of such Services; or (2) the purchase price of the parts if the liability results from the provision of such parts.

ACCESS TO EQUIPMENT; PERFORMANCE OF SERVICES; CUSTOMER OBLIGATIONS

8. (a) Contractor's maintenance personnel shall have free access to the System and the Equipment for the purpose of providing maintenance service.

(b) During the Services provided pursuant to this Agreement as to the System, whether an interruption in electrical services in contemplated by Customer or Contractor or not, as a matter of allocating between Customer and Contractor the risks associated with an interruption in electrical services and/or taking the System off line, Customer agrees to use its best efforts to fully and completely secure all or any part of any facility in which the System is located, as the case may be, for any and all safety issues that an electrical service interruption might give rise to, including but not limited to, injury to building occupants, customers, invitees, or any third party and/or property damage, or work interruption, arising out of any event of maintenance or testing performed by Contractor as to the System. Customer agrees with Contractor that securing of the premises in order for Contractor to perform its Services is a material and critical element of this Agreement and, prior to the performance of any maintenance and/or testing Services under this Agreement, Customer will receive and execute with Contractor a written Notification and Acknowledgement of Inspection and Warning ("Notification") related to the Services provided herein. The Notification shall include Contractor's estimate as to when interruption of electrical services may occur during the performance of its obligations under this Agreement. Customer further agrees that Contractor shall have no liability to Customer or any third party for any estimate given in connection with potential interruptions in electrical services during the performance of Contractor's obligations herein, it being acknowledged by Customer that Contractor's Services are often affected by acts of third parties and/or components or elements of the System that do not allow for more specific and accurate estimates as to when an electrical service interruption may occur.

DELAYS

9. Contractor shall not be liable for any delays in performance directly or indirectly resulting from acts of Customer, its agents, employees, or subcontractors, or causes beyond the reasonable control of Contractor. "Causes beyond the reasonable control of Contractor" include, but are not limited to:

- | | |
|---|--|
| (a) Acts of God | (h) Strikes, civil commotions, or revolutions |
| (b) Acts of a public enemy | (i) Freight embargos |
| (c) Acts of the United States or the District of Columbia, or any State or Territory of the United States, or any of their political subdivision. | (j) Unusually severe weather conditions |
| (d) Fire | (k) Default of Contractor's subcontractors or suppliers |
| (e) Flood | (l) Normal wear and tear |
| (f) Epidemics | (m) Overloads |
| (g) Quarantine restrictions | (n) Improper operation and/or abuse of the System by Customer or other third parties |
| | (o) Accidents beyond the reasonable control of Contractor. |

CONSEQUENTIAL DAMAGES

10. CUSTOMER AGREES THAT CONTRACTOR SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FOR THE LOSS OF PROFITS, REVENUES, OR ANY OTHER LOSSES ARISING OUT OF ANY DEFAULT UNDER THIS AGREEMENT, EVEN IF CONTRACTOR SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

IDEMNIFICATION OF CONTRACTOR

11. Customer agrees to defend, hold harmless, and indemnify Contractor, its officers, directors, employees and agents for any and all losses, damages, and liabilities, legal or non-legal, arising out of any interruption in electrical services or as to any other incident or event as to the System which is not caused by the willful misconduct or gross negligence of Contractor. Customer further agrees with Contractor that this Agreement of indemnification shall include, without limitation, any attorney's fees, costs or other legal or non-legal expenses of any description incurred by Contractor.

TERMINATION

12. Contractor shall have the right to terminate this Agreement in the event any one of the following instances of default occurs and is not remedied within seven (7) days after receipt of a written notice thereof:

- (a) Failure of Customer to pay or make financial arrangements satisfactory to Contractor for the Services described herein;
- (b) Customer's failure to perform or observe any of the terms and conditions under this Agreement, including, without limitation, timely payment of any sums due Contractor;
- (c) Any assignment of Customer's business or assets for the benefit of creditors;
- (d) The filing of a petition in bankruptcy by or against Customer;
- (e) The appointment of a receiver, trustee in bankruptcy, or similar officer to take charge of all or part of Customer's property;
- (f) Others: _____

MISCELLANEOUS

13. In addition to the other terms and conditions of this Agreement, Customer and Contractor further agree that the following shall also govern this Agreement:

- (a) Waiver. No waiver of any of the terms or conditions of this Agreement shall be binding or effective for any purpose unless expressed in writing and executed by the party giving the same.
- (b) Governing Law; Constitution. This Agreement is being delivered and performed in the State of Florida and shall be construed in accordance with, and governed by, the laws of the State of Florida. Venue of any action related to this Agreement shall be placed in the courts of Polk or Hillsborough County, Florida, exclusively. This Agreement, together with any other documents executed in conjunction with or pursuant to this Agreement shall not be construed against either Customer or Contractor, regardless of which party drafted the Agreement, it being intended this Agreement is the product of informed negotiations between both parties with full knowledge of the meaning of the terms and conditions hereto.
- (c) Enforcement in connection with any action out of this Agreement, or in any way relating to the transactions contemplated hereby, the prevailing party in such action shall be entitled to recover from the non-prevailing party, all court costs and expenses of litigation, including attorney’s fees, court costs, costs of investigation, accounting and other costs reasonably related to the litigation, including, but without limitation, all attorney’s fees and costs subsequent to entry of any judgment on behalf of the prevailing party, on appeal, in connection with any bankruptcy proceedings, or in any alternative dispute resolution proceedings. **THE PARTIES TO THIS AGREEMENT HEREBY WAIVE, WITHOUT EXCEPTION, ANY RIGHT TO JURY TRIAL RELATED TO ANY ISSUE OR MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.**
- (d) Successors and Assigns. All of the terms and conditions of this Agreement, and the rights and obligations of the parties hereunder, shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties hereto.
- (e) Entire Agreement. This Agreement, any Agreements referenced herein and exhibits attached hereto constitute the entire Agreement and understanding of the parties with respect to the transactions contemplated hereby as an exclusive statement, and incorporate and supersede all prior and contemporaneous negotiations, agreements and understandings related to the subject matter hereof. This Agreement, referenced Agreements, and exhibits may not be amended, terminated or otherwise modified, except by a written instrument executed by all of the parties to be bound thereby.
- (f) Notice. Subject to notice of change of address, in the manner provided in this Paragraph, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing, signed by or on behalf of the party giving notice, and shall be deemed to have been given on the earlier to occur of:
 1. the date of actual delivery; or
 2. five (5) days after the date on which such notice is mailed by United States Mail, postage prepaid to each party at the addresses listed below; or
 3. the date of electronic facsimile transmission that is verified by the issuance of a successful facsimile transmission report at the facsimile telephone number for the receiving party, which is currently on file with the sending party; or the business day following the day on which such notice is sent by any next day or overnight delivery service to each party at the address listed below.
- (g) All scheduled PM appointments canceled by customer when technician arrives at site will be subject to a cancellation fee. A three (3) hour minimum Service call charge will be charged to customer.

If to the customer: **CITY OF DAYTONA BEACH**
ATTN: MIKE BURNS
3651 LPGA BLVD
DAYTONA BEACH, FL 32124
Phone: 386-671-8841
E-Mail: BURNSMIKE@CODB.US

If to the Contractor: TAW Power Systems, Inc.
 Attn: Tom Swearingen
 6312 78th Street
 Riverview, FL 33569
 Phone: 866-860-6267
 Fax: 813-217-8074

With copy to: James A. Turner III
 Tampa Armature Works, Inc.
 6312 78th Street
 Riverview, FL 33569

Neither party shall hold the other in default hereunder without first giving seven (7) days written notice of default and specifying the action required to cure the default.

Please print and sign both areas of the contract including the Exhibit page.

CUSTOMER: **CITY OF DAYTONA BEACH**

Signed By: _____ Title: _____

Print Name: _____ Date: _____

CONTRACTOR

TAW Power Systems, Inc.

By: Brian Haggerty **Account Representative**

Where Applicable and With Customer Written Permission.

Contract price is based on normal business hours (8:00 AM to 4:30 PM Monday through Friday)

**PROPOSAL EXHIBIT A
PERIODIC MAINTENANCE PROPOSAL
ENGINE-GENERATOR SYSTEMS
QUARTERLY INSPECTION
Proposal #BH09112019**

Upon acceptance of this proposal TAW will perform the services listed below, TAW will inspect during business hours at least 4 time(s) each year while this agreement remains in effect. These inspections will include:

<input checked="" type="checkbox"/>	Oil and oil filter change (Once/year)	<input checked="" type="checkbox"/>	Confirm transfer switch and accessory operation
<input checked="" type="checkbox"/>	Fuel filter change (Once/year)	<input checked="" type="checkbox"/>	Check alternator charge rate
<input type="checkbox"/>	Engine tune-up with parts	<input checked="" type="checkbox"/>	Confirm engine and generator gauge operation
<input checked="" type="checkbox"/>	Check air filter	<input checked="" type="checkbox"/>	Confirm generator controller operation including shutdown functions and emergency stop
<input checked="" type="checkbox"/>	Check coolant level	<input checked="" type="checkbox"/>	Check unit output voltage and adjust as necessary
<input checked="" type="checkbox"/>	Test anti-freeze and adjust	<input type="checkbox"/>	Check paralleling equipment operation
<input checked="" type="checkbox"/>	Inspect belts condition	<input checked="" type="checkbox"/>	Check Fuel Tank Level
<input checked="" type="checkbox"/>	Check engine heater operation	<input checked="" type="checkbox"/>	Inspect fuel line and electrical connections
<input checked="" type="checkbox"/>	Inspect air intakes and outlets	<input type="checkbox"/>	Annual Fuel Analysis (Optional \$100.00)
<input type="checkbox"/>	Check transfer tank operation	<input type="checkbox"/>	Annual Coolant Analysis (Optional \$100.00)
<input checked="" type="checkbox"/>	Drain exhaust line	<input checked="" type="checkbox"/>	Annual Oil Analysis (\$125.00 Per Sample)
<input checked="" type="checkbox"/>	Inspect silencer	<input type="checkbox"/>	Check High Fuel Alarm (\$100.00 Once/Year)
<input checked="" type="checkbox"/>	Check battery charger operation and charging rate	<input type="checkbox"/>	Check Leak Alarm (\$100.00 Once/Year)
<input checked="" type="checkbox"/>	Check battery electrolyte levels and specific gravity	<input type="checkbox"/>	Annual Resistive Load Bank Test 2 Hour (Optional Every Year) \$0.00
<input checked="" type="checkbox"/>	Emergency system operation without load transfer	<input type="checkbox"/>	Annual Resistive Load Bank 4 Hour (Optional Every 3 Years)\$0.00
<input checked="" type="checkbox"/>	Emergency system operation with load transfer (If allowed)		
<input checked="" type="checkbox"/>	Frequency check/governor adjustment		

Manufacturer / KW	Model	Serial Number	Location	Each Major(s)	Quarterly 3 Each Minor(s)	Sub-Total
CATERPILLAR/1000 KW	SR4B	24Z01563	BRENNAN	\$1,175.00	\$350.00	\$2,225.00
SPECTRUM/1000 KW	1000DSEB	2084834	BRENNAN	\$1,175.00	\$350.00	\$2,225.00
ONSITE ENERGY/300 KW	DS00300D6SR AH1574	335278-1-1- 0711	BRENNAN	\$545.00	\$160.00	\$1,025.00
OLYMPIAN/125 KW	125-6	LCG00192 C6.6	WELL #4	\$500.00	\$150.00	\$950.00
OLYMPIAN/125 KW	125-6	LCG00195 C6.6	WELL #7	\$500.00	\$150.00	\$950.00
OLYMPIAN/125 KW	125-6	N6D00857	WELL #10	\$500.00	\$150.00	\$950.00
CATERPILLAR/1000 KW	4 HR LOAD BANK	WITH PM	BRENNAN			\$1,700.00
SPECTRUM/1000 KW	4 HR LOAD BANK	WITH PM	BRENNAN			\$1,700.00
OIL ANALYSIS	ALL UNITS	WITH PM	\$125.00 PER UNIT			\$750.00
				\$0.00	\$0.00	\$0.00
SUB-TOTAL						\$12,475.00

Sub-Total: \$12,475.00

State Sales Tax: \$0.00

County Sales Tax: \$0.00

Annual Total: \$12,475.00

All Sales Tax is due on all work unless a valid tax-exempt certificate is supplied.

This proposal is open for acceptance for 30 days.

Terms & Conditions: TAW Periodic Maintenance Agreement & Notification incorporated herein.

Proposal Acceptance

Customer

Date

TAW Power Systems, Inc.

Date

****CONTRACT IS NON-BINDING IF NOT SIGNED BY BOTH THE CUSTOMER AND THE CONTRACTOR****