



The City of Daytona Beach Utilities Department

To: James V. Chisholm, City Manager
From: Shannon Ponitz, Utilities Director *SP*
Date: September 12, 2019

Approved:

James V. Chisholm, City Manager

APPROVED

By Flick Joanne at 11:02 am, Sep 16, 2019

Joanne Flick, Purchasing Agent

Subject: Ralph Brennan Water Treatment Plant and Well Field Auxiliary Generator Annual Maintenance

REQUEST:

The Utilities Department requests the City Manager approve a purchase requisition to Genset Services, Inc. 578 Cooper Oaks Court Apopka, FL 32703 for an annual maintenance contract for auxiliary generators in the amount of \$12,255.

PURPOSE:

The purpose of this request is to obtain an annual maintenance contract for auxiliary generators per Florida Department of Environmental Protection regulations

CONSIDERATION:

Florida Department of Environmental Protection rule 62-555 requires all water treatment plants to ensure continuous plant operations during power outages. This rule requires water purveyors to maintain the auxiliary generators in accordance with the equipment manufacturers recommendations. The Brennan Water Plant utilizes three (3) auxiliary generators at the treatment plant and three (3) auxiliary generators in the well fields. In the event of a complete power failure, the Water plant relies on these units to maintain plant and well field operations according to FDEP rules. The annual maintenance contract ensures that the generators are routinely serviced and maintained in accordance with manufacture's recommendations.

Three quotes were obtained, as listed below, and Genset Services, Inc. was determined to be the most responsive and lowest bid.

Genset Services, Inc.	\$12,255.00
TAW Power Systems, Inc.	\$12,475.00
Ring Power, Inc.	\$19,830.00

FUNDING:

Sufficient funds are available in the 411 water and Sewer Fund 411-610240-536-531900-000000.

RECOMMENDATION:

The Utilities Department recommends the City Manager approve a purchase requisition to Genset Services, Inc. 578 Cooper Oaks Court Apopka, FL 32703 for an annual maintenance contract for auxiliary generators in the amount of \$12,255.

SCHEDULE:

Upon Approval

ATTACHMENT(S):

Quotations

851/1



Sales & Service for Standby Engine Generators



Proposal#: 12805

Proposal Date: 08/21/2019

Valid Until: 09/20/2019

Revision : 1

Attention:	Mike Burns	Sales Rep:	Dale Denio
Email Address:	BurnsM@CODB.US	Sales Rep Phone:	407-532-0414
Customer:	City of Daytona Beach	Sales Rep Email:	ddenio@gensetservices.com
Job Name:	City of Daytona Beach - WTP 2019 PMSA		

We are pleased to offer the following proposal:

City of Daytona Beach
Ralph Brennan WTP
3651 LPGA Blvd
Daytona Beach, FL 32124

Per your request and the e-mailed Word document, we offer the following pricing for the Annual Maintenance (quarterly inspections, annual maintenance service, annual coolant & oil sample with laboratory analysis for each piece of equipment and an annual two hour load bank test on both the 1000 kW Caterpillar & Spectrum generators.

Exception: "annual air filter element replacement". We replace the engine air filter elements as a demand service on an as needed basis, since they typically don't require an annual replacement by annual usage or manufacturers' requirement.

LOCATION	EQUIPMENT	COST
Brennan WTP	1000 kW Caterpillar	\$4,130.00
Brennan WTP	1000 kW Spectrum	\$3,500.00
Brennan WTP	300 kW MTU	\$1,362.50
Well Field #4	125 kW Olympian 6.6 L	\$1,087.50
Well Field #7	125 kW Olympian 6.6 L	\$1,087.50
Well Field #10	125 kW Olympian 6.6 L	\$1,087.50

All work to be completed during normal business hours. Genset Services, Inc. standard; inspection, load bank and follow-up forms to be completed and submitted both onsite and via e-mail.

Total Investments for the above equipment (Service including any applicable taxes):

\$ 12,255.00



Sales & Service for Standby Engine Generators



Proposal#: 12805

Proposal Date: 08/21/2019

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Notes to Customer:

Quoted work to be performed during Genset Services normal working hours unless otherwise noted. Quoted work will not be scheduled until all material has arrived at our warehouse. For scheduling inquiries please call (407) 532-0414 and ask for Service Scheduling. For service please call (407) 532-0414 and ask for the Service Manager.

Customer Authorization:

(by signing below, I acknowledge that I have read and accept the Genset terms and conditions that follow).

Signature: _____

Print Name: _____

Title: _____

Date: _____

P.O.#: _____



Sales & Service for Standby Engine Generators

GENERAC INDUSTRIAL
POWER

Proposal#: 12805

Proposal Date: 08/21/2019

Valid Until: 09/20/2019

Revision : 1

Terms and Conditions

GENSET SERVICES SERVICE TERMS & CONDITIONS 1. Agreement and Order. The terms and conditions set forth below (the Terms and Conditions) and on Gensets proposal, quotation or order form attached hereto (collectively referred to as the "Proposal" and together with these Terms and Conditions, the Agreement) constitute the complete and exclusive statement of the terms of this transaction by and between Genset Services, Inc. (Genset) and the customer identified on the Proposal (the Customer) for the performance of the services specifically set forth on the Proposal (the Services). To the extent that the terms contained on the Proposal differ from the terms contained in these Terms and Conditions, the terms of the Proposal shall govern to the extent of such differences provided that Genset has executed the version of the Proposal containing such terms following the addition or inclusion of such terms. Genset shall have no obligation to perform other services not described on the Proposal, but Genset may provide other Services at Customers request, as and when needed pursuant to the Agreement. Any additional Services performed shall be subject to these Terms and Conditions 2. Parts. Genset shall furnish parts as necessary at Gensets then current scheduled price or on an exchange basis, regardless of when installed, and such parts shall either be new or equivalent to new in performance when used in Customers equipment. 3. Modification of Terms. No terms contained on any purchase order, service order, contract or other document prepared by or submitted to Genset by Customer or its agents, including modification of the terms contained on the Proposal and in these Terms and Conditions, shall be effective or bind Genset unless Genset agrees to such terms or requirements by executing and returning to Customer such purchase order, agreement or other document. Failure by Genset to respond in writing to Customer upon receipt of Genset of a purchase order or other agreement by Customer shall not be a waiver of the requirement that Genset agree in writing to any terms contained in a purchase order or other contract. All representations, promises, warranties or statements by any agent or employee of Genset that differ in any way from the Proposal as prepared by Genset or the Terms and Conditions in the Agreement shall be of no force or effect. No course of prior dealings between the parties and no usage of the trade shall be relevant to this transaction. Prices quoted on the Proposal are good for a period of thirty (30) days from the date of the Proposal, provided that prior to the execution of the Proposal by Customer and acceptance by Genset, prices are subject to change without notice. 4. Charges. Charges for the Services described on the Proposal are described thereon. Charges for on-call, unscheduled or additional Services requested by Customer, but not described on the reverse, shall be at the rates then published by Genset in writing. Customer shall be responsible for any parts and shipping charges for such parts ordered by Genset in order to perform the Services 5. Taxes. Quoted prices do not include any applicable sales, use, transfer, excise or other taxes, tariffs or custom duties as are required by federal, state or local law. Customer will pay directly or to Genset any such taxes, tariffs or duties levied upon the sale, transfer, import, or service or necessary components thereof unless Customer provides Genset with a valid tax exemption certificate. Genset shall provide Customer with any tax payment certificate upon request and after acceptance of the Services being provided hereunder and full payment to Genset. 6. Time of Performance. If performance of the Services is delayed through no fault of Genset, then the time for performance of the work shall be extended to the extent of such delay. Genset shall not be liable for any delays in performance directly or indirectly resulting from acts of Customer, its agents, employees, or subcontractors, or any other causes beyond the control of Genset. If any necessary components of the Services become unavailable, then Genset shall be released from any obligation to provide the specified materials which are unavailable and Customer agrees to pay Genset for any difference between the cost of the unavailable materials or equipment and the cost of any reasonably available substitute. The estimated date of performance indicated on the Proposal is subject to delay due to availability of necessary components, and Genset shall not be liable for any such delay. 7. Payment. Upon Customers execution and return of the Proposal, Customer must provide a deposit in the amount of 30% of the service fee contained in the Proposal unless some other amount is set forth on the Proposal. Unless otherwise set forth on the Proposal, the entire service fee, plus all applicable sales tax and other charges contained on the Proposal must be tendered by Customer to Genset within 2 days following notification by Genset to Customer that the Services are ready to be performed. In any case full and final payment must be made by Customer and received by Genset no later than two days prior to Genset performing the Services, and Genset shall have no obligation to perform the Services prior to receiving full and final payment. Customer is responsible for the payment of all registration fees, use tax or similar assessments and taxes which may be imposed upon the service or the sale, possession or use of any necessary parts or components. Customer hereby grants Genset a security interest in Customers generator and any parts installed by Genset until such time as Genset is actually paid in full, and Customer will assist Genset in any action necessary to perfect Gensets security interest, provided that Genset may prepare, file and record a UCC financing statement to evidence the security interest with no further notice to or consent by Customer. No parts or components furnished by Genset shall become a fixture by reason of being attached to real estate until payment in full has been received and acknowledged by Genset. Customer shall not be entitled to set-off any amounts due from Customer against any amount due to Genset in connection with this transaction. 8. Warranty; Limitation. (a) CUSTOMER ACKNOWLEDGES THAT THE ONLY WARRANTIES WITH RESPECT TO THE SERVICES ARE ANY APPLICABLE WARRANTIES 4813-9727-5146.1 OFFERED BY THE MANUFACTURER OF ANY NECESSARY PART OR COMPONENT THEREOF AND THAT GENSET MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, NOR DOES IT WARRANT THE MERCHANTABILITY OF THE COMPONENTS OR THAT THE COMPONENTS ARE FIT FOR A PARTICULAR PURPOSE. PARTS AND COMPONENTS ARE SOLD AND SERVICES PROVIDED BY GENSET TO PURCHASER AS IS WHERE IS AND WITH ALL FAULTS. (b) CUSTOMER ACKNOWLEDGES THAT IT HAS DECIDED TO CONTRACT FOR SERVICES BASED ON ITS OWN ASSESSMENT OF ITS NEEDS. CUSTOMER ACKNOWLEDGES AND AGREES THAT GENSET HAS NOT MADE ANY STATEMENTS OF FACT CONCERNING THE SERVICES, AND CUSTOMER HAS NOT RELIED UPON ANY STATEMENT BY GENSET IN DECIDING TO CONTRACT FOR THE SERVICES. (c) CUSTOMER IS SOLELY RESPONSIBLE FOR FOLLOWING ALL MANUFACTURER REQUIREMENTS WITH RESPECT TO THE EQUIPMENT ON WHICH THE SERVICES ARE PERFORMED. (d) Customer further agrees that in no event shall Genset's liability to Customer for damages of any nature exceed the amounts actually paid by Customer to Genset for the Services. 9. Access to Equipment; Performance of Services; Customer Obligations. (a) Genset's maintenance personnel shall have free access to the Customers Equipment for the purpose of providing Services. (b) During any Services provided pursuant to this Agreement as to the System, whether an interruption in electrical service is contemplated by Customer or Genset or not, as a matter of allocating between Customer and Genset the risks associated with an interruption in electrical services and/or taking the Customers equipment off line, Customer agrees to use its best efforts to fully and completely secure all or any part of any facility in which the equipment 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 repairs performed by Genset as to the equipment. Customer agrees with Genset that securing of the premises in order for Genset to perform its Services is a material and critical element of this Agreement and, prior to the performance of any Services under this Agreement, Customer will receive and execute with Genset a written Notification and Acknowledgement of Inspection and Warning (Notification) related to the Services provided herein. The Notification shall include Genset's estimate as to when interruption of electrical services may occur during the performance of its obligations under this Agreement. Customer further agrees that Genset 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 Genset's obligations herein, it being acknowledged by Customer that Genset'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. 10. Damages. CUSTOMER AGREES THAT GENSET SHALL NOT BE LIABLE BEYOND THE REMEDIES EXPRESSLY SET FORTH HEREIN. GENSET SHALL NOT BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING IN ANY MANNER FROM THE GOODS, EQUIPMENT OR MATERIALS FURNISHED OR THE WORK PERFORMED PURSUANT TO THE AGREEMENT, WHETHER BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, OR FOR THE LOSS OF PROFITS, REVENUES, OR OTHER LOSSES ARISING OUT OF ANY DEFAULT UNDER THIS AGREEMENT, EVEN IF GENSET SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE PRICE OF THE GOODS AND SERVICES PURCHASED BY CUSTOMER IS CONSIDERATION FOR LIMITING GENSETS LIABILITY. GENSETS LIABILITY FOR ANY CLAIM ASSERTED BY CUSTOMER, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, SHALL NOT EXCEED THE CONTRACT PRICE OF THE SERVICES HEREUNDER. NO ACTION OR SUIT TO ENFORCE RIGHTS OR REMEDIES ARISING FROM THIS TRANSACTION SHALL BE COMMENCED LATER THAN ONE YEAR FROM THE DATE OF GENSETS LAST FURNISHING SERVICES UNDER THIS AGREEMENT. 11. Cancellation. Service Orders cannot be cancelled or after Customer signs and returns a Proposal which is accepted by Genset, except with Gensets written consent and subject to conditions then agreed upon which shall indemnify Genset against liability and expense incurred and commitments made by Genset. No materials or products provided in conjunction with the Services may be returned. 12. Indemnity. Customer represents and warrants that it is fully insured for any and all potential damages arising out of or in connection with the Services performed by or to be performed by Genset hereunder. Customer shall defend, indemnify and hold harmless Genset and its officers, directors, employees, agents, owners and affiliates, from and against any and all damages, costs, liability, and expense whatsoever (including attorneys' fees and related disbursements) incurred in whole or in part, directly or indirectly, by reason of: (a) any failure by Customer to perform any covenant 4813-9727-5146.1 or agreement of Customer set forth herein or the breach of any representations or warranties set forth herein; (b) death or bodily injury or loss of or damage to property which arising out of or in connection with the Services provided and any goods, parts or components provided; or (c) any acts of Customer or Customer's personnel; or (d) the unloading, installation, operation, storage or use by Customer of any goods provided by Genset or any other party or subsequent owner. The foregoing obligation shall survive the termination or expiration of this Contract. 13. Miscellaneous. In addition to the other terms and conditions, Customer and Genset further agree that the following shall also govern this Agreement: (a) Waivers. The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy under this Agreement. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances. (b) Governing Law; Construction. This Agreement is being delivered and performed in the State of Florida and shall be construed in accordance with, and governed by, the law of the State of Florida. Venue of any action related to this Agreement shall be placed in the courts of Broward 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 Genset, regardless of which party drafted the Agreement. It is intended that 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 arising 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 attorneys fees, court costs, costs of investigation, accounting and other costs reasonably related to the litigation, including, without limitation, all attorneys 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, and permitted successors and assigns of the parties hereto. This Agreement does not confer upon or give to any person other than the parties any rights or benefits hereunder. (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 supercede 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 written notice of change of address, 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 performance; 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 (4) 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. If to Customer: To the address and contact person identified on the Proposal. If to Genset: Genset Services, Inc., 3100 Gateway Drive, Pompano Beach, FL 33069 Genset shall not be in default of any of its obligations hereunder unless Customer provides Genset with seven (7) days written notice of default and specifying the action required to cure the default and Genset fails to cure such default.



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 is 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 |
| | (n) Improper operation and/or abuse of the System by Customer or other third parties |
| (g) Quarantine restrictions | (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****