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<p>Robert O. Oakes, Jr. Mayor</p> <p>Wayne Gray Mayor Pro Tem</p> <p>Cliff Ogburn Town Manager</p>	 <p>Town of Nags Head Post Office Box 99 Nags Head, North Carolina 27959 Telephone 252-441-5508 Fax 252-441-0776 www.townofnagshead.net</p>	<p>Doug Remaley Commissioner</p> <p>Anna D. Sadler Commissioner</p> <p>M. Renée Cahoon Commissioner</p>
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NORTH CAROLINA
DARE COUNTY

SERVICE CONTRACT
PURCHASE ORDER # _____



**THIS CONTRACT IS NOT VALID WITHOUT THE REQUIRED ACCOMPANYING/
CORRESPONDING PURCHASE ORDER**

THIS CONTRACT is made and entered into this the 10th day of December 2010, by and between the TOWN OF NAGS HEAD, a public body corporate of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and CUMMINS ATLANTIC INC, 3729 Holland Blvd., Chesapeake, VA 23323 (hereinafter referred to as "CONTRACTOR"), party of the second part.

1. SERVICES TO BE PROVIDED AND AGREED CHARGES

The services and/or material to be furnished under this contract (hereinafter referred to collectively as "SERVICES") and agreed charges are as follows:

TO REMOVE EXISTING WESTINGHOUSE AUTOMATIC TRANSFER SWITCH (ATS) ON THE GULL STREET PUMP STATION'S GENERATOR. REPLACE WITH CUMMINS MODEL OTEC600 ATS. REPLACE WIRE FROM GENERATOR TO ATS AND PERFORM STARTUP AND TESTING ON NEW ATS.

TOTAL CONTRACT PRICE SHALL NOT EXCEED \$9,924.00 (Nine thousand nine hundred twenty-four dollars and no cents) plus tax of approx \$442.65 IN ACCORDANCE WITH CONTRACTOR'S QUOTE SUBMITTED NOVEMBER 17, 2010 (COPY ATTACHED).

INSTALLATION AND TESTING SHALL BE COMPLETED no more than 50 calendar days from date of the Purchase order issued.

2. DESCRIPTION OF PROJECT

- 1) REMOVE EXISTING TRANSFER SWITCH
 - 2) INSTALL NEW CUMMINS MODEL OTEC600 AUTOMATIC TRANSFER SWITCH
 - 3) REPLACE WIRES FROM GENERATOR TO AUTOMATIC TRANSFER SWITCH.
 - 4) SPLICE EXISTING CONDUCTORS AS NECESSARY AND RECONNECT
 - 5) START UP/TEST OF NEW AUTOMATIC TRANSFER SWITCH
- AUTOMATIC TRANSFER SWITCH WILL HAVE A ONE (1) YEAR WARRENTY.

3. TERM OF CONTRACT

The term of this CONTRACT for SERVICES is from DECEMBER 10, 2010 to February 15, 2011. Either party may nonetheless cancel this contract on thirty (30) days written notice to the other party by certified mail or personal delivery. This contract is subject to the availability of funds to purchase the specified SERVICES and may be terminated at any time if such funds become unavailable.

It is mutually agreed by and between the TOWN and SELLER that CONTRACTOR will INSTALL AND TEST the Equipment required under this contract no later than January 29, 2011 (fifty days from the date of the contract) with time being of the essence. If SELLER fails to meet this deadline, the TOWN will be damaged thereby, and because the amount of the TOWN's damages, inclusive of expenses for inspection, superintendence and necessary traveling expenses is difficult if not impossible to definitely ascertain and prove, it is hereby agreed that the amount of such damages shall be \$100.00 as liquidated damages for every day's delay in furnishing the Equipment beyond the deadline prescribed; and the SELLER hereby agrees that said sum shall be deducted from monies due the SELLER under the contract or, if no money is due the SELLER hereby agrees to pay to the TOWN as liquidated damages, and not by way of penalty, such total sum as shall be due for such delay computed aforesaid.

4. PAYMENT TO CONTRACTOR

The TOWN agrees to pay at the rates specified for SERVICES satisfactorily performed in accordance with this contract. Unless otherwise specified, the CONTRACTOR shall submit an itemized invoice to the TOWN by the end of the month during which SERVICES are performed. Payment will be processed promptly upon receipt and approval by the TOWN of the invoice.

5. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this contract. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'S activities in accordance with this contract, including by way of illustration by not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

6. INSURANCE AND INDEMNITY

The CONTRACTOR shall indemnify and save harmless the TOWN, its agents and employees from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against the TOWN or which the TOWN must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from negligent performance of or failure to perform any of its obligations under the terms of this CONTRACT.

The CONTRACTOR shall be fully responsible to the TOWN for the acts and omissions of its sub-contractors and of persons either directly or indirectly employed by it, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

In addition, the CONTRACTOR shall comply with the North Carolina Worker's Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the CONTRACTOR is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the CONTRACTOR shall carry or cause its employees to carry adequate medical/accident insurance to cover any injuries sustained by its employees or agents during the performance of SERVICES.

The CONTRACTOR agrees to furnish the TOWN proof of compliance with said Act or adequate medical/accident insurance coverage upon request.

The CONTRACTOR upon request by the TOWN shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the TOWN verifying the existence of any insurance coverage required by the

TOWN. The Certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.

7. HEALTH AND SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees from the work and other persons who may be affected thereby.

8. NON-DISCRIMINATION IN EMPLOYMENT

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, or national origin. In the event the CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be cancelled, terminated or suspended in whole or in part by the TOWN, and the CONTRACTOR may be declared ineligible for further contracts.

9. GOVERNING LAW

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina.

10. OTHER PROVISIONS

This Contract is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

11. CONTRACT DOCUMENTS/AMENDMENTS

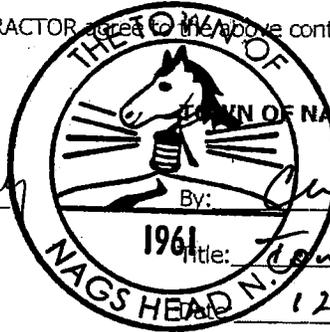
This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto. In the event of any conflict between this contract and any attached documents, the contract language will prevail.

12. SIGNATURES

Both the TOWN and the CONTRACTOR agree to the above contract.

Witnessed or Attested By:

Mickelle A Gray
Town of Nags Head



By: [Signature]
Title: Town Manager
Date: 12-17-10

Marie C. Poston
Contractor

CONTRACTOR CUMMINS ATLANTIC
By: [Signature]
Title: VICE PRESIDENT
Date: 12/10/10

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

[Signature]
Finance Officer

APPROVED AS TO FORM AND LEGAL SUFFICIENCY.

[Signature]
TOWN ATTORNEY

Our energy working for you.™



Power Generation

Quotation

Dawn Wheeler
 Cummins Atlantic Inc.
 3729 Holland Blvd.
 Chesapeake VA 23323 United States
 Direct: 757-485-4848---120

November 17, 2010

Nancy Carawan

Project Name: Town of Nags Head-Gull St. Tank

Quotation: 78000000178798

Thank you for your inquiry. We are pleased to quote as follows:

Item	Description	Qty	USD
	Transfer Switch-Electronic Control:300A/400A/600A	1	
OTEC600	Transfer Switch-Electronic Control,600Amp	1	
A028-7	Poles-3	1	
A046-7	Listing-UL 1008/CSA Certification	1	
A044-7	Frequency-60 Hertz	1	
A042-7	System-3 Phase,3 Wire Or 4 Wire	1	
R026-7	Voltage-480 Vac	1	
B001-7	Cabinet-Type 1	1	
M034-7	Genset Starting Battery-24VDC	1	
J030-7	Clock-Exercise, External	1	
G009-7	Transfer Switch Warranty - 1 Yr Comprehensive	1	
CP01-7	Common Parts Listing	1	
SPEC-A	Product Revision - A	1	
	Installation	1	
	Replace with new 600 amp ATS and replace wire from generator to ATS. All other wire remains.		
Test	Start up	1	

Grand Total \$9,924.00

Lead time is approx. 4 weeks.
The station will be down for approx. 8 hrs.
Work to be done bet. Mon-Fri during normal working hours.

Pricing break down:

Equipment: \$ 5389.00
Labor \$ 4,535.00
Tax: \$ 442.65 (Tax is approximate)

Submitted by

Dawn Wheeler , Territory Manager - Power Generation
Dawn.M.Wheeler@cummins.com
Mobile: 757-567-3640
Fax: 757-485-5085

Terms and Conditions

Extended Warranty Coverage is valid only in the United States and Canada. For Extended Warranty requirements outside of the United States and Canada, please contact your Cummins Power Generation-Fridley Warranty Analyst.

The equipment contained in this quotation may have to comply with new EPA emissions regulations for stationary genset applications that are being phased in between now and January 1, 2007. Depending upon the date this order is received, this quote must be verified to be compliant with these new EPA requirements prior to acceptance of the order.

Cummins Atlantic's Standard Terms and Conditions:

Payment - Terms are Net 30 Days at the time of shipment, based upon Cummins Atlantic's credit department approval, otherwise terms are C.O.D. Payment of invoice must be made in full prior to placing the equipment into service.

Retainage - Retainage withheld on projects is not acceptable nor binding on Cummins Atlantic, unless accepted and confirmed in writing by an officer of Cummins Atlantic prior to order acceptance or shipment.

Sales Tax - Prices are quoted less any sales tax. Applicable sales tax will be added to our invoice. Resale tax certificates must be on file with Cummins Atlantic's credit department for tax-exempt sales, prior to invoicing.

Warranty - Cummins standard manufacturer's warranty applies as specified in our proposal. All buy out items not manufactured by Cummins, Inc. will be covered by the manufacturers' standard warranty provisions. Copies of non-Cummins manufactured equipment warranties are available upon request.

Cancellation - Cancellation charges may apply for orders cancelled, once placed and accepted by Cummins Atlantic. Cost of custom components, completed fabrication, or any other work performed will be added to the cancellation fee.

Other - Cummins Atlantic is an equipment supplier only. No fuel, wiring, connecting, installation, plumbing or other type of installation type labor is included in this proposal, unless specifically noted herein.

The customer is responsible for any and all installation of the above equipment, unless specifically noted herein. Cummins Atlantic personnel will perform an installation audit prior to the start-up being completed. Any issues identified by the installation audit shall be corrected at the purchaser's expense prior to the start-up being accomplished.

All equipment required to perform any loading or unloading of the proposed equipment at the jobsite is the responsibility of the purchaser.

Cummins Atlantic limits the scope of supply for this quotation to the equipment and services listed in our bill of material. Equipment that is not specifically listed in our bill of material is to be provided by others. We have carefully detailed the equipment proposed in our bill of material. Please carefully review it to be certain it meets your requirements.

We reserve the right to correct any errors and omissions in our proposal.

Contracts which include liquidated damages or penalty clauses for failure to meet promised shipping dates are not acceptable or binding on Cummins Atlantic, unless accepted and confirmed in writing by an officer of Cummins Atlantic.

Cummins Atlantic standard terms and conditions are included in this quotation and hereby become part of any subsequent purchase order. These same terms and conditions need to be noted on any purchase order received by Cummins Atlantic.

Cummins Atlantic will not be responsible for any labor or materials charged by others associated with the start-up and installation of this equipment unless previously agreed upon in writing by Cummins Atlantic.

Customer Acceptance: _____

Purchase Order #: _____ Date: _____

Signature

Date

Title



12/17/2010 09:31
costellk

TOWN OF NAGS HEAD

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PURCHASE ORDER

20110423-00 FY 2011

BILL TO

VENDOR

CUMMINS ATLANTIC INC
3729 HOLLAND RD
CHESAPEAKE, VA 23323

SHIP TO

NANCY CARAWAN
NAGS HEAD WATER PLANT
2200 LARK AVE
NAGS HEAD, NC 27959

Tel# 757-485-4848
Fax# 757-485-5085

Requisition
476

DATE ORDERED	VENDOR NUMBER	DATE REQUIRED	FREIGHT METHOD/TERMS	DEPARTMENT/LOCATION
12/16/10	004373	12/10/10		Water Operations

LN	DESCRIPTION	QTY	UOM	UNIT PRICE	NET PRICE
001	to replace the generator tra transfer switch at Gull st pump station	1.0	Each	9924.000	9,924.00

PO TOTAL 9,924.00

** END OF REPORT - Generated by Karen Costello

Handwritten signature: Kyle