



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 4/21/2011

Report Type: Consent

Title: Contract: Original Equipment Manufacturer (OEM) Repair Parts and Services [2/3 Vote Required]

Report ID: 2011-00347

Continued to 4-26-11

Location: Citywide

Recommendation: Adopt a Resolution 1) suspending competitive bidding in the best interests of the City for the purchase of Cummins repair parts and services; 2) awarding a two-year contract to Cummins West, Inc. for the purchase of Cummins repair parts and services in an amount not to exceed \$600,000 for the two year period; and 3) authorizing the Interim City Manager or the Interim City Manager's designee to execute the contract specified above provided that sufficient funds are available in the budget adopted for the applicable fiscal year(s).

Contact: Marc Robles, Program Analyst, (916) 808-6343; Craig Lymus, Acting Procurement Manager, (916) 808-5524, Department of General Services

Presenter: None

Department: General Services Dept

Division: Procurement Services Admin

Dept ID: 13001061

Attachments:

-
- 1-Description/Analysis
 - 2 - Attachment 1
 - 3 - Resolution
 - 4 - Unexecuted Contract Cover
 - 5 - Exhibit A - Cummins West, Inc. Contract

City Attorney Review

Approved as to Form
Lan Wang
4/12/2011 2:16:09 PM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
4/1/2011 3:58:06 PM

Approvals/Acknowledgements

Department Director or Designee: Reina Schwartz - 4/7/2011 3:12:18 PM

Assistant City Manager: Cassandra Jennings - 4/8/2011 6:32:03 PM

Eileen Teichert, City Attorney

Shirley Concolino, City Clerk
Gus Vina, Interim City Manager

Russell Fehr, City Treasurer



Description/Analysis

Issue: In support of City departments and core operations, the Department of General Services, Fleet Management Division, has an ongoing need to purchase OEM repair parts and services for City vehicles and equipment.

A competitive bid was conducted and multiple awards were required, as bidders must be a factory authorized parts and service center for the manufacturer they represent. On April 5, 2011, City Council adopted Resolution No. 2011-197 awarding contracts to five of the bidders. The Cummins representative in the central valley, Cummins West, Inc., submitted a bid however it contained exceptions to the contract terms as listed below:

- Standard Performance (changes City's "sole discretion" to "contributory discretion")
- Termination (eliminates provisions that allow the City to recover costs for re-procurement and completion of the contract in the event Contractor terminates the contract; eliminates provision that allows the City to recover damages should the Contractor fail to complete the contract)
- Indemnity (changes "sole negligence" to "contributory negligence"; limits City's recovery to insurance proceeds)
- Insurance Requirements (limits City's recovery to insurance proceeds)
- Inspection
- Pick Up and Delivery (imposes a delivery fee on certain deliveries)
- F.O.B. (City assumes freight costs)
- Contract Period (lowers the contract period from 5 to 2 years)
- Price Adjustment (in the event the Contractor requests a price adjustment, amendment eliminates requirement that Contractor provide proof of labor cost increases)
- Evaluation (eliminates requirement that contractor pick up deficient components and redeliver them after correction)
- Warranty (limits City's ability to recover excess costs incurred as a result of default by Contractor; limits City's ability to recover cost of removing a defective component and reinstalling new equipment)
- Repair Service Requirements
- Parts Requirements

Under normal circumstances, the Procurement Services Division would find the bid non-responsive. However, because Cummins West, Inc. is the only known authorized service center in the central valley that can service Liquefied Natural Gas (LNG) fueled engines, it is in the City's best interest to suspend competitive bidding and award a contract award to Cummins West, Inc. for the purchase of Cummins repair parts and services in a total amount not to exceed \$600,000.

Policy Considerations: The recommendations in this report are in accordance with: 1) the provisions of City Code Section 3.56; and 2) Resolution No. 2010-346 prohibiting the City from entering into any contract to purchase goods or services from any business or entity headquartered in Arizona.

Environmental Considerations:

California Environmental Quality Act (CEQA): The current proposal involves the purchasing of vehicle and equipment parts and services. Continuing purchases of vehicle and equipment parts and repair services are not a 'project' and are not subject to CEQA, in accordance with Section

15378(b)(2) of the CEQA Guidelines. Therefore, as determined by the City's Environmental Services Planning Manager, no environmental review is necessary.

Sustainability: None

Commission/Committee Action: Not applicable

Rationale for Recommendation: In support of City departments and core operations, the Department of General Services, Fleet Management Division, has an ongoing need to purchase OEM repair parts and services for City vehicles and equipment.

In February 2011, Procurement Services, in accordance with City Code Section 3.56, issued Invitation for Bid No. B11131061010 for the purchase of OEM repair parts and services. Vendors were required to be a factory authorized parts and service center for the manufacturer(s) they represent. Therefore, multiple awards must be made in order to fulfill the parts and service needs for the wide variety of City vehicles and equipment. Seven responses were received. One bid was determined to be nonresponsive because the vendor is not an authorized repair facility for all repairs required by the bid. On April 5, 2011, City Council adopted Resolution No. 2011-197 awarding contracts to five of the bidders. Cummins West, Inc. is the seventh bidder that responded. Under normal circumstances, the Procurement Services Division would find the Cummins West, Inc. bid non-responsive due to the contract exceptions noted above. However, because Cummins West, Inc. is the only known authorized service center in the central valley that can service Liquefied Natural Gas (LNG) fueled engines, it is in the City's best interest to suspend competitive bidding and award a contract award to Cummins West, Inc. for the purchase of Cummins repair parts and services in a total amount not to exceed \$600,000.

The contract award to Cummins West, Inc. is recommended to City Council separately from the other bidders because of the contract exceptions. The bid information for Cummins West, Inc. is included in Attachment 1.

Financial Considerations: Sufficient funds are available in the FY2010/11 operating budget of the Department of General Services (Fleet Fund, Fund 6501) to purchase OEM repair parts and services through June 30, 2011. Purchases made after June 30, 2011 are subject to funding availability in the adopted budget of the applicable fiscal year. Pricing for the first year of the contract will be at the original bid price. The contract includes a potential price increase not to exceed five percent in the second year. If the City determines that a proposed contract price increase is not justified then the contract can be terminated and the service rebid. Annual estimated expenditures are shown in the table below.

Vendor	Year 1 Estimate	Year 2 Estimate	Total Contract Amount
Cummins West, Inc.	\$290,000	\$310,000	\$600,000

Emerging Small Business Development (ESBD): Cummins West, Inc. is not certified with the City as an emerging/small business firm.



BID RESULTS - BID NO. B11131061010

Line No.	Item Description	Vendor	Discount from Price List	Hourly Rate	Extended Price
1	Cummins Parts	Cummins West, Inc.	18%		\$61,500
2	Cummins Repairs & Services	Cummins West, Inc.		\$115	\$230,000
1	Cummins Parts	Bid not responsive*			
2	Cummins Repairs & Services	Bid not responsive*			

*Interstate Truck Center also bid, but was non-responsive.

Note: The amounts listed reflect estimated annual expenditures. The lowest responsible bid amounts represent the total for the quantities selected for evaluation purposes only, which was calculated on historic annual expenditures. Authorization is requested to enter into contracts in a total amount not to exceed \$600,000, which anticipates a cost and/or volume increase and more closely reflects the actual amount anticipated to be expended overall for the potential two year period.



RESOLUTION NO. 2011-XXXX

Adopted by the Sacramento City Council

April 21, 2011

AWARD CONTRACT FOR THE PURCHASE OF ORIGINAL EQUIPMENT MANUFACTURER (OEM) REPAIR PARTS AND SERVICES

BACKGROUND

- A. In support of City departments and core operations, the Department of General Services, Fleet Management Division, has an ongoing need to purchase OEM repair parts and services for City vehicles and equipment.
- B. In February 2011, Procurement Services, in accordance with City Code Section 3.56, issued Invitation for Bid No. B11131061010 for the purchase of OEM repair parts and services. Vendors were required to be a factory authorized parts and service center for the manufacturer(s) they represent. Therefore, multiple awards must be made in order to fulfill the parts and service needs for the wide variety of City vehicles and equipment. Seven responses were received. One bid was determined to be nonresponsive because the vendor is not an authorized repair facility for all repairs required by the bid.
- C. On April 5, 2011, City Council adopted Resolution No. 2011-197 awarding contracts to five of the bidders. Cummins West, Inc. is the seventh bidder that responded. The contract award to Cummins West, Inc. is recommended to City Council separately from the other bidders because of contract exceptions noted by the vendor. The exceptions are set forth in detail in the Description/Analysis of the accompanying report.
- D. Because Cummins West, Inc. is the only known authorized service center in the central valley that can service Liquefied Natural Gas (LNG) fueled engines, it is in the City's best interest to suspend competitive bidding and award a contract to Cummins West, Inc. for the purchase of Cummins repair parts and services in a total amount not to exceed \$600,000.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. In the best interests of the City, competitive bidding is hereby suspended for the purchase of Cummins repair parts and services.
- Section 2. Cummins West, Inc. is awarded a two-year contract for the purchase of Cummins repair parts and services in a total amount not to exceed

\$600,000.

Section 3. The Interim City Manager or the Interim City Manager's designee is authorized to execute the contract specified above provided that sufficient funds are available in the budget adopted for the applicable fiscal year(s).

Table of Contents:

Exhibit A: Contract with Cummins West, Inc.



Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.

- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.



City of Sacramento Contract Cover and Routing Form

Requires Council Approval: No YES Meeting: Apr. 19

General Information

Type: Commodity

CHANGE: None CH #:

\$ Not to Exceed: \$ 600,000.00

Original Contract Number:

Original Contract Amount:

Contractor: Cummins West, Inc.



Project Name: O.E.M. Parts and Services

Project Number:

Bid Transaction #: B11131061010

E/SBE-DBE-M/WBE: No

Department Information

Department: General Services

Division: Procurement

Project Mgr: Marc Robles

Supervisor: Craig Lymus

Contract Services:

Division Mgr:

Phone Number: x6343

Org Number: 13001611

Comment:

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:	<i>MR</i>	3.9.11
Accounting:	-	-
Contract Services:	-	-
Supervisor:	<i>CL</i>	3/15/11
Division Manager:	<i>CL</i>	3/15/11

City Attorney	Signature or Initial	Date
City Attorney:	<i>KCB</i>	3/11/11

Send Interoffice Mail Notify for Pick Up

Authorization	Signature or Initial	Date
Schwartz, Reina Department Director:	<i>RS</i>	3/17/11
City Mgr: yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

For City Clerk Processing Finalized:
Initial: _____ Date: _____

Imaged:
Initial: _____ Date: _____

Resolution No: (If Applicable)

Contract No:

This coversheet is to remain with the original signed Contract.

Responsibility

General Information: May be completed by Project Manager or Contract Services.

Department Information: May be completed by Project Manager or Contract Services.

Review and Signature Routing:

Department

Project Manager: Verification of Technical Specs.

Accounting: Verification of Funding Sources.

Contract Services: BOT Number, Insurance, Bonds, Solicitation (BID, RFP, RFQ, RFI, Quote, Sole Source, or Emergency), Contractor Signatures, E/SBE, DBE or M/WBE Project Participation.

City Attorney

Approval of Contract Form and Bonds (if applicable)

Verification that Insurance Documents are Included (if required for contract approval)

Authorization

Department Director: Review All Contracts; Signing Authority <\$100,000

City Manager: Signing Authority delegated for < \$100,000

Signing Authority delegated to Assistant City Manager for = or > \$100,000

AFTER Council Authorization

Types of Contracts

Type	City Code	Type	City Code
Commodity	3.56	Reimbursement/Credit	
Development	18.16	Settlement	
Grant		Supplies	3.56
Hold Harmless			
Individual Participation			
Master Services			
Memorandum			
Non-Professional Services	3.56		
Owner Participation			
Professional Services	3.64		
Public Project	3.60		
Real Property Lease City Owned	3.68		
Real Property Sale City Owned	3.88		
Real Property Non-City Owned (NCO)			

Received City Clerk (2nd Receipt)

Cummins West



CITY OF SACRAMENTO

PROCUREMENT SERVICES DIVISION

Bid Number: B11131061010

INVITATION FOR BID And Contract Specifications

FOR: Original Equipment Manufacturer (O.E.M.) Parts and Services for BMW Motorcycles, Light and Heavy Duty Vehicles and Equipment

Bids Must Be Received Prior To 2:00 P.M. on February 23, 2011

Bids Must Be Submitted To: City Clerk's Office
P.O. Box 122391
Sacramento, CA 95812-2391

Pre-Bid Conference:
Mandatory: [] Yes
 [] No

N/A

BIDDER SIGNATURE
 Properly Signed Improperly Signed
 Not Included Not Required
Type of Deposit
 Bid Bond Cashier/Certified Check
 Other _____ Initial: VE
Bid Bond Certificate

NAME AND ADDRESS OF BIDDER SUBMITTING THIS BID:
(Bidder to complete the following information)

Name of Bidder: Cummins West Inc.

Address: 875 Riverside Parkway

City, State, Zip Code: West Sacramento CA 95605

Phone Number: 916 371-0630

Email Address: Bernie.lapos@cummins.com

**CITY OF SACRAMENTO
PROCUREMENT SERVICES DIVISION**

**Bid No. B11131061010
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SECTION I REQUIREMENTS

SECTION I – REQUIREMENTS

A. "NO BID" RESPONSE FORM

NOTE: COMPLETE AND RETURN THIS FORM
ONLY IF YOU DO NOT WANT TO SUBMIT A BID

If you do not want to submit a bid for this requirement, we are interested in knowing why. Please remove this form, complete the requested information, and **FAX your response to the Procurement Services office at (916) 808-5747**. If you have questions, please call the Procurement Office at (916) 808-6240. Thank you for your cooperation.

"NO BID" QUESTIONNAIRE
(Please complete all items that apply)

- We do not sell the products/services called for in this invitation for bid, but **we want to stay on the City's Bid List**. Please send necessary information so that the products/services we do provide can be updated on the City's Bid List.
- We are not interested in doing business with the City of Sacramento, because _____

- Other reasons/comments: _____

- Please send application forms for certification as an emerging and/or small business enterprise (E/SBE):
(Note: Application forms and information about becoming certified as an emerging and/or small business can be obtained via the Internet at: <http://www.cityofsacramento.org/esbd>).

(Business Name)

(Street Address/P.O. Box)

(City, State, Zip)

(E-mail address)

Date: _____

Phone: _____

Contact: _____

SECTION I – REQUIREMENTS

B. BID INSTRUCTIONS AND REQUIREMENTS

No Bid Is In Legal Form Unless the Following Instructions Are Fully Complied With

1. **Submittals.** VENDORS ARE REQUIRED TO SUBMIT AN ORIGINAL BID, INCLUDING ALL REQUIRED ATTACHMENTS SUCH AS BROCHURES AND CATALOGS, TO THE CITY CLERK ON THE DATE AND AT THE TIME AND LOCATION SPECIFIED ON THE COVER SHEET. FAILURE TO DO SO MAY CAUSE YOUR BID TO BE REJECTED.
2. **Bid Forms.** Bid must be submitted on these printed forms and sealed in an appropriate envelope or package.
 - a) To obtain an electronic version of this bid go to Procurement's website at www.cityofsacramento.org/generalservices/procurement/bids.
 - b) Bidders are invited to be present at the opening of bids. Bids will be opened, in public, in the City Clerk's Hearing Room, 915 "I" Street, Second Floor, Sacramento, CA, at or after 2:00 P.M. on February 23, 2011. After opening, Bids may be inspected in the City Clerk's Office.

(Note: Bids must be submitted prior to 2:00 P.M. on the above date)
 - c) All bids shall be clearly and distinctly written without erasure or modification, and properly signed by an authorized party, who shall indicate the capacity in which the signature is executed.
3. **Alternate Bids.** Alternate bids are invalid unless invited and covered by the specifications. **Please note all submissions are subject to rejection when unsolicited alternate bids are submitted.**
4. **Bid Security.** Bid Security is: Required Not Required

If required, bid security approved by the City must accompany the bid, in the amount of ___ % of the total amount of the bid. Bid security can be in the form of a cashier's check, certified check, or a bid bond from a surety company authorized to do business in the State of California. Bid securities will be returned to all except the three lowest Bidders within ten days after the opening of bids. The bid security of the two unsuccessful Contractors will be returned after the successful Contractor has executed the contract. Bid security of the successful Contractor will be returned when the contract is signed and all other contract award requirements have been met.
5. **Interest in More Than One Bid.** No bidder shall be interested in more than one bid (submit more than one bid for this solicitation) as provided by City Code Section 3.56.130(D).
6. **Rejection of Bids.** The right to reject any and all bids is reserved by the City, in its absolute discretion.
7. **Right to Waive.** The City reserves the right to waive any informalities or minor irregularities, as determined in its sole discretion, in connection with bids received.
- 7A. **City's Options.** City reserves the following options:
 1. The right to award in whole or in part.
 2. The right to reject all partial bids.
 3. The right to reject any or all bids or make no award.
 4. The right to issue subsequent Invitation For Bids (IFB).
 5. The right to approve or disapprove the use of particular subcontractors and/or suppliers.
 6. The right to waive any informality or irregularity in the bidding process and any bids.
 7. The right to accept a bidder's signed offer and issue a purchase order directly to the bidder based on the IFB.

8. **City Code.** All provisions of Chapter 3.56 of the City Code are applicable to any bid submitted or contract awarded.
9. **Equipment.** If equipment is bid, it shall be the newest and latest model in current production. Used, re-manufactured, shopworn, demonstrator, prototype or discontinued models are not acceptable unless otherwise stipulated by the City.
10. **Faithful Performance Bond.** A faithful performance bond is: Required Not Required
- If required, the successful bidder must submit a performance bond in a form approved by the City Attorney, in the amount of _____.
11. **Payment Discounts.** Payment discounts offered for payment in less than twenty (20) days will not be considered as a basis of award. Payment discounts offered for payment in twenty (20) or more days will be subtracted from the total bid price for the purposes of bid evaluation. Any payment discount offered by the successful bidder will be accepted by the City of Sacramento, whether or not it was considered as a basis of award.
12. **Mandatory Pre-Bid Conference.** If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, all bidders are required to attend the conference. Failure to attend this conference will result in rejection of your bid. If a mandatory Pre-Bid Conference is indicated on the Invitation for Bid, bid packages will be made available only through the time and date of the conference. Subsequent addenda, if applicable, will be furnished only to those bidders who attended the Mandatory Pre-Bid Conference.
13. **Bid Inquiries.** Questions regarding this bid should be referred to:

Contractual Questions
Procurement Services Division
Attention: Marc Robles
Email: mrobles@cityofsacramento.org
Phone: (916) 808-6240

Technical Questions
Fleet Management Division
Attention: Jonathon Yee
Email: jjyee@cityofsacramento.org
Phone: (916) 808-6289

These inquiries must be submitted at least 10 days prior to the bid opening date. Any interpretations by the City will be made in the form of a written amendment. The receipt of such an amendment must be acknowledged in accordance with the directions on the amendment. Oral explanations or instructions given before the award of the contract will not be binding.

14. **Bid Evaluation.** In determining the amount bid by each bidder, the City shall disregard mathematical errors in addition, subtraction, multiplication and division that appear obvious on the face of the Bid. When such a mathematical error appears on the face of the Bid, the City shall have the right to correct such error and to compute the total amount bid by the bidder on the basis of the corrected figure or figures.

When an item price is required to be set forth in the Bid, and the total for the item set forth separately does not agree with a figure which is derived by multiplying the item price times the City's estimate of the quantity to be provided or performed for said item, the item price shall prevail over the sum set forth as the total for the item unless, in the sole discretion of the City, such a procedure would be inconsistent with the intent of the bid process. The total paid for each such item of work shall be based upon the item price and not the total price.

Should the Bid contain only a total price for the item and the item price is omitted, the City shall determine the item price by dividing the total price for the item by City's estimate of the estimated quantities to be provided or performed.

If the Bid contains neither the item price nor the total price for the item, then it shall be deemed incomplete and the Bid shall be disregarded.

15. **Determination of Lowest Responsible Bidder.** Sacramento City Code '3.56.020 provides that the lowest responsible bidder shall be determined as follows:
- a. In determining whether a bidder is responsible, consideration shall be given to: (i) the quality and performance of the supplies to be provided by the bidder; (ii) the ability, capacity and skill of the bidder to perform the

contract or effectuate the transaction; (iii) the ability of the bidder to perform the contract or effectuate the transaction within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience and efficiency of the bidder; (v) the quality of the bidder's performance on previous purchases by, or contracts with, the City; (vi) the ability of the bidder to provide future maintenance, repair parts and services for the supplies provided.

- b. Based on the information provided in the bids, the City Council or the City Manager, as the case may be, shall identify those bids that are subject at the time of bid opening to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. This deduction shall be in addition to the application of any bid price preferences authorized by subsection c, below.
 - c. The City Council may by resolution, from time to time, adopt programs or procedures for providing bid price preferences, including but not limited to, preferences to promote the participation and utilization of small business enterprises, energy conservation and sustainability in the City's contracting for supplies and nonprofessional services. The lowest responsible bidder shall be the responsible bidder whose bid price is the lowest after all bid prices are calculated to include any such preferences. The calculation of such preferences shall be in addition to any deduction of sales or use tax required by subsection b, above.
16. **Pre-Award Conference.** The apparent lowest responsible bidder may be required to attend a pre-award conference at a mutually acceptable time at which requirements of the Contract will be reviewed. At that time, samples of forms, reports etc., will be submitted by the Contractor for final approval.
 17. **Award by Item or Group.** The City reserves the right to increase or decrease quantities listed, make separate awards for any item, line-item or category/group of items to the lowest responsible bidders for such items or category/groups of items.
 18. **Multiple Awards.** The City reserves the right to make multiple awards in order to provide alternate sources to insure continuity of supply if meeting the City's requirements within an acceptable time period exceeds the capacity or capability of the primary contractor(s).
 19. **Contract Award.** Within ninety (90) days after the bid opening, a contract will be awarded by the City to the lowest responsible bidder, subject to the right of the City to reject all bids or waive informalities or minor irregularities, as it may deem proper. The time for awarding a contract may be extended in the sole discretion of the City, if required to evaluate bids or for such other purposes as the City may determine, unless the Bidder objects to such extension in writing with his/her bid. The City may accept this bid offer by issuance of a Notice of Award Letter, Contract and/or a Purchase order covering award of said bid to Bidder at any time on or before the 90th day following the day of this official bid is opened by the City. This offer shall be irrevocable for 90 days after bid opening or 90 days after City Council awards the bid, whichever comes last, however this period may be extended by mutual agreement of both parties.
 20. **Emergency/Declared Disaster Requirements.** In the event of an emergency or if a City facility is declared a disaster area by the county, state or federal government, this contract may be subjected to unusual usage. The consultant/vendor/supplier shall service the City during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the consultant/vendor/supplier shall apply to serving the City's needs regardless of the circumstances. If the consultant/vendor/supplier is unable to supply the goods/services under the terms of the contract because of a disruption in its chain of supply or service, then the consultant/vendor/supplier shall provide proof of such disruption which may include, but not be limited to a copy of a letter from the source of supply or service stating reason for the disruption. Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted.
 21. **Acceptable bid format.** All bids must show the full name of the firm bidding and must be on forms furnished by the City of Sacramento Procurement Division. All responses must be written in ink, printed by typewriter or computer generated. Responses made in pencil will not be considered.

- 22. Submission of Bids.** The City is not responsible for misaddressed bids. Please assure that you utilize the address appropriate for the method of delivery. Bid submissions made via commercial express courier (FedEx, United Parcel Svs.) must be addressed as follows:

**City of Sacramento
City Clerk's Office
915 I St., Ste. 122391
Sacramento, CA. 95814-2604**

Bid submissions made via personal delivery shall be delivered to:

**City of Sacramento
City Clerk's Office
Historic City Hall
915 I St., Ste. 116
Sacramento, CA. 95814**

- 23. Bid Protest.** Bid protests must be filled and maintained in accordance with the provisions of Sections 3.60.460 through 3.60.560 of the Sacramento City Code. Bid protests that do not comply with Sections 3.60.460 through 3.60.560 of the Sacramento City Code shall be invalid and shall not be considered. A bid protest fee of \$750.00 is required at the time of filing to be considered valid in accordance with City of Sacramento Resolution No. 2003-231 dated April 29, 2003. As used herein, the term "bid protest" includes any bid protest that (1) claims that one or more bidders on this contract should be disqualified or rejected for any reason, or (2) contests a City staff recommendation to award this contract to a particular bidder, or (3) contests a City staff recommendation to disqualify or reject one or more bidders on this contract. Sections 3.60.460 through 3.60.560 of the Sacramento City Code are available at <http://www.qcode.us/codes/sacramento/>

- 24. City of Sacramento Boycott of Arizona-Headquartered-Businesses.** On June 15, 2010, the Sacramento City Council adopted Resolution No. 2010-346 opposing two Arizona laws (SB 1070 and HB 2162) that will allow Arizona police to arrest individuals suspected of being unlawfully present in the United States and to charge immigrants with a state crime for not carrying immigration documents. Sacramento City Council Resolution No. 2010-346 also called for a boycott of the State of Arizona and businesses headquartered in Arizona until Arizona repeals or a court nullifies SB 1070 and HB 1262. Resolution No. 2010-346 provides, in pertinent part, that "where practicable and where there is no significant additional cost to the City, the City of Sacramento shall not enter into any new, amended, extended or supplemental contracts to purchase or procure goods or services from any business or entity that is headquartered in Arizona ..."

**SUBJECT TO PARAGRAPH 7 ABOVE, THE CITY CANNOT ACCEPT A
BID FAILING TO COMPLY WITH ANY OF THE ABOVE REQUIREMENTS.**

SECTION I - REQUIREMENTS

C. BID SIGNATURE PAGE

BID NO. B11131061010

FOR SERVICES/SUPPLIES: Original Equipment Manufacturer (O.E.M.) Parts and Services

To the City of Sacramento:

The undersigned bidder (hereafter referred to as the "Bidder" or the "Contractor") submits the attached bid, and certifies as follows: that the only persons or parties interested in this bid as principals are those named herein as bidder; that this bid is made without collusion with any other person, firm, or corporation; that in submitting this bid the bidder has examined all of the Contract Documents identified below; that the bidder proposes and agrees that if this bid is accepted, the bidder will execute and fully perform the contract for which bids are called; that the bidder shall perform all the work and/or furnish all the materials specified in the Contract Documents, in the manner and time therein prescribed, and according to the requirements as therein set forth; and that the bidder shall take in full payment therefor, the prices set forth in the attached Pricing Schedule.

CONTRACT DOCUMENTS

Performance of and payment for the contract for which bids are called shall be subject to all terms and conditions of the Invitation for Bid, the Bid Instructions and Requirements, the Bid, the Pricing Schedule(s), the Items Requiring Bidder Response, the Required Submittals, the General Conditions, and any Addenda, Amendments, Special Provisions, Specifications, Plans or other requirements applicable to performance of the work and/or furnishing the materials specified herein. Such documents, referred to herein as the Contract Documents, are fully incorporated herein by this reference and are collectively referred to as the Contract. By submitting this Bid, the Contractor agrees to fully perform each and every provision of the Contract, provided that City awards the Contract to the Contractor, and provided further that City shall have no obligation hereunder unless and until such award is made. Contractor shall not make any changes to this form without City's written approval, and any changes made without such approval shall be void.

To Be Filled Out By Bidder

NAME OF CONTRACTOR: Cummins WEST INC
ADDRESS: 875 Riverside Prkwy WEST Sacramento CA 95605
PHONE #: 916-371-0630 FAX #: 916-376-1504 E-MAIL: _____
STATE TAX I.D. #: C1521071 FED. TAX I.D. #: 94-3147123
City of Sacramento Business Operation Tax Certificate #: K46252
(Contract award will not be processed without a valid and current Certificate Number.)

TYPE OF BUSINESS ENTITY (check one): Individual/Sole Proprietor Partnership
 Corporation Limited Liability Company
Other (please specify: _____)

BY: (signature of authorized person) Robert M. Dickie
PRINT NAME: Robert M. Dickie
TITLE: Regional Manager, Sacramento's Bedding

Note: All information submitted in or in connection with a bid is submitted under penalty of perjury. The City shall have the right to terminate at any time any contract awarded pursuant to a bid that contains false information.

FOR CITY USE ONLY

The Bid was opened on 2.23.11

Bid Bond Required: No; Yes - Amount: \$ _____

Received: Cashiers or Certified Check drawn on a California bank; Surety Bond

City Clerk

CONTRACT AWARD

Bid Items Included in the Contract: All Items, unless otherwise specified below

Specify: Items 1 & 2

Contract Not-to-Exceed Amount: \$ 400,000.

Award Date: 4.5.11

CONTRACT APPROVAL

Approved as to Form:

Approved:

Attest:

Kenneth B. Bowler

City Attorney

City Manager
(Or Authorized Designee)

City Clerk

D. EQUAL BENEFITS ORDINANCE (EBO) REQUIREMENTS

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

“Domestic Partner” means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

“Employee Benefits” means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. “Employee benefits” shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR’S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee’s name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

- (a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.
- (b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment “A.”
- (c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment “B.”

ATTACHMENT A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822
- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages- Reasonable attorney's fees and costs

ATTACHMENT B



**YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S
NON-DISCRIMINATION IN EMPLOYEE BENEFITS BY CITY CONTRACTORS ORDINANCE**

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Procurement Services Division, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th St., Bldg.1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Procurement Services Division, at the same address, containing the details of the alleged violation.

SECTION II CONTRACT DOCUMENTS

SECTION II – CONTRACT DOCUMENTS

A. GENERAL CONDITIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)

- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.

- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.

- 2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole

cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
5. **Conflict of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.
7. **CONTRACTOR Information.**
 - A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for

any unauthorized modification or use of such information for other than its intended purpose by CITY.

- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

9. **Term; Suspension; Termination.**

- A. **Termination for Cause.** If the City determines that the Contractor's performance is not satisfactory, and notifies the Contractor of such determination in writing, the Contractor shall correct the unsatisfactory condition(s) within 5 days after receiving such notification. If the

Contractor fails to correct the unsatisfactory condition(s) within 5 days, the City may declare the Contract terminated upon 30 days written notice and may, in the City's sole discretion, demand performance by the Contractor's surety, if any, or contract for performance of all or part of the remainder of Contract with another contractor. In the event two such notices of unsatisfactory performance are given in any calendar year, and in the event that Contractor shall again fail to satisfactorily perform pursuant to the Contract, City may thereupon terminate the Contract immediately, with no prior notice. ~~In the event of termination hereunder, the Contractor and/or its surety shall be liable and assessed for any and all costs for re-procurement and completion of the Contract.~~ *PWJ 30 DAYS PWJ*

B. Termination for Convenience. The City ~~may terminate the Contract, in whole or in part, for its convenience and without cause upon giving written notice, to the Contractor. The City shall pay all reasonable costs associated with the Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with such termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned, or any other costs, which have not been incurred, as of the date of termination.~~ *PWJ*

C. Termination After Completion Date. If the Contractor fails to complete its performance of the Contract within the time specified in the Contract (including any approved extension of such time), if any, the Contract may be terminated and, in the event of such termination, the Contractor shall not be paid or allowed any further compensation for any costs incurred after such termination. ~~The City may thereafter proceed to complete the Contract either by rebidding or otherwise, the Contractor and its surety, if any, shall be liable to the City for all loss or damage that the City may suffer on account of the Contractor's failure to complete the Contract on time.~~ *PWJ* This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.

10. Indemnity.

A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the ~~sole~~ negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR. *Contributory PWJ*

B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, ~~nor shall the limits of such insurance limit the liability of~~

Contractors liability hereunder shall not exceed the amount recoverable under the insurance coverage submitted.

RWJ

~~CONTRACTOR hereunder.~~ This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. **Insurance Requirements.** During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

~~It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.~~

Contractors liability here under shall not exceed the amount recoverable under the insurance coverage submitted. RWJ

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

RWJ

Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured's as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

 X Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insured's as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be

forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** The Contract Documents contain the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Contract. No alteration to the terms of this Contract shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Sacramento City Code. In the event of any conflict among the provisions of different Contract Documents, the conflict shall be resolved by giving precedence to the Contract Documents in the following order:

- A. Post-Award Amendments.
- B. Pricing Schedule(s), as corrected by City, if applicable.
- C. Pre-Award Addenda
- D. Special Provisions.
- E. Bid Instructions and Requirements
- F. General Conditions
- G. Technical Specifications and/or Plans

14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.

19. **Compliance with Laws.** The Contractor shall be responsible for strict compliance with all applicable

laws, regulations, court orders and other legal requirements applicable to the work to be accomplished pursuant to the Contract, including without limitation the California Occupational Safety and Health Act and all applicable safety orders issued by the Division of Occupational Safety and Health, Department of Industrial Relations, State of California, and all applicable requirements of Underwriters Laboratories and the Federal Communication Commission.

20. **Inspection.** Merchandise will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, ~~appearance,~~ proper functioning of all equipment and systems and conformance to all other requirements of the Contract. If deficiencies are found, it shall be the responsibility of the Contractor to ~~pick up the merchandise, make necessary correction and redeliver the merchandise for re-inspection and acceptance.~~ ^{land} Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made. ²⁰⁰⁷

21. **Funding Availability.**

- A. The Contract is subject to the budget and fiscal provisions of the Charter and City Code of the City of Sacramento.
- B. The City's payment obligation under the Contract shall not at any time exceed the amount of funds appropriated and approved for such purpose by the Sacramento City Council.
- C. The Contract shall terminate without penalty at the end of the fiscal year in the event funds to make payment under the Contract are not appropriated and approved for such purpose by the City Council for the succeeding fiscal year. If such funds are appropriated for only a portion of the fiscal year this Contract shall terminate, without penalty, at the end of the term for which funds have been appropriated. In the event of such termination, the Contractor shall not be entitled to recover any costs incurred after termination, subject, further, to the limitation in subsection 11.B. of these General Conditions.
- D. Notwithstanding any provision of the Contract Documents to the contrary, this section shall govern over any other provision of the Contract.

22. **Inspection of Facilities.** If requested by the City, the Contractor shall provide City with an inspection tour of Contractor's facilities at the location where the work under the Contract will be accomplished.

23. **Material Safety Data Sheets (MSDS).** It is mandatory for a manufacturer, Contractor or distributor to supply a MSDS with the first shipment of any hazardous material. Also at any time the content of an MSDS is revised, the Contractor shall provide new information relevant to the specific material.

24. **Notification of Material Changes in Business.** Contractor agrees that if it experiences any material changes in its business including, without limitation, a reorganization, refinancing, restructuring, leveraged buyout, bankruptcy, loss of key personnel, etc., it will immediately notify the City of the changes. Contractor also agrees to immediately notify the City of any condition which may jeopardize the scheduled delivery or fulfillment of Contractor's contractual obligations to the City. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Procurement Services Division reserves the right at its sole discretion to terminate the Contract either for cause or for convenience as provided in Section 9 of these General Conditions.

25. **Payment and Invoicing.** Unless otherwise specified in the Contract Documents, payment for services rendered or materials provided and accepted by City will be made monthly, in arrears, after receipt of a proper invoice.

- 26. Protection of Existing Facilities.** Contractor shall take every precaution to protect all public and private property during the performance of the Contract. Any damages caused by Contractor's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Contractor.
- 27. Guarantee.** By submitting its bid, the Contractor guarantees that all merchandise delivered and/or work or services performed under the Contract shall meet the minimum requirements set forth herein. If it is determined by the City that the merchandise delivered or work or services performed do not meet the minimum requirements of the Contract, the Contractor shall be required to correct the same at Contractor's sole expense.

SECTION II – CONTRACT DOCUMENTS

B. SPECIAL PROVISIONS

1.0 The intent of these specifications is to describe high quality services and related O.E.M. replacement parts for Cummins engines, Chevrolet vehicles, Pierce fire apparatus, BMW Police Motorcycles and Heil refuse bodies.

2.0 GENERAL CONTRACT SPECIFICATIONS

2.1 Manufacturing, Material and Design Practices

The bidder/manufacturer shall use material and design practices that are the best available in the industry for the conditions which items will be subjected to. All items provided shall conform in strength, quality of material and workmanship to recognized industry standards.

2.2 Specification Variances

If any of the items bid varies from the specifications, such variation(s) must be listed in writing and attached as part of the bid. The City of Sacramento reserves the right to waive minor variation(s) if in the opinion of the Procurement Services Manager the items offered meet the general intent of these specifications.

2.3 Manufacturer's Standard Equipment

- a. All items and components listed as standard by the manufacturer for items quoted shall be furnished whether or not such items are detailed herein. Optional equipment as necessary to meet the following requirements of this specification shall also be supplied.
- b. The City will not accept any part, component or system which is not an established standard product of the bidding manufacturer. By this is meant that any item or assembly which, relative to the supplying manufacturer's standard line of products, could be described as "first of its kind", "experimental", "only one of its kind to be built", "especially modified to comply with this specification", "prototype", or synonymous categoric descriptions, shall not be acceptable. All parts and components offered and delivered must conform to the manufacturer's standard production or be off-shelf available as a standard hardware production item.

2.4 Applicable Documents and Certifications

- a. Federal Motor Vehicle Safety Standard, Department of Transportation.
- b. State of California Motor Vehicle Code.
- c. Society of Automotive Engineering Standards.
- d. American Society of Mechanical Engineers (A.S.M.E.).

3.0 GENERAL CONTRACT PROVISIONS

3.1 Award

The City of Sacramento reserves the right to make an award on any item, group of items or in the aggregate to that/those lowest responsible bidder(s) whose bid(s) is/are most responsive to the needs of the City. Timely delivery is important and may influence the award.

3.2 Pick Up and Delivery

The successful bidder shall provide ~~pickup and delivery service~~ ^{of parts} as requested to the City of Sacramento Corporation Yard South, 5730-24th Street, Meadowview Service Center, 2812 Meadowview Road, Rooney Police Facility, 5303 Franklin Boulevard, Kinney Police Facility, 3550 Marysville Boulevard, North Area Corporation Yard (NACY), 918 Del Paso Road and other sites as required. ~~Pick up and deliveries shall be free of charge, and there shall be no minimum order required. If the order meets a \$250.00 minimum requirement, orders less than \$250 will be assessed a \$25 delivery fee.~~ ^{or will be made available for will call @ the Sacramento Branch.} All deliveries or shipments under this agreement shall be accompanied by one copy of a delivery tag. All delivery tags shall include the bidder's name, the City's purchase order number, the date of order, and itemized list of the materials furnished, including quantity, unit price and extension of each item, less applicable discount.

3.3 F.O.B.

All items are to be supplied F.O.B., Delivered, freight prepaid and allowed. Contractor will bear and pay freight charges at time of shipment and will hold title to goods up until they are received by the City of Sacramento at the shipping destination. Contractor will be responsible for filing all claims for damaged or lost goods.

^{Freight cost assumed by customer.}

3.4 Contract Period

Any contract(s) resulting from this bid shall be effective for a period of five ~~(5)~~ ² years from the date of award by City Council.

3.5 Prices

- a. The prices quoted to the City shall be as low as or lower than those charged the supplier's most favored customer for comparable quantities under similar terms and conditions, in addition to any discounts for prompt payment.
- b. Prices, discounts and labor costs that bidder used for quoting prices on the bid sheet, shall be applied to all City purchases. These discounts shall be firm (for all items) for the term of the agreement.
- c. Price sheets or CD-ROM listing prices shall be included with the bid, if available. These discounts and price sheets shall be firm for the term of the agreement. Prompt payment discounts, if any, shall be noted. In the event that there is a conflict or discrepancy between the pricing of any items listed on the bid sheet or the stated discount the City will refigure bidders bid using the price sheet(s) provided and the discount stated in the bid.
- d. Any manufacturer incentives that reduce vendor net cost shall be passed along to the City.

3.6 Price Adjustment

Price adjustments will be in accordance with the current published manufacturers' price listing as they are updated. Adjustments will not be allowed until the updated list is delivered to the Contract Representative, listed in Item 3.11. The discount from commercial or fleet retail pricing shall remain the same for the full term of the contract. In the event of a price decline, the benefit of such lower prices shall be immediately extended to the City.

Note: A 5% maximum labor price increase may be considered for services on the contract anniversary date, shall be based on the prior year pricing and shall remain in effect until the next contract anniversary date. ~~Justification and/or proof of labor cost increases (union contracts, etc.) shall be required upon the request of an increase for the cost of services.~~ *FWJ*

All requests for price adjustments must be submitted in writing prior the end of each contract year, and shall be reviewed and approved in writing by the City's contract representative and the Procurement Services Division before such increases are applied.

3.7 Conference (Pre-Award)

The apparent lowest responsible bidder may be requested to attend a pre-award conference at a mutually acceptable time at which all requirements of these specifications will be reviewed.

3.8 Evaluation (Inspection)

Merchandise, components, and units will be inspected before acceptance by an authorized representative of the City of Sacramento for workmanship, appearance, proper functioning of all items and equipment, and conformance to all other requirements of this specification. If deficiencies are found, it shall be the responsibility of the contractor to ~~pick up the merchandise, make necessary correction, and redeliver the merchandise for re-inspection and acceptance.~~ *FWJ* Payment and/or commencement of discount period (if applicable) will not be made until corrective action has been made.

3.9 Warranty (Commercial)

- a. The bidder agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the contractor gives to any customer for such supplies or services, and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this contract.
- b. In case of default by supplier, the City reserves the right to procure the articles or services from other sources ~~and to hold the supplier responsible for any excess costs occasioned to the City thereby.~~ *FWJ*
- c. The provisions of this contract shall in no way prohibit the City from purchasing the same products and/or services listed herein from another supplier.
- d. ~~Bidder shall reimburse the City for the necessary labor for the removal of defective item(s) and reinstallation of the new component. Hourly rates shall be paid in accordance to the original installation, not to exceed \$98.00 per hour.~~ *FWJ*

3.10 Modification of Contract

The City may order changes in the work herein required and may order extra work in connection with the performance of the contract and the Contractor may comply with such orders, except that:

- a. If changes in requirements, reports, or materials are of such a nature as to increase or decrease the cost of any part of the work, the price fixed in the contract will be increased or decreased by such amount as the Contractor and the Procurement Services Manager may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of work.
- b. No order for any alteration, modification, or extra work which will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Procurement Services Manager. No oral statement of any person whom so ever shall in any manner or degree modify or otherwise affect the terms of this contract, including the requirements of the specifications.

3.11 Contract Representative

During performance of the contract, the City will be represented by Jonathon Yee, telephone (916) 808-6289.

3.12 Payment and Invoicing

- a. Invoices shall be mailed or delivered to City of Sacramento, Fleet Management Division, 5730-24th Street Bldg. 1, Sacramento, CA 95822-3699.
- b. One invoice shall be sent to each shop weekly for all services performed and parts delivered during the billing week. The weekly invoice shall list each delivery tag with a subtotal for taxable and non taxable items. All invoices shall include City purchase order number.
- c. If invoices are incorrectly priced, the City shall notify the vendor, and may withhold payment until the pricing is corrected. If invoices are continually or regularly in error, the City may terminate this agreement.

3.13 Payment Terms

- a. Payment terms are net 30 days unless bidder otherwise quotes. All cash discounts, if taken, shall be computed from the date of delivery or completion and acceptance of material, or from date of receipt of invoice, whichever is latest. Invoices must be submitted as specified at the time of shipping authorization.
- b. If invoices are incorrectly priced, the City shall notify the Vendor, and may withhold payment until the pricing is corrected. If invoices are continually or regularly in error, the City may terminate this agreement.

Note: If a prompt payment discount is offered and the invoice is priced incorrectly, the prompt payment discount period will not start until the City receives the corrected invoice. (No exceptions)

3.14 Drug-Free Workplace Policy

The City of Sacramento is committed to providing a safe workplace for its employees and citizens alike. An essential part of this commitment is keeping the work environment free from drugs. In 1989, to assist in the achievement of this end, the City established a Drug-Free Workplace Policy.

As a contractor doing business with the City, it is expected that your firm will also implement a drug-free policy that informs your employees of the dangers and prohibition of drug abuse and that you will join with the City in maintaining a drug-free workplace.

If, in the performance of work under this contract, any employee of the Contractor exhibits unacceptable behavior that may be related to use of drugs or alcohol, the City reserves the right to discuss the employee's behavior with the Contractor. If the unacceptable behavior persists, the City may require that the employee be removed from all work under this contract.

3.15 Environmentally Preferable Procurement

The City has adopted a "Sustainable Procurement Policy (SPP) and program. The goal is to encourage the procurement of products and services that help minimize environmental impact resulting from use and disposal of these products. Contractors are encouraged to offer Energy Star, Green Seal, EcoLogo, EPEAT, or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. City also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this IFB. Contractors will offer products that have minimal virgin materials and maximum use of recycled products. Contractor must work with the City to attain these goals.

Notwithstanding the above, the Contractor agrees to supply the City of Sacramento with environmentally preferable and effective products in compliance with the specifications in this solicitation and provide services that help minimize environmental impact resulting from use and disposal of products specified in this bid.

The Contractor further agrees that its products specified in this bid do not contain any items, ingredients or components prohibited under the City's SPP Policy.

The City may terminate this contract or take other appropriate actions if the contractor fails to comply or provide adequate supporting documentation to substantiate compliance with the City's SP Policy and requirements specified in the bid.

The City's SPP Policy is available on line at:

[http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable Purchasing Policy_SPP.pdf](http://www.cityofsacramento.org/generalservices/procurement/documents/Sustainable_Purchasing_Policy_SPP.pdf) or by contacting the Procurement Services Division at (916) 808-6240.

SECTION II – CONTRACT DOCUMENTS

C. TECHNICAL SPECIFICATIONS

4.0 General Requirements

- a. The bidder's facility shall be a clean and safe working environment. It shall comply with all Federal, State, and local regulations.
- b. All items provided under this agreement shall comply with all applicable Federal, State and local regulations including State of California Motor Vehicle Code, if applicable.
- c. Authorized representative(s) of the City of Sacramento shall be permitted to inspect the bidder's facility prior to the award of this bid. After the award of the bid, authorized representative(s) of the City shall be permitted to inspect the bidder's facility on a periodic basis. More frequent inspections shall be permitted if problems develop and remain unresolved. Persistent and/or unresolved performance or other issues may be grounds for termination of this agreement.
- d. The bidder shall be an established and factory authorized O.E.M. parts dealer and/or service center by the manufacturer for which they are bidding.

4.1 Repair Service Requirements

- a. The quoted labor rate will be used to perform all repairs to City vehicles/equipment.
- b. All repairs performed shall be completed at the quoted labor rate and in addition, parts used for repairs shall be priced in accordance with the parts discount quoted in this bid.
- c. Prior to the commencement of any work or repairs on City equipment, vendor shall provide a written estimate to the City for the requested or recommended repairs. Approval from an authorized representative of the City must be given prior to work being performed and shall be based on the provided estimated cost. If additional work is required, approval from the City must be obtained prior to work being completed. The City will not be responsible for the costs associated with any unauthorized repairs.
- d. All work shall be inspected by a representative of the City for proper completion and correction of the reported concerns. If it is determined that the concerns were not properly addressed or the quality of work is unacceptable, the vendor shall, at their expense, make the necessary corrections.
- e. ~~It shall be the responsibility of the vendor to pick up and deliver vehicles/equipment for warranty and repair services. This service shall be provided at no additional charge to the City.~~
- f. The City may consider and allow on-site repairs/services when appropriate.

4.2 Parts Requirements

- a. All items provided under this agreement shall be original equipment manufacturer (O.E.M.) line of replacement parts. All items provided under this agreement shall be equivalent in function and workmanship to the parts originally supplied on the vehicle(s) unless superseded by the vehicle/equipment manufacturer. No generic parts shall be supplied.
- b. The bidder shall maintain adequate local inventory of popular items and items regularly stocked by the City, to meet the City's emergency needs. Emergency needs shall be delivered ~~within three (3)~~ *AS SOON AS POSSIBLE*

FWD

~~hours~~ of order; or shipped within the same business day if available and vendor's inventory location is not within the greater Sacramento region. Stock orders shall be delivered within two (2) working days of order, if available, from the manufacturer. Back orders shall be filled within four (4) working days. The City shall be notified of all back-orders. *Provided order is available from manufacturer.*

- Applicable freight costs apply.*
- c. If the vendor does not have the required part(s) in stock, vendor personnel shall determine if the City's need is immediate. If the successful bidder does not have the required item(s) on a regular basis, and/or frequently obtains parts from other dealers, the City may determine that the bidder does not "maintain adequate inventory" and may terminate this agreement.
 - d. Availability and timely delivery are critical to the award and maintenance of this agreement. Failure to maintain adequate inventory or provide timely delivery shall be grounds for termination.
 - e. The successful bidder agrees to accept the return of unused and undamaged items purchased through this agreement at 100% of the contract price. *within 30 days of purchase*

LESS 15% restocking fee excludes electrical items/components.

SECTION III BIDDER RESPONSE DOCUMENTS

SECTION III – BIDDER RESPONSE DOCUMENTS

A. ITEMS REQUIRING BIDDER RESPONSE

NOTE: Bidders must provide responses where indicated to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of bid.

1. SBE/EBE FIVE PERCENT (5%) BID EVALUATION PREFERENCE

On February 9, 1999, the Sacramento City Council adopted an Emerging and Small Business Development program to provide enhanced opportunities for the participation of small business enterprises (SBEs) and emerging business enterprises (EBEs) in the City's contracting and procurement activities. Any bid or quotation submitted by a firm that is certified as a SBE by the City of Sacramento, or that is certified as an EBE by the City of Sacramento, will receive a five percent (5%) bid evaluation preference for the purpose of determining the lowest responsible bidder. If, after applying the 5% bid evaluation preference, the bid of an SBE/EBE firm receiving such preference is determined to be the lowest responsible bid, the award will be made for the actual amount bid. To receive this bid evaluation preference, a firm must be certified as a SBE or EBE at the time of bid opening. Questions regarding eligibility for SBE/EBE certification should be addressed to the City of Sacramento Procurement Division, at (916) 808-6747.

A. SMALL BUSINESS ENTERPRISE (SBE) CERTIFICATION

Is the firm submitting the bid certified by the City of Sacramento as a small business enterprise? Check the appropriate block below:

- YES** – Our firm is certified by the City of Sacramento as a small business enterprise.
- NO** -Our firm submitting is not certified by the City of Sacramento as a small business enterprise.

If the response to the above is YES, provide the City of Sacramento Certification Number

B. EMERGING BUSINESS ENTERPRISE (EBE) CERTIFICATION

Is the firm submitting the bid certified by the City of Sacramento as an *emerging* business enterprise? Check the appropriate block below:

- YES** - Our firm is certified by the City of Sacramento as an emerging business enterprise.
- NO** - Our firm is not certified by the City of Sacramento as an emerging business enterprise.

If the response to the above is YES, provide the City of Sacramento Certification Number: _____

2. LOCAL BUSINESS SALES/USE TAX DEDUCTION

The Sacramento City Code requires the City to identify those bids that are subject to the City's local sales or use tax under the provisions of Part 1.5 of Division 2 of the California Revenue and Taxation Code and Chapter 3.24 of the Sacramento City Code. The lowest responsible bidder shall be determined after the amount of local sales or use tax that would be received by the City is deducted from such bids. The current rate at which such local sales or use tax is received by the City is one percent (1%). Therefore, in evaluating bids to determine the lowest responsible bidder, bids that are subject to this tax at the time of bid opening shall have an amount equal to one percent (1%) of the taxable total deducted from the bids. This deduction shall be in addition to the application of any bid price preferences or other deductions authorized by the City Code. Such deductions shall be made for bid evaluation purposes only. Contract awards shall be made at the actual bid amount.

In order to identify those bids that are subject to the City's local sales or use tax, all bidders shall respond to the following:

Does the bidder have fixed offices or locally taxable distribution points within the boundaries of the City of Sacramento? Yes; or No

If the answer to Question above is "Yes":

a) Provide the address of the bidder's fixed offices or locally taxable distribution point(s):

Specify: fixed office location or distribution point(s): _____

b) Provide the bidder's current, valid City of Sacramento Business Operations Tax Certificate Number: _____

3. PAYMENT DISCOUNT

Will you offer a prompt payment discount? Yes [] or No (Net 30 days)

If Yes, the Payment Discount is _____% for payment within _____ calendar days, which will be computed from the date delivery is made and is accepted by the City, or the date a proper invoice is received, whichever is later.

PAYMENT DISCOUNTS SHALL BE CONSIDERED IN AWARDING THE CONTRACT AS SET FORTH IN THE "BID INSTRUCTIONS AND REQUIREMENTS", PARAGRAPH 11 (ENTITLED "PAYMENT DISCOUNTS").

4. ELECTRONIC FUNDS TRANSFER (EFT) (informational only):

Do you have the ability to accept electronic payments (EFT)? Yes [] or No

If Yes, what percentage discount would you offer the City to be paid through EFT? _____%

5. CITY OF SACRAMENTO BOYCOTT OF ARIZONA-HEADQUARTERED BUSINESSES:

Pursuant to the provisions of Resolution No. 2010-346, the City may determine that a bid from a business or entity that is headquartered in Arizona is nonresponsive and the City may reject the bid on that basis.

Bidders that are headquartered in the United States shall certify in the space below the state where the bidder is headquartered:

California
State Where Bidder is Headquartered

SECTION III – BIDDER RESPONSE DOCUMENTS

**B. ITEMS THAT MUST BE SUBMITTED BY SUCCESSFUL
BIDDER PRIOR TO START OF CONTRACT**

The following documents are required to be completed and submitted by the successful bidder prior to the award of contract of the contract:

1. CERTIFICATE OF INSURANCE

Successful bidders are REQUIRED to submit the necessary Certificate(s) of Insurance as called for in the General Conditions prior to award of the contract.

2. BUSINESS OPERATIONS TAX CERTIFICATE

Chapter 3.08 of the Sacramento City Code requires that anyone conducting business in the City of Sacramento obtain a **Business Operations Tax Certificate** and pay the applicable tax if necessary. Successful bidders will be REQUIRED to show compliance with this requirement prior to award of the contract.

To obtain information about the Business Operations Tax Certificate, contact the City of Sacramento, Revenue Division, 915 I Street, Room 1214, Sacramento, CA 95814, or telephone (916) 808-8500.

SECTION III – BIDDER RESPONSE DOCUMENTS

C. DECLARATION OF COMPLIANCE
Equal Benefits Ordinance

Name of Contractor: Cummins West Inc.
 Address: 875 Riverside Parkway West Sacramento, Ca. 95605

The above-named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit F.
2. As a condition of receiving this Contract, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the "Ordinance").
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

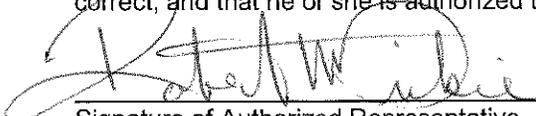
4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Contract is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such policies may not exceed one (1)

year from the date this Contract is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Contract is executed by the City.
- g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
- h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
- i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits, are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Contract is executed by the City.

- 5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; debarment for future contracts until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
- 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
- 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Contract award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
- 8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



 Signature of Authorized Representative

2-23-11

 Date



 Print Name


 Title

SECTION III – BIDDER RESPONSE DOCUMENTS

E. PRICING SCHEDULE

For furnishing the City of Sacramento with high quality O.E.M. services and related replacement parts for Cummins engines, Chevrolet vehicles, Pierce fire apparatus, BMW Police Motorcycles and Heil refuse bodies as required in accordance with the provisions and specifications contained herein.

The bid items listed are for evaluation purposes only. The quantities and items specified are an annual estimate of the City's requirements. Vendor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability of funds and actual needs as they occur throughout the contract period. Estimated annual expenditures and quantities listed on the Pricing Schedule are based on the most recent historical usage and are subject to increase or decrease.

Parts Discounts offered in the table below shall be stated as a percentage less than the Manufacturer's commercial or fleet retail pricing.

Labor rates offered in the table below shall be stated as the hourly shop labor rate for all repairs and shall include all fees and surcharges. No additional fees and surcharges are allowed and no allowances will be made for after hours or overtime labor.

To calculate extension cost for parts, bidders shall multiply the discount percentage offered times the estimated value/quantity and reduce the bid cost by the calculated discount. To calculate extension cost for services, bidders shall multiply the estimated value/quantity by the proposed labor rate.

Item	Value/Qty.	Description	Parts Discount / Labor Rate	Extension
1	\$75,000	Cummins parts	18 %	\$11,500
2	2000 hrs	Cummins repair services	\$ 115/hr	\$230,000
3	\$20,000	Chevrolet/GMC parts	%	\$
4	1000 hrs	Chevrolet/GMC repair services	\$	\$
5	\$75,000	Pierce fire apparatus parts	%	\$
6	2000 hrs	Pierce fire apparatus repair services	\$	\$
7	\$80,000	BMW Motorcycle Parts	%	\$
8	1000 hrs	BMW Motorcycle repair services	\$	\$
9	\$100,000	Heil refuse body parts	%	\$
10	2500 hrs	Heil refuse body repair services	\$	\$

Bidder must attach the most current price sheet/schedule(s) from the manufacturer or submit a CD/ROM, listing all O.E.M. parts available and the manufacturers list price.

Price List Identification and date of publication Cummins and Recon list price file 02/21/2011

Price List Identification and date of publication _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/23/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Artex Risk Solutions, Inc. Two Pierce Place Itasca, IL 60143-3141 Sharon Size	1-630-285-3641	CONTACT NAME: Maria Prost PHONE (A/C, No, Ext): E-MAIL ADDRESS: maria_prost@artexrisk.com PRODUCER CUSTOMER ID #:	FAX (A/C, No): 630-285-4199
INSURED Cummins West, Inc. 14775 Wicks Blvd. San Leandro, CA 94577-6779		INSURER(S) AFFORDING COVERAGE	NAIC #
		INSURER A: ZURICH AMERICAN INS CO	16535
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 19867045 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Broad Form Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC		GLO 3731028-06	06/01/10	06/01/11	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Auto Phys. Damage		BAP 3731027-06	06/01/10	06/01/11	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$		UMB 6547547	06/01/10	06/01/11	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	WC 3731026-07	06/01/10	06/01/11	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Property Insurance		PRA 3738807-07	06/01/10	06/01/11	Bldg & Prsnl Prp Blanket

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The City of Sacramento, its officials, employees and volunteers are added as additional insureds for work performed by the Named Insured. Such insurance as is afforded to the additional insureds is on a primary and non contributory basis. Waiver of subrogation applies to Workers Compensation. The insurance coverage evidenced by this certificate shall not be modified, changed, or cancelled except after (30) days prior written notice has been given to the certificate holder.

CERTIFICATE HOLDER

City of Sacramento
Procurement Services Division
915 "I" Street, Suite 116
Sacramento, CA 95814
USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Additional Insured – Automatic Owners, Lessees Or Contractors



Policy No.	Exp. Date of Pol	Eff. Date of End	Agency No	Addl. Prem	Return Prem.
GLO 3731028-06	06/01/11	06/01/10	Artex Risk	\$0.00	\$0.00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured:

Address (including ZIP Code):

This endorsement modifies insurance provided under the:
Commercial General Liability Coverage Part

- A. **Section II – Who Is An Insured** is amended to include as an insured any person or organization who you are required to add as an additional insured on this policy under a written contract or written agreement.
- B. The insurance provided to the additional insured person or organization applies only to “bodily injury”, “property damage” or “personal and advertising injury” covered under **SECTION I – Coverage A – Bodily Injury And Property Damage Liability and Section I – Coverage B – Personal And Advertising Injury Liability**, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part by:
 1. Your acts or omissions; or
 2. The acts or omissions of those acting on your behalf; and resulting directly from:
 - a Your ongoing operations performed for the additional insured, which is the subject of the written contract or written agreement; or
 - b “Your work” completed as included in the “products-completed operations hazard”, performed for the additional insured, which is the subject of the written contract or written agreement.
- C. However, regardless of the provisions of paragraphs **A. and B.** above:
 1. We will not extend any insurance coverage to any additional insured person or organization:
 - a That is not provided to you in this policy; or
 - b That is any broader coverage than you are required to provide to the additional insured person or organization in the written contract or written agreement; and
 2. We will not provide Limits of Insurance to any additional insured person or organization that exceed the lower of:
 - a The Limits of Insurance provided to you in this policy; or
 - b The Limits of Insurance you are required to provide in the written contract or written agreement.

- D. The insurance provided to the additional insured person or organization does not apply to: “Bodily injury”, “property damage” or “personal and advertising injury” arising out of the rendering or failure to render any professional architectural, engineering or surveying services including:
1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 2. Supervisory, inspections, architectural or engineering activities.
- E. The additional insured must see to it that:
1. We are notified as soon as practicable of an “occurrence” or offense that may result in a claim;
 2. We receive written notice of a claim or “suit” as soon as practicable; and
 3. A request for defense and indemnity of the claim or “suit” will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured, if the written contract or written agreement requires that this coverage be primary and non-contributory.
- F. For the coverage provided by this endorsement:
1. The following paragraph is added to Paragraph **4.a.** of the Other Insurance Condition of **Section IV – Commercial General Liability Conditions**:

This insurance is primary insurance as respects our coverage to the additional insured person or organization, where the written contract or written agreement requires that this insurance be primary and non-contributory. In that event, we will not seek contribution from any other insurance policy available to the additional insured on which the additional insured person or organization is a Named Insured.
 2. The following paragraph is added to Paragraph **4.b.** of the Other Insurance Condition of **Section IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured by attachment of an endorsement to another policy providing coverage for the same “occurrence”, claim or “suit”. This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.
- G. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to the identified additional insured.

Any provisions in this Coverage Part not changed by the terms and conditions of this endorsement continue to apply as written.