

RESOLUTION 1766

RESOLUTION APPROVING A THREE YEAR SERVICE CONTRACT FOR PERFORMING SEMI ANNUAL INSPECTION, LOAD TEST, AND ANNUAL SERVICE ON THE CITY'S EMERGENCY GENERATOR.

WHEREAS, the City of West Branch, Iowa desires to receive generator inspection, load testing, and annual maintenance services; and

WHEREAS, Interstate Power Services have provided the City of West Branch services in the past and the City has been satisfied with the services provided; and

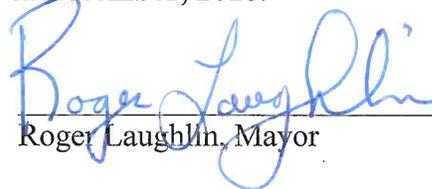
WHEREAS, this contract includes an inspection and load test scheduled in the months of February, and an annual generator service in the months August; and

WHEREAS, this three year contract would require an annual total payment \$1631.12 for services rendered, and an anticipated contract expense of \$4,893.36 for three years of service as aforementioned; and

WHEREAS, any repairs discovered will be quoted at \$125.00/hr and parts at cost plus 25%).

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa, that the aforementioned agreement with Interstate Power Systems of Davenport, IA is hereby approved.

Passed and approved this 3rd day of December, 2018.


Roger Laughlin, Mayor

ATTEST:


Redmond Jones II, City Administrator/Clerk



8200 North Fairmount Street • Davenport, IA 52806 • 563-388-9988

City of West Branch
PO Box 218
West Branch, IA 52358

Customer # 160236
Generator Service Contract
November 20, 2018

Attention: Matt Goodale

This letter is to confirm our three year service contract renewal pricing for performing Semi annual Inspection, Load Test and Annual Service on your emergency generator.

Generator: Kohler 125REOZJG

"A" Semi Annual Inspection
& Load Test

Scope of work:

Our technician will travel to your site during scheduled service month (February) and perform generator inspection per attached check list. Technician will set up portable load bank test equipment and perform 2 hour generator load bank test. Labor, equipment and travel mileage charges are included. Mechanics inspection and load bank reports will be furnished to customer via e-mail.

Contract price: \$868.50

(Misc. additional repairs will be done at \$125.00/hr and parts at cost plus 25%)

"B" Annual Generator Service

Scope of work:

Our technician will travel to your site during scheduled service Month (August) and perform generator inspections per Attached checklist. Engine oil, oil filters and fuel filters will be changed. Old motor oil and filters will be taken back to Interstate's shop for recycling. Labor, oil, filters, travel mileage and recycling charges are included.

Contract price: \$762.62

(Misc. additional repairs will be done at \$125.00/hr and parts at cost plus 25%)

BRANCH LOCATIONS

ALTOONA, IA • CEDAR RAPIDS, IA • DAVENPORT, IA • CAROL STREAM, IL • ROCKFORD, IL • GARY, IN
IRON MOUNTAIN, MI • MINNEAPOLIS, MN • VIRGINIA, MN • BILLINGS, MT • LINCOLN, NE • OMAHA, NE • BISMARCK, ND
FARGO, ND • GRAND FORKS, ND • WILLISTON, ND • SIOUX FALLS, SD • BUTLER, WI • GILLETTE, WY

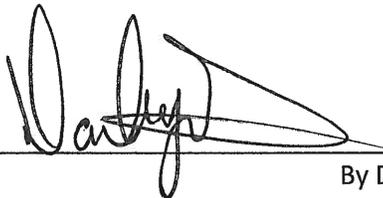
City of West Branch
PO Box 218
West Branch, IA 52358

Customer # 160236
Generator Service Contract
November 20, 2018 (page 2 of 2)

Terms:

Contract commences with first scheduled service. Prices are firm through December 31, 2021. Sales tax, if applicable, is additional. Prices quoted are per service event and are based upon performing services during regular business hours (7:00 am to 3:30 pm, Monday through Friday, excluding Holidays). Mechanic's reports will be furnished via e-mail. Additional repairs, if any, will be approved by you, and billed separately. "General Terms & Conditions" (sample enclosed) apply. You will be billed for services only after they have been performed. Purchase order numbers must be furnished at time of service (or in advance), if you want them to appear on our invoices. Please countersign where indicated below to affirm your acceptance.

Interstate PowerSystems



By Don Ayers – Branch Manager

Acceptance Date 12-3-2018

Customer Signature Roger Laughlin

Print name/title Roger Laughlin / Mayor

e-mail address (for reports) mattg@westbranchiowa.org

Attachments:

Terms & Conditions
Sample Generator Inspection Checklist
Sample Load Bank Report Form

GENERAL TERMS & CONDITIONS

1. Formation of Contract
 - 1.1 These terms and conditions constitute a complete statement of the agreement between the Customer and Interstate Power Systems, Inc. or its subsidiaries or operating divisions, or Istate Truck, Inc. or its subsidiaries or operating divisions ("Interstate"), which shall not be supplemented or amended except as set forth on the face of this invoice or by separate written agreement signed by both parties. Provisions set forth on the face hereof shall govern, where inconsistent with these terms and conditions.
 - 1.2 Terms and conditions additional to or varying from those of this Invoice shall not be binding on Interstate unless specifically agreed to in writing by Interstate. Interstate's acceptance or acknowledgement of the Customer's purchase orders or shipping instructions shall not constitute such written agreement. If this Invoice shall be deemed an acceptance of a prior offer by the Customer, such acceptance is expressly conditional on the Customer's assent to any additional or different terms contained herein.
2. Acceptance
 - 2.1 No offers, arrangements or orders shall be binding on Interstate unless and until confirmed by Interstate in writing.
 - 2.2 Acceptance by the Customer of delivery of all or any part of the products sold hereunder and/or acceptance of the services performed by Interstate shall be an acknowledgement and acceptance by the Customer of these Terms and Conditions, whether or not the Customer shall have first received this Invoice.
3. Price and Payment
 - 3.1 The price shall be as specified on the face of this Invoice.
 - 3.2 Prices, quotations, specifications and other terms and all statements appearing in Interstate's sales literature and otherwise made by Interstate are subject to change without notice. Interstate is not responsible for typographical errors made in any of its publications or stenographic or clerical errors made in preparation of quotations. All such errors are subject to correction. Without limiting the generality of the foregoing, all prices are subject to and shall be increased by sales tax where applicable.
 - 3.3 Payment of the selling price and additional costs are due in accordance with the terms set forth on the face of this Invoice. All payments hereunder shall be made to Interstate at 2901 E 78th Street, Minneapolis, MN 55425. Complaints or claims by the Customer shall not impair Interstate's right to payment as provided hereunder and any adjustments to be made as a result of such complaints shall be made subsequent to such payment.
 - 3.4 If the credit of the Customer shall at any time, in the sole judgement of Interstate, become impaired, Interstate may at, its option, and without incurring any liability therefor, divert or prevent the discharge of product shipments in route to the Customer or cancel any scheduled services and cancel the unfilled portion of the contract, or require the Customer to give such security as Interstate may specify to ensure payment or require payment in advance before making any further shipment or performing any future services. All costs and expenses incurred by Interstate as a result of its exercise of any right or option under this paragraph shall be for the account of the Customer.
 - 3.5 Prompt payment is of the essence of this contract and a default in any payment will, at the option of Interstate, operate as a breach of the entire contract. Past due payments shall bear interest computed monthly at a rate of 1½ percent per month on the outstanding balance, or such lower rate as shall be the highest allowable under applicable law.
 - 3.6 The Customer shall be in default hereunder if any one or more of the following events occurs: (a) the Customer shall default in fulfilling any of its obligations to Interstate; (b) a receiver, liquidator or trustee of the Customer, or of any of its property, is appointed by court order; (c) the Customer is adjudicated bankrupt or insolvent; (d) any property of the Customer is sequestered by court order; (e) a petition is filed by or against the Customer under any bankruptcy, reorganization, arrangement, insolvency, moratorium, readjustment of debt, dissolution or liquidation law of any jurisdiction; (f) the Customer becomes insolvent, makes an assignment for the benefit of its creditors; admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of the Customer or of all or any substantial part of its property in the event of such default, all unpaid payments shall, at Interstate's option, become immediately due and payable and Interstate shall have the right to consider its contract with the Customer cancelled and to recover damages, and shall further have all rights and remedies, including those of a secured party, provided by applicable law. For purposes of this paragraph "Customer" shall include any corporation controlling, controlled by, or under the common control with Customer.
 - 3.7 All costs incurred by Interstate as a result of non-payment or delay in payment by the Customer, including, without limitation collection costs and reasonable attorney's fees, shall be paid by the Customer.
4. *****DISCLAIMER OF WARRANTIES
INTERSTATE EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FUTURE PERFORMANCE, OR OTHERWISE.*****
5. Remedies of Customer
 - 5.1 Interstate shall not be liable for any claim arising in connection with the products or services sold to the Customer unless written notice is given by Customer to Interstate as provided in paragraph 5.2 below.
 - 5.2 Written notice of any objection, complaint or claim concerning the products or services must be given: (a) with respect to claims of damage to product(s) which occurred in transit, within thirty (30) days after the date on which risk of loss with respect to the product(s) passes to the Customer; (b) with respect to claims that the product(s) does not conform to specifications, within thirty (30) days following the date on which risk of loss with respect to the products passes to the Customer, provided however, that no claim of non-conformity will be honored if the Customer has previously notified Interstate of its acceptance of the product(s) following inspection thereof; (c) with respect to complaints/claims related to services within thirty (30) days of the date of the invoice related to such services.
 - 5.3 Failure to give such notice in the manner and within the time provided herein shall be deemed a waiver by the Customer of all claims with respect to such products and services.
 - 5.4 Interstate will, at its sole discretion, either reimburse the Invoice value to the Customer of product(s) or service found to be defective, or repair or replace free of charge all products or services found to be defective, within thirty (30) days after the date notice was given in accordance with paragraph 5.2 above, provided, however, that such products, or the product on which service work was performed, have not been

- abused by the Customer or used in conditions for which the products were not intended. The aforesaid right of repair, replacement, or reimbursement shall be the Customer's sole and exclusive remedy in the event of non-conformity or defect in the product(s) or services. **Interstate shall not be liable for the incidental or consequential damages to the Customer. In no event shall Interstate's liability exceed Interstate's Invoice value to the Customer of the product(s) or services sold regardless of the nature of the claim of the Customer.**
- 5.5 By accepting Interstate's goods or services to which these terms and conditions apply, Customer hereby agrees that the statute of limitations for any claim of breach of contract or any other cause of action arising out of or relating to any contract between Customer and Interstate shall be one year, measured from the date of delivery of the products or the date of the invoice related to such services.
 6. Passage of Title - Security Interest
 - 6.1 Interstate shall retain title to ownership of, and security interest in the products until the contract purchase price set forth on the face hereof shall have been paid in full and all covenants and agreements of Interstate herein shall have been performed. Interstate shall have all common law and statutory lien rights available in the state where goods or services are provided and the Customer hereby agrees that if Customer takes possession of the related products without making payment to Interstate and thereafter Interstate regains lawful possession of the equipment that was once subject to lien claims while there remains a balance due Interstate, all such lien rights shall be reinstated as if Interstate had always maintained lawful possession of all such equipment.
 - 6.2 At the request of Interstate, the Customer shall execute and deliver to Interstate all such financing statement and other instruments and documents as may be requested by Interstate to evidence and to perfect its security interest in the products. Expenses of filing financing statements or other security documents with the appropriate state and local governmental authorities shall be for the account of the Customer.
 7. Force Majeure
 - 7.1 If because of force majeure Interstate is unable to carry out any of its obligations under this agreement and if Interstate promptly notifies the Customer in writing expressly claiming such force majeure, then the provisions of paragraph 7.2 shall apply. The term "force majeure" as used herein shall mean any causes reasonably beyond the control and without fault or negligence of Interstate which wholly or in substantial part prevent the manufacture, transportation, loading, unloading, delivery or storage of the products sold hereunder or prevents the performance of services. Examples, without limitation, of force majeure are acts of God, acts of the public enemy, acts of war, riot or civil commotion, labor disputes, labor or material shortages, accidents, fire, explosions, floods, breakdowns or of damage of plants, equipment or facilities, partial or complete embargoes imposed by originating or connecting inland carriers, interruptions to or contingencies of transportation, orders or acts of any governmental authority, acts, rules, regulations or expressed policies of any government.
 - 7.2 If force majeure notice is given under paragraph 7.1 above, the obligations of Interstate shall be suspended to the extent made necessary for such force majeure and during its continuance, if the obligations of Interstate remain suspended hereunder for a period amounting to forty-five (45) consecutive days measured from the dates of performance and at any time thereafter, then either party may terminate the agreement without liability by giving fifteen (15) days' notice to the other party. At the expiration of said fifteen (15) days, unless such condition shall have been ended, the party giving such notice may terminate this agreement forthwith.
 8. LIABILITY FOR DAMAGES
 - 8.1 INTERSTATE SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY THE PRODUCTS DELIVERED OR TO BE DELIVERED TO THE CUSTOMER, THE SERVICES INTERSTATE PERFORMED, OR BY THE CUSTOMER'S OR ANY THIRD PARTY'S USE OF SUCH PRODUCTS. **INTERSTATE SHALL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES.**
 - 8.2 INTERSTATE'S OBLIGATIONS HEREUNDER ARE EXPRESSLY SUBJECT TO THE OCCURRENCE OF EVENTS OF FORCE MAJEURE, AND NO LIABILITY SHALL BE INCURRED BY INTERSTATE FOR DAMAGES OF ANY NATURE RESULTING FROM SUSPENSION, REDUCTION OR TERMINATION OF DELIVERIES OR FAILURE TO PERFORM SERVICES FOR REASONS OF FORCE MAJEURE, OR FROM INTERSTATE'S COMPLIANCE WITH ANY GOVERNMENT ACTION.
 - 8.3 THE CUSTOMER SHALL HOLD INTERSTATE HARMLESS FROM ALL CLAIMS OR ACTIONS BROUGHT BY THIRD PARTIES WITH RESPECT TO ANY DAMAGES DESCRIBED IN THIS ARTICLE 8.
 9. Waiver, Abandonment and Severability of Terms
 - 9.1 Waiver by Interstate of any default of the Customer shall not be deemed a waiver of any other default of the Customer. The express provision herein for certain rights and remedies of Interstate shall not be construed to deprive Interstate of any other rights and remedies to which it would otherwise be entitled under applicable law.
 - 9.2 Any property of the Customer left on Interstate's premises which remains unclaimed for thirty (30) days shall be deemed abandoned and Interstate shall have the right to dispose of such property in any manner it so chooses.
 - 9.3 The invalidity of any provision of these Terms and Conditions shall not affect the remaining provisions hereof.
 10. Governing Law - Notice
 - 10.1 This invoice shall be interpreted in accordance with the internal laws of the State of Minnesota (without giving effect to its conflicts of law's rules) and no presumption shall be deemed to exist in favor or against either party as a result of the preparation and/or negotiation of this Invoice.
 - 10.2 This Invoice and all the terms and conditions hereof shall be binding upon the Parties and their respective successors and assigns, however, the Customer shall not assign or otherwise transfer any of its rights or obligations hereto without the prior written consent of Interstate.
 - 10.3 The parties hereto submit to the exclusive jurisdiction of the courts of the State of Minnesota (including Hennepin County Conciliation Court), and the Minnesota Federal Courts in connection with any dispute related to their relationship. The parties hereto also agree to service of any complaint by certified mail. To the extent that the Customer or any of its property has or may hereafter acquire any right of sovereign immunity from suit, the Customer hereby irrevocably waives any such right of sovereign immunity in respect of its obligations, rights and duties under this agreement.
 - 10.4 Notices or other communications shall be given by facsimile or e-mail, or by registered or certified mail, return receipt requested. Facsimile or e-mail notice shall be deemed received twelve hours after transmission. Mail notice shall be deemed received on the third day after mailing (or on the next business day if the third day is not a business day). Where both methods of notice are used, the earlier shall establish the effective date of notice. Notice shall be given to the address of a party as stated on the face hereof until appropriate notice otherwise.