



**CASHMERE CITY COUNCIL MEETING**  
MONDAY, SEPTEMBER 23, 2024, 6:00 P.M., CITY HALL

**THE PUBLIC CAN ATTEND IN PERSON, CALL-IN OR LOG-IN TO ZOOM TO PARTICIPATE IN THE CITY COUNCIL MEETING. PLEASE CALL-IN OR LOGIN 5 MINUTES PRIOR TO THE MEETING.**

**To Join the Meeting Go To <https://zoom.us>  
Meeting ID: 882 719 9871 Passcode: 788276  
Audio Only: PH# 1-(253)-215-8782**

**AGENDA**

CALL TO ORDER - ROLL CALL – FLAG SALUTE

ANNOUNCEMENTS

PUBLIC COMMENT PERIOD (For Items Not on the Agenda)

APPROVAL OF AGENDA

CONSENT AGENDA

1. Minutes of September 9, 2024, Regular Council Meeting
2. Payroll and Claims Packet Dated September 23, 2024
3. Set public hearing October 28, 2024 on revenue sources including possible increase in property tax
4. Set public hearing November 12, 2024 on Preliminary Budget for 2025
5. Set public hearing November 25, 2024 on Final Budget for 2025
6. Set public hearing October 14, 2024 on petition to annex a five acre parcel at 5633 Evergreen Dr.

BUSINESS ITEMS

1. Woodard & Curran 2025 Budget for operating the water and wastewater facilities
2. Interlocal Agreement between the City and the Cashmere Transportation Benefit District
3. Interagency Agreement with Growth Management Services for GMA Periodic Update Grant-FY2025
4. Resolution No. 05-2024 authorizing the purchase of a mobile generator through Sourcewell

PROGRESS REPORTS

ADJOURNMENT

TO ADDRESS THE COUNCIL, PLEASE BE RECOGNIZED BY THE MAYOR AND STATE YOUR NAME WHEN YOU BEGIN YOUR COMMENTS  
**Americans with Disabilities Act (ADA) accommodations provided upon request (48-hour notice required)**

MINUTES OF THE CASHMERE CITY COUNCIL MEETING  
MONDAY SEPTEMBER 9, 2024, AT CASHMERE CITY HALL – In-Person and Digital

OPENING

Mayor Fletcher opened the regular City Council meeting at 6:00 p.m. at City Hall. Clerk-Treasurer Kay Jones took minutes.

The public can attend the council meeting in person, by phone, or by digital conference.

ATTENDANCE

	<u>Present</u>	<u>Not Present</u>
Mayor:	Jim Fletcher	
Council:	John Perry Chris Carlson Shela Pistorosi Jayne Stephenson Jeff Johnson	
Staff:	Kay Jones, Clerk-Treasurer Steve Croci, Director of Operations City Attorney, Julie Norton	

PUBLIC COMMENT

No public comment.

APPROVAL OF AGENDA

MOVED by Councilor Carlson and seconded by Councilor Stephensen to approve the agenda as amended. Motion carried unanimously.

CONSENT AGENDA

Minutes of August 26, 2024, Regular Council Meeting  
Payroll and Claims Packet Dated September 9, 2024

Claims Direct Pay and Check #43732 and #43734 through #43757 totaling \$184,260.47

Payroll Direct Pay and Check #43699 through #43731 totaling \$112,426.58

Manual Check #43733 not needing prior approval

MOVED by Councilor Carlson and seconded by Councilor Stephenson to approve the items on the Consent Agenda. Motion carried unanimously.

SHERIFF MORRISON – UPDATE ON SHERIFF’S OFFICE

Sheriff Morrison and Corporal Haynes were present to update the council on the progress of the Sheriff Department. The Sheriff presented the 2023 Annual Report and discussed the highlights. All the contract cities are represented in the report with each city’s stats from 2019 through 2023.

Morrison announced his department has received federal funding for the body cameras and are working on funding for 42 cameras to place around Chelan County for additional eyes, especially in remote areas. The cameras do not have facial recognition, they would be used to identify vehicles in the area. Other

departments are using these cameras, which has resulted in success. This information can be shared with other law enforcement agencies in collaboration on cases. A 2-year pilot program will be established for use of the cameras.

The two largest issues for law enforcement are drugs and the homeless. The homeless population and camps are increasing everywhere. Sheriff Morrison stated that deputies can trespass someone if they are camped on private property and Chelan County amended their codes so that law enforcement can remove the homeless from county property. Morrison suggested the city look at the county's code and maybe tweak ours to match. It would be a great benefit to law enforcement if all the cities in Chelan County had the same language regarding the homeless.

ORDINANCE NO. 1329 ESTABLISHING THE CASHMERE TRANSPORTATION BENEFIT DISTRICT NO. 1  
MOVED by Councilor Carlson and seconded by Councilor Johnson to approve Ordinance No. 1329 establishing the Cashmere Transportation Benefit District No. 1. Motion carried unanimously.

SELECTION OF CONTRACTOR FOR THE S. DOUGLAS WATERLINE REPLACEMENT PROJECT  
MOVED by Councilor Carlson and seconded by Councilor Johnson to approve the selection of Accent Foundations and More LLC as the contractor for the S. Douglas Street water line replacement in the amount of \$630,727.83. Motion carried unanimously.

#### PROGRESS REPORTS

Mayor Fletcher reported there was a water leak at Freedom Hills which turned out to be irrigation not city water.

The Emerald St. leak has been fixed.

Public Works is working on the leak at the pool.

Slab Jack will be raising and leveling the slabs of sinking concrete at the pool.

The paving on W. Pleasant Street has been completed.

#### ADJOURNMENT

Mayor Fletcher adjourned the council meeting at 6:56 PM

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James Fletcher, Mayor

Attest:

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Kay Jones, Clerk-Treasurer



**NOTICE OF PUBLIC HEARING ON CITY OF CASHMERE  
REVENUE SOURCES AND POSSIBLE INCREASE IN PROPERTY TAXES**

The Cashmere City Council will hold a public hearing on Monday, October 28, 2024 at 6:00 p.m. at the Cashmere City Hall on the City of Cashmere Revenue Sources and possible increase in Property Taxes. The public is invited to attend said hearing and make comments.

If you are unable to attend in person, please call City Hall or access the agenda on the City's website for login information. Written comments can be sent to Kay Jones, City Clerk-Treasurer at [kay@cityofcashmere.org](mailto:kay@cityofcashmere.org).

Kay Jones  
City Clerk-Treasurer  
CITY OF CASHMERE

**Please publish one time only on October 16, 2024**

The City of Cashmere is an equal opportunity provider and employer.

To file a complaint of discrimination, write USDA, Director, Office of Civil rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202)720-6382 (TDD).



**NOTICE OF PUBLIC HEARING ON CITY OF CASHMERE  
PRELIMINARY 2025 BUDGET**

The Cashmere City Council will hold a public hearing on Tuesday, November 12, 2024 at 6:00 p.m. at the Cashmere City Hall on the City of Cashmere Preliminary Budget for 2025. The public is invited to attend said hearing and make comments.

If you are unable to attend in person, please call City Hall or access the agenda on the City's website for login information. Written comments can be sent to Kay Jones, City Clerk-Treasurer at [kay@cityofcashmere.org](mailto:kay@cityofcashmere.org).

Kay Jones  
City Clerk-Treasurer  
CITY OF CASHMERE

**Please publish one time only on October 30, 2024**

The City of Cashmere is an equal opportunity provider and employer.

To file a complaint of discrimination, write USDA, Director, Office of Civil rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202)720-6382 (TDD).



## **NOTICE OF PUBLIC HEARING ON CITY OF CASHMERE FINAL 2025 BUDGET**

The City of Cashmere Preliminary 2025 Budget has been filed with the City Clerk-Treasurer. The Cashmere City Council will hold a public hearing on the Final 2025 Budget for the City of Cashmere on Monday, November 25, 2024, at 6:00 p.m. at the Cashmere City Hall, 101 Woodring Street. Copies of the preliminary budget are available by November 21st at Cashmere City Hall, 101 Woodring Street, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday. The public is invited to attend said hearing and make comments.

If you are unable to attend in person, please call City Hall or access the agenda on the City's website for login information. Written comments can be sent to Kay Jones, City Clerk-Treasurer at [kay@cityofcashmere.org](mailto:kay@cityofcashmere.org).

Kay Jones  
City Clerk-Treasurer  
CITY OF CASHMERE

**Publish twice, November 6 and November 13**

The City of Cashmere is an equal opportunity provider and employer.

To file a complaint of discrimination, write USDA, Director, Office of Civil rights, 1400 Independence Avenue SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202)720-6382 (TDD).



## City of Cashmere

101 Woodring Street  
Cashmere, WA 98815  
Ph (509) 782-3513 Fax (509) 782-2840  
Website [www.cityofcashmere.org](http://www.cityofcashmere.org)

### CITY OF CASHMERE NOTICE OF PUBLIC HEARING

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**NOTICE IS HEREBY GIVEN** that the Cashmere City Council will hold a public hearing on Monday, October 14, 2024, at 6:00 PM at the Cashmere City Hall, 101 Woodring Street, Cashmere, Washington, on the petition submitted by Corey Van Lith for a 5-acre parcel of land located at 5633 Evergreen Drive for annexation into the incorporated city limits as Multi Family zoning.

If you are unable to attend in person, please call City Hall or access the agenda on the City's website for login information. Written comments can be sent to Kay Jones, Clerk-Treasurer at [kay@cityofcashmere.org](mailto:kay@cityofcashmere.org).

Publish: Cashmere Valley Record on October 2, 2024

Via Electronic Mail

September 13, 2024



Mr. Steve Croci  
Director of Operations  
City of Cashmere  
101 Woodring Street  
Cashmere, WA 98815

Dear Steve,

We would like to begin by expressing our gratitude for the partnership that has developed with the City of Cashmere, and we are looking forward to working with the City for years to come.

Budget season has quickly arrived, and we would like to share the 2025 proposed budget for your consideration. The Base Budget includes the below adjustments for the following reasons:

- As experience is gained operating the drinking water and wastewater systems the costs become more predictable. With 27 months of operations information available the expenses associated with operating the system are becoming well defined.
- The area's average CPI for the past 12 months is 3.1%.
- Chemical costs have stabilized over the past year and are no longer increasing faster than CPI, as well as efficiencies in the wastewater facility have been found to reduce overall costs.
  - Polymer, that is used for wastewater solids thickening in the Dissolved Air Flotation (DAF) unit, has been dramatically reduced through strict operational controls and adjustments to the system. This has reduced usage of this chemical substantially.
- Laboratory reagents and outside analysis costs have increased more than the CPI during the past 12 months.
  - As a point of information, the renewal of the Wastewater NPDES is upcoming in late 2025 and may change the overall sampling requirements at the facility which will change the outside analysis costs at the facility.
- The maintenance and repair budget is increased \$30,000 above CPI to replace valves and fire hydrants that are inoperable in the water system.





<u>Expense</u>	<u>2024 Budget</u>	<u>2025 Proposed Budget</u>
Direct Labor, Benefits, & Tech Support	\$858,641	\$867,159
Chemical Costs	\$125,000	\$100,000
Residuals Management Costs	\$82,558	\$85,117
Maintenance and Repair Cost	\$154,354	\$189,139
Laboratory Costs	\$50,000	\$51,550
Office Supplies	\$2,356	\$2,380
Miscellaneous Operating Costs	\$57,886	\$58,460
Utility Cost	\$90,294	\$91,189
<b>Subtotal Costs</b>	<b>\$1,421,089</b>	<b>\$1,444,995</b>
Fixed Fee (8% of Subtotal Costs)	\$113,687	\$115,600
Transition Costs (\$123,438/Amortized over 56 months)	\$26,451	\$26,451
Washington Business & Occupation Tax	\$27,805	\$28,265
<b>Total Budgeted Costs</b>	<b>\$1,589,033</b>	<b>\$1,615,310</b>

Once the budget is approved, please sign, and return a copy of this letter.

Please feel free to contact me with any questions or concerns.

Sincerely,

WOODARD & CURRAN

Chris McMahon, Area Manager

CC: Jim Fletcher, Mayor  
 Kay Jones, City Clerk  
 Dorien McElroy, Project Manager  
 Dave Kitzmiller, Operations Leader – West Region  
 Brian Ravens, O&M Controller  
 Marc Thomas, National Operations Leader

Acceptance:

\_\_\_\_\_  
 City of Cashmere

\_\_\_\_\_  
 Date

**AN INTERLOCAL AGREEMENT BETWEEN**  
**THE CITY OF CASHMERE, WASHINGTON,**  
**AND**  
**THE CASHMERE TRANSPORTATION BENEFIT DISTRICT**

This Agreement between the City of Cashmere, Washington (“City”), and the Cashmere Transportation Benefit District (“TBD”), each of whom is organized as a Municipal Corporation under the laws of the state of Washington, is dated this 23<sup>rd</sup> day of September, 2024.

**WHEREAS**, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local governmental units to make the most efficient use of their powers by enabling them to cooperate on the basis of mutual advantage; and

**WHEREAS**, the City is empowered to operate, maintain, construct, and reconstruct, public street infrastructure within its City limits in accordance with the powers granted pursuant to RCW 35A.11.020 and Chapter 35A.47 RCW; and

**WHEREAS**, pursuant to Ordinance No. 1329, the City established the TBD and authorized funding for any purpose allowed by law, including to operate the TBD and to make transportation improvements consistent with existing state, regional, and local transportation plans; and

**WHEREAS**, the TBD may, by resolution, authorize a measure to be voted upon by citizens authorizing certain projects to be funded if the ballot proposition is approved; and

**WHEREAS**, if the ballot proposition is approved by the voters it will be necessary to have an agreement in place to enable the parties to this Agreement to implement and construct the projects funded by the TBD;

**NOW, THEREFORE,**

The parties have entered into this Agreement in consideration of the mutual benefits to be derived and to coordinate their efforts through the structure provided by the Interlocal Cooperation Act, RCW Chapter 39.34.

**1. Purpose and Interpretation.** The City is empowered by Title 35A to construct, reconstruct, maintain and preserve City streets and other related public infrastructure either by contract or through the use of City forces. The TBD has been constituted in accordance with State law to provide a source of funding for the maintenance and preservation of streets and construction of other transportation related infrastructure within the City limits of the City. The TBD has no employees and its officers are City Council Members serving in an ex officio capacity. In order to make the most efficient use of public monies, to avoid duplication of effort, and to coordinate their efforts, the parties have entered into this Agreement. In the event of ambiguity

or the need for guidance arises, this Agreement shall be interpreted in accordance with Chapter 36.73 RCW, the Bylaws of the TBD and the provisions of the Governmental Accounting Act and RCW 43.09.210 as the same exists or shall hereafter be amended. In the event that any provision of this Agreement is held to be in conflict with existing statute or any future amendment thereof, such provisions shall be severable, and the remaining provisions of this agreement shall remain in full force and effect.

2. **Obligations of the TBD.** In accordance with the requirements of Chapter 36.73 RCW, City Ordinance No. 1329, Resolution of the TBD, and the TBD Bylaws, the TBD agrees to:

a. Provide to the City all funding received from any and all lawful sources which the TBD in its sole discretion may levy for the purpose of completing the TBD's authorized projects.

b. Continue the annual provision of funding for the projects approved by the TBD, so long as the TBD remains in existence. Such funding shall be in accordance with the provisions of Ordinance No. 13-29 and any amendment thereto, Resolutions, the Bylaws of the TBD, and Chapter 36.73 RCW.

c. If a measure to the voters is approved that provides for the funding of the TBD, the TBD shall reimburse the City for all costs associated with placing the measure on the ballot.

3. **Obligations of the City.** The City shall:

a. Provide all staff and necessary related support to the TBD. The costs of such support shall be accounted for as a part of the City's annual report to the TBD. TBD funding shall first be applied to the reasonable charges incurred in establishing and staffing the TBD. Annual services provided may include the services provided by City staff and contract employees that serve the TBD and any associated costs, including, but not limited to the preparation of an annual work plan, finance plan, reporting, advertising, design, contracting, construction management, accounting, legal, and any and all other actual charges or City/TBD agreed upon percentage of charges associated with the proper application of TBD funding in accordance with law and ordinance. In consideration of the benefits derived by the City, overhead charges such as utilities, information technology, office supplies, and equipment shall be a contribution of the City to the parties' joint goals and objectives and need not be directly charged back to the TBD.

b. Maintain for the period established by the State Archivist retention schedule, financial records, kept in accordance with generally accepted accounting practice and governmental accounting requirements, as necessary to document that any and all funding received through the TBD is used only for the projects authorized in accordance with law and ordinance.

c. Immediately alert the TBD of any material changes in scope, schedule, or cost increases of 20% or greater to improvements funded in part or whole with TBD funds.

d. Utilize funding provided for projects shown on the TBD's annual work plan in accordance with the TBD's material change policy, law, and ordinance.

4. **Ownership.** Streets and related transportation infrastructure preserved, maintained and constructed with TBD funds are and shall remain the property of the City. No joint property ownership is contemplated under the terms of this agreement.

5. **No Joint Board.** No provision is made for a joint board. The TBD shall exercise its function in accordance with its enabling legislation and Bylaws, using staff as provided by the City, pursuant to law and to this agreement.

6. **Insurance; Indemnity.**

a. The parties agree to participate in the Washington Cities Insurance Authority (WCIA) insurance pool in accord with their respective agreements with WCIA. The original charge or premium for the TBD will be borne by the City as a cost to be covered under Section 3(a) and shall be paid for with funds received from or through the TBD. In the event that either or both cease to participate in the WCIA pool, the party or parties agree to obtain comparable coverage.

b. Each party agrees to indemnify and hold harmless the other party, its officers, agents, and employees from any claim, loss, or liability arising from or out of the other party's negligent, tortious, or illegal actions under this agreement.

7. **Termination.** This Agreement shall terminate or expire as follows:

a. This Agreement may be terminated by either party upon the provision of one hundred and eighty (180) calendar days notice. A final reconciliation of costs, payment, and a current report of completed activities shall be completed by Cashmere within such a period following the notice by either party.

b. Unless sooner terminated by either party, this Agreement shall expire on the date when the District is automatically dissolved in accordance with provisions of 36.73.170 RCW, as the same exists or is hereafter amended, or assumed in accordance with the provisions of Chapter 36.74 RCW.

***[The remainder of this page left blank intentionally]***

8. **Effective Date.** This Agreement shall be effective upon the last authorizing signature affixed hereto and when listed by subject on the City's website or other electronically retrievable public source as required by RCW 39.34.040.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first written above.

**CITY OF CASHMERE**

By: \_\_\_\_\_  
JAMES FLETCHER, MAYOR

Attest: \_\_\_\_\_  
KAY JONES, CITY CLERK-TREASURER

**CASHMERE TRANSPORTATION BENEFIT DISTRICT**

By: \_\_\_\_\_  
BOARD PRESIDENT

Attest: \_\_\_\_\_  
KAY JONES, BOARD CLERK

**APPROVED AS TO FORM  
OFFICE OF THE CITY ATTORNEY**

\_\_\_\_\_  
JULIE K. NORTON

# Staff Summary

**Date:** 9/19/2024  
**To:** City Council  
**From:** Director of Operation – Steve Croci  
**RE:** GMA Periodic Update Grant – FY2025

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The Growth Management Act (GMA) requires periodic updates to the comprehensive land use plan (Comp Plan) to be eligible for state grants for infrastructure projects and public benefit programs. Washington Department of Commerce is providing up to \$125,000 to update the Comp Plan. The city is requesting \$62,500 for activities which will occur in the 2024-2025 state budget biennium. The remainder of the available grant funds will be requested in the 2025-2026 state budget biennium.

**Staff Recommendation:**

MOVE to accept grant funding from the Department of Commerce for comprehensive land use planning and allow the mayor to sign documents.

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Washington State  
Department of  
**Commerce**

**Interagency Agreement with**

**City of Cashmere**

**through**

**Growth Management Services**

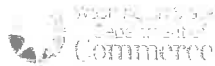
**Contract Number:**

**25-63335-107**

**For**

**GMA Periodic Update Grant – FY2025**

**Dated:** Date of Execution



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## Face Sheet

Contract Number: 25-63335-107

**Local Government Division  
Growth Management Services  
GMA Periodic Update Grant (PUG)**

<b>1. Contractor</b> City of Cashmere 101 Woodring St. Cashmere, WA 98815		<b>2. Contractor Financial Representative</b> Kay Jones Clerk/Treasurer <a href="mailto:kay@cityofcashmere.org">kay@cityofcashmere.org</a>	
<b>3. Contractor Representative</b> Steve Croci Director of Operations <a href="mailto:steve@cityofcashmere.org">steve@cityofcashmere.org</a>		<b>4. COMMERCE Representative</b> Jo Anne Wright Senior Planner <a href="mailto:joanne.wright@commerce.wa.gov">joanne.wright@commerce.wa.gov</a>	
<b>5. Contract Amount</b> \$62,500		<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	
<b>7. Start Date</b> Date of Execution		<b>8. End Date</b> June 30, 2025	
<b>9. Federal Funds (as applicable)</b> N/A		<b>Federal Agency:</b> N/A	
<b>10. Tax ID #</b> N/A		<b>11. SWV #</b> SWV0013174-00	
<b>12. UBI #</b> 041-000-329		<b>13. UEI #</b> N/A	
<b>14. Contract Purpose</b> Grant funding to assist the City of Cashmere with planning work for the completion the Growth Management Act (GMA) requirement to review and revise the comprehensive plan and development regulations under RCW 36.70A.130(5).			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget.			
<b>FOR CONTRACTOR</b>  DocuSigned by:  9188C9207605407  James Fletcher, Mayor City of Cashmere  9/18/2024   10:29 AM PDT Date		<b>FOR COMMERCE</b>   Mark K. Barkley, Assistant Director Local Government Division  Date  <b>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE</b>	



## Special Terms and Conditions

### 1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

### 2. ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING

If this Agreement is funded in whole or in part by the Climate Commitment Act, Grantee agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Grantee which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Grant, shall contain the following statement:

"The [PROGRAM NAME / GRANT / ETC.] is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at [www.climate.wa.gov](http://www.climate.wa.gov)."

The Grantee agrees to ensure coordinated Climate Commitment Act branding on work completed by or on behalf of the Grantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- A. Any project related website or webpage that includes logos from other funding partners;
- A. Any publication materials that include logos from other funding partners;
- B. Any on-site signage including pre-during Construction signage and permanent signage at completed project sites; and
- C. Any equipment purchased with CCA funding through a generally visible decal.

### 3. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

### 4. COMPENSATION

COMMERCE shall pay an amount not to exceed **sixty-two thousand, five hundred dollars (\$62,500)**, for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

### 5. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number 25-63335-107. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.



Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

#### Invoices and End of Fiscal Year

Final invoices for a state fiscal year may be due sooner than the 30th and Commerce will provide notification of the end of fiscal year due date.

The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

#### Grant Start Date

COMMERCE will pay the Contractor for costs incurred beginning July 1, 2024, for services and deliverables described under this Agreement.

#### Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

#### Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

#### Line Item Modification of Budget

- A. Notwithstanding any other provision of this contract, the Contractor may, at its discretion, make modifications to line items in the Budget (Attachment B) that will not increase the line item by more than fifteen percent (15%).
- B. The Contractor shall notify COMMERCE in writing (by email or regular mail) when proposing any budget modification or modifications to a line item of the Budget (Attachment B) that would increase the line item by more than fifteen percent (15%). Conversely, COMMERCE may initiate the budget modification approval process if presented with a request for payment under this contract that would cause one or more budget line items to exceed the 15 percent (15%) threshold increase described above.
- C. Any such budget modification or modifications as described above shall require the written approval of COMMERCE (by email or regular mail), and such written approval shall amend the Budget. Each party to this contract will retain and make any and all documents related to such budget modifications a part of their respective contract file.
- D. Nothing in this section shall be construed to permit an increase in the amount of funds available for the Project, as set forth in Section 3 of this contract, nor does this section allow any proposed changes to the Scope of Work, including Tasks/Work Items and Deliverables under Attachment A, without specific written approval from COMMERCE by amendment to this contract.



## **6. SUBCONTRACTOR DATA COLLECTION**

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

## **7. INSURANCE**

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

## **8. FRAUD AND OTHER LOSS REPORTING**

Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

## **9. ORDER OF PRECEDENCE**

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Add any other attachments incorporated by reference from the Face Sheet



## General Terms and Conditions

### 1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Attachments, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### 2. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### 3. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### 4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

### 5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
  - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;



- ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
  - iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.
- B.** The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**6. COPYRIGHT**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.



## 7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

## 8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## 9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

## 10. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

## 11. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

## 12. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## 13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day



notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

**14. SEVERABILITY**

The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

**15. SUBCONTRACTING**

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

**16. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

**17. TERMINATION FOR CAUSE**

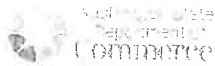
In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the Contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this Contract are not exclusive and are, in addition to any other rights and remedies, provided by law.





## 18. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days' written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

## 19. TERMINATION PROCEDURES

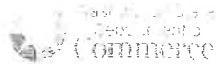
Upon termination of this Contract, COMMERCE, in addition to any other rights provided in this Contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the Contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.



**20. TREATMENT OF ASSETS**

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

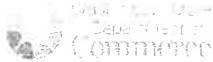
- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.
- E. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

**21. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

### Attachment A: Scope of Work

<b>Tasks &amp; Deliverables</b>	<b>Description</b>	<b>End Date</b>
Task 1	Develop periodic update work plan	
<b>Deliverable 1</b>	<b>D1: Periodic update work plan</b>	<b>June 13, 2025</b>
Task 2	Develop a public participation plan	
<b>Deliverable 2</b>	<b>D2: Public participation plan</b>	<b>June 13, 2025</b>
Task 3	Complete critical areas analysis	
<b>Deliverable 3</b>	<b>D3: Critical Areas Checklist</b>	<b>June 13, 2025</b>
Task 4	Complete comprehensive plan analysis and development regulations	
<b>Deliverable 4</b>	<b>D4: Comprehensive Plan Checklist</b>	<b>June 13, 2025</b>
Task 5	Population allocation and Housing allocation	
<b>Deliverable 5</b>	<b>D5: Population allocation and Housing allocation</b>	<b>June 13, 2025</b>
Task 6	Land Use Study	
<b>Deliverable 6</b>	<b>D6: Land Capacity Analysis</b>	<b>June 13, 2025</b>





**Attachment B: Budget**

<b>Deliverable</b>	<b>SFY25 Amount</b>
<b>D1:</b> Periodic update work plan	\$3,125
<b>D2:</b> Public participation plan	\$3,125
<b>D3:</b> Critical Areas Checklist	\$12,500
<b>D4:</b> Comprehensive Plan Checklist	\$18,750
<b>D5:</b> Population allocation and Housing allocation	\$6,250
<b>D6:</b> Land Capacity Analysis	\$18,750
<b>Contract Total</b> (State Fiscal Year 2025 only)	<b>\$62,500</b>

Internal routing form. Will be deleted after contract fully signed.

**Commerce GMS programs - Contract review and routing form**

Reviewer	Name	Initials and Date
Budget Analyst	Corina Campbell	 9/10/2024   1:19 PM PDT
GMS Managing Director	Dave Andersen	 9/10/2024   2:40 PM PDT
Deputy Assistant Director – LGD	Tony Hanson	

**Certificate Of Completion**

Envelope Id: 72E77729953A4A6387887845CECEBE95C  
Subject: Complete with Docusign: Cashmere PUG  
Division:  
Local Government  
Program: PUG  
ContractNumber: 25-63335-107  
DocumentType: Contract  
Source Envelope:  
Document Pages: 15  
Certificate Pages: 5  
AutoNav: Enabled  
Envelopeld Stamping: Enabled  
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Sent

Envelope Originator:  
Ashley Murphy  
1011 Plum Street SE  
MS 42525  
Olympia, WA 98504-2525  
ashley.murphy@commerce.wa.gov  
IP Address: 198.238.75.150

**Record Tracking**

Status: Original  
9/5/2024 9:50:46 AM  
Security Appliance Status: Connected  
Storage Appliance Status: Connected

Holder: Ashley Murphy  
ashley.murphy@commerce.wa.gov  
Pool: StateLocal  
Pool: Washington State Department of Commerce

Location: DocuSign  
Location: DocuSign

**Signer Events**

Corina Campbell  
corina.campbell@commerce.wa.gov  
Security Level: Email, Account Authentication  
(None)

**Signature**



Signature Adoption: Pre-selected Style  
Using IP Address: 198.239.10.154

**Timestamp**

Sent: 9/5/2024 9:53:43 AM  
Viewed: 9/10/2024 1:19:52 PM  
Signed: 9/10/2024 1:19:58 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Dave Andersen  
dave.andersen@commerce.wa.gov  
Security Level: Email, Account Authentication  
(None)



Signature Adoption: Pre-selected Style  
Using IP Address: 198.238.75.189

Sent: 9/10/2024 1:20:00 PM  
Viewed: 9/10/2024 2:40:06 PM  
Signed: 9/10/2024 2:40:08 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

James Fletcher  
mayor@cityofcashmere.org  
Security Level: Email, Account Authentication  
(None)



Signature Adoption: Pre-selected Style  
Using IP Address: 206.130.143.148

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Signed: 9/18/2024 10:29:27 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 9/18/2024 10:29:17 AM  
ID: 7cb56370-94ac-447f-b5ac-608765d97366

**Signer Events**

Tony Hanson  
tony.hanson@commerce.wa.gov  
Washington State Department of Commerce  
Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Mark Barkley  
mark.barkley@commerce.wa.gov  
Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Signature**

**Timestamp**

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**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

**Agent Delivery Events**

**Status**

**Timestamp**

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

**Carbon Copy Events**

**Status**

**Timestamp**

Steve Croci  
steve@cityofcashmere.org  
Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign



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**Witness Events**

**Signature**

**Timestamp**

**Notary Events**

**Signature**

**Timestamp**

**Envelope Summary Events**

**Status**

**Timestamps**

Envelope Sent  
Envelope Updated

Hashed/Encrypted  
Security Checked

9/5/2024 9:53:44 AM  
9/18/2024 9:03:53 AM

**Payment Events**

**Status**

**Timestamps**

**Electronic Record and Signature Disclosure**

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Washington State Department of Commerce (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.15 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

**All notices and disclosures will be sent to you electronically**



Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### **How to contact Washington State Department of Commerce:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [docusign@commerce.wa.gov](mailto:docusign@commerce.wa.gov)

#### **To advise Washington State Department of Commerce of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [docusign@commerce.wa.gov](mailto:docusign@commerce.wa.gov) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

#### **To request paper copies from Washington State Department of Commerce**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [docusign@commerce.wa.gov](mailto:docusign@commerce.wa.gov) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### **To withdraw your consent with Washington State Department of Commerce**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to [docusign@commerce.wa.gov](mailto:docusign@commerce.wa.gov) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

#### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

#### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Washington State Department of Commerce as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Washington State Department of Commerce during the course of your relationship with Washington State Department of Commerce.

# Staff Summary

**Date:** 9/19/2024

**To:** City Council

**From:** Director of Operation – Steve Croci

**RE:** Resolution No. 05-2024 - mobile generator purchase

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Resolution No. 05-2024 would authorize the purchase of a mobile generator through Sourcewell. Grant funds are the primary source of funding. The cost is \$110,761.86 (inclusive of tax).

**Staff Recommendation:**

MOVE to approve the purchase of a mobile generator and allow the mayor to sign documents.

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**RESOLUTION NO. 05-2024**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CASHMERE, WASHINGTON AUTHORIZING THE PURCHASE OF A CUMMINS PORTABLE DIESEL GENERATOR USING THE SOURCEWELL COMPETITION BIDDING PRICING, CONTAINING A SEVERABILITY PROVISION, AND SETTING AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Cashmere ("City") is a municipal corporation operating under the laws of the state of Washington; and

**WHEREAS**, pursuant to RCW 39.34.030, the City previously passed Resolution No. 01-2023, which approved an interlocal agreement with Sourcewell, a Minnesota public agency, in order to utilize the cooperative purchasing roster maintained by Sourcewell; and

**WHEREAS**, the City Public Works Director reviewed options for purchasing a portable diesel generator and located one for the lowest price that meets the City needs via Sourcewell's cooperative purchasing roster; and

**WHEREAS**, Cummins Sales and Service ("Cummins") was awarded Sourcewell Contract No. 092222-CMM via competitive bid procedure; and

**WHEREAS**, Cummins has the portable (trailer mounted) diesel generator (model C150D2RE) of the size, quality and capacity that the City requires at the Sourcewell competitive bid price of \$110,761.86 (inclusive of tax); and

**WHEREAS**, Sourcewell has confirmed that the pricing quoted to the City from Cummins is consistent with the pricing contained in Sourcewell Contract No. 092222-CMM; and

**WHEREAS**, the Mayor recommends the City Council approve the purchase of the Cummins portable diesel generator (Model C150D2RE); now, therefore,

**THE CITY COUNCIL OF THE CITY OF CASHMERE, WASHINGTON, HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The City Council hereby authorizes the Mayor to execute the Quotation & Terms of Conditions between the City and Cummins Parts and Service (Cummins) for the purchase of a Cummins portable diesel generator (Model C150D2RE) for the Sourcewell competitive bid price of \$110,761.86 in the form of the "Quotation & Terms and Conditions" attached hereto as Exhibit "1".

**Section 2.** If any section, sentence, clause, or phrase of this Resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

Resolution No. \_\_\_\_

unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Resolution.

**Section 3.** This Resolution shall be effective immediately upon passage by the City Council.

APPROVED by the City Council of the City of Cashmere, Washington at an Open Public Meeting the \_\_\_ day of \_\_\_\_\_, 2024.

APPROVED:

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JAMES FLETCHER, MAYOR

ATTEST/AUTHENTICATED:

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KAY JONES, CITY CLERK/TREASURER

APPROVED AS TO FORM:

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JULIE K. NORTON, CITY ATTORNEY

Resolution No. \_\_\_\_

August 5, 2024

**Prepared by**

Will Jameson  
 971-291-2228  
 lg883@cummins.com

We are pleased to provide you this quotation based on your inquiry.

Item	Description	Qty
1	Sourcewell Pricing per Contract # 092222-CMM	1
2	C150D2RE, Diesel Genset, 50/60Hz, 150kW, Standby-Rental U.S. EPA, Nonroad (Portable) Application Duty Rating - Prime Power (PRP) Emissions - Compliance EPA Tier 4 Final Certified C150D2RE, Diesel Genset, 50/60 Hz, 150kW, Standby-Rental Voltage 208 - 480 Variable Alternator - 60Hz, 208/416 - 240/480 Volt, 125/80C Standby/Prime Hydraulic Brake Trailer Pintle Hitch - 3 inch UN31A Certified Fuel Tank Generator Set Control - PowerCommand 3.3, Paralleling with MLD Distribution Panel - Rental Bus Bar Connection Packaging - Cummins Power Generation Genset Warranty - Industrial Mobile Base, Prime 3 Years/3000 hours Battery Charger - Rental Cam Lock Distribution Panel - U.S. Rental Auxiliary DEF Connections Paralleling Harness	1
3	Factory Direct Shipping Included. Offloading Excluded.	1
4	Startup and System Testing, 2hr Load Bank Test, Demonstration of the Generator Powering one of the Cities Sites, Training During Startup Visit, 1 Day.	1
5	Standard Electronic O&M's and Hard Copy of Owner's Manual A053W115 and Service Manual A047Z290	1

**QUOTE TOTAL: \$ 110,761.86**

Quote value does not include any tax.

**EXCEPTIONS AND CLARIFICATIONS:**

Quotation: Q-329185-20240805-1234

#### **COVID 19 SUPPLEMENTAL STATEMENT**

AS A RESULT OF THE OUTBREAK OF THE DISEASE COVID-19 ARISING FROM THE NOVEL CORONAVIRUS, TEMPORARY DELAYS IN DELIVERY, LABOUR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOUR OR SERVICE. WHILE CUMMINS SHALL MAKE EVERY COMMERCIALY REASONABLE EFFORT TO MEET THE DELIVERY, SERVICE OR COMPLETION OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE.

#### **INTERNATIONAL BUILDING CODE (IBC) CERTIFICATION**

The products in this quotation identified as meeting the requirements of the 2009 IBC have been certified by their respective manufactures via a combination of analytical testing and shaker table testing. Not all products have been shaker table tested.

#### **OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT (OSHPD)**

OSHPD seismic requirements are continuing to evolve. Please contact Cummins for the most current requirements for meeting OSHPD applications.

#### **SELECTIVE COORDINATION FOR NATIONAL ELECTRIC CODE (NEC) ARTICLE 700 AND 701 LOADS**

Cummins generators are equipped with the manufacturer's recommended circuit breaker. Information regarding this device can be supplied upon request. This quotation is not valid if any changes to this circuit breaker(s) is required to coordinate with other devices in the electrical distribution system. If changes are required, the customer must provide a copy of the coordination study listing the manufacturers part number of the disconnect device to be supplied with the generator and a revised quotation will be issued.

#### **TRANSFER SWITCH WITHSTAND AND CLOSE RATINGS**

Transfer switch(es), if included in this quotation, require a withstand and closing rating (WCR) capable of meeting the available upstream fault current (kAIC). The WCR may be based on a specific breaker rating or a time-based rating, and it is the responsibility of a qualified facility designer or engineer to verify compatibility. In the event that the proposed transfer switch(es) are not compatible, the transfer switch(es) will need to be re-quoted to ensure compatibility. A full listing of the WCR can be provided upon request and will be included as part of the submittal package.

#### **CUMMINS STANDARD EXCLUSIONS**

##### **Exhaust System**

All off-engine piping, hangers, flanges, gaskets, bolts, insulation, other materials and labor to install.

##### **Fuel System**

All fuel piping and materials not limited to; supply, return, venting, valves, coolers, filters, pumps, fittings, primary fuel regulator, storage tank & senders, external to genset package. All fuel for testing and initial fill. Fuel tank vent extensions and flame arrestors unless specifically listed in the Bill of Materials.

##### **Cooling System**

Intake louvers, exhaust louvers, air dampers, sheet metal ducting, flex adapters, sound attenuators/baffles. All off engine piping, flexible connections, labor and coolant for remote cooling systems.

##### **Electrical**

All off-engine wiring, field terminations of wiring, and lugs other than those detailed in our submittal. Mounting Mounting bolts and anchors. Vibration isolators (if included) may be shipped loose for installation at the jobsite by others. Seismic engineering calculations.

##### **Electrical Testing**

Not limited to International Electrical Testing Association (NETA), infrared scanning, harmonic content or other independent agency testing of switchgear, switchboards, protective relays, circuit breaker, electrical coordination studies, arc flash studies and reactive load site testing.

##### **Environmental Testing**

Environmental Protection Agency (EPA), local air quality district or other Authority Having Jurisdiction (AHJ), including acoustical.

##### **Programming**

All protective relay settings, breaker settings, PLC programming or other user configurable device programming.

##### **Documentation**

Electronic submittals and operation and maintenance manuals will be provided. Printed copies are available upon request, additional charges may apply.

##### **Miscellaneous**

Site specific labeling. Exhaust backpressure, airflow restriction or vibration analysis

##### **Design**

Cummins is not responsible for system design or engineering and does not guarantee system performance standards. Cummins will supply documentation and reasonable assistance to others responsible for system engineering, design and performance.

##### **Taxes and Permit**

Any applicable sales tax, permits, fees, licenses.

##### **Bonds**

Any bid bond, payment or performance bond or other type of bond.

**All items listed above are excluded and will only be supplied by Cummins if agreed upon, in writing, by a sales representative for Cummins.**



**NOTES:**

No Specification or Drawings Considered in This Proposal. This Budget is Based on an Email Request.

**LEAD TIME:**

Submittals:

Typical submittal lead time is 2 - 3 weeks after receipt of purchase order.

Equipment:

Current lead-time is 20 - 21 weeks after submittal approval and release for production.

Please feel free to contact me if you require any additional information; or if you have any further questions or concerns that I may be of assistance with.

Thank you for choosing Cummins.

**Submitted by:**

**Will Jameson, Inside Sales Representative - Commercial Power Generation**

[lq883@cummins.com](mailto:lq883@cummins.com)

971-291-2228

**SUBMITTALS.** An order for the equipment covered by this quotation will be accepted on a hold for release basis. Your order will not be released and scheduled for production until written approval to proceed is received in our office. Such submittal approval shall constitute acceptance of the terms and conditions of this quotation unless the parties otherwise agree in writing.

**THERE ARE ADDITIONAL CONTRACT TERMS AND CONDITIONS ATTACHED TO THIS QUOTATION, INCLUDING LIMITATIONS OF WARRANTIES AND LIABILITIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN. BY ACCEPTING THIS QUOTATION, CUSTOMER ACKNOWLEDGES THAT THE CONTRACT TERMS AND CONDITIONS HAVE BEEN READ, FULLY UNDERSTOOD AND ACCEPTED.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Purchase Order No

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## TERMS AND CONDITIONS FOR SALE OF POWER GENERATION EQUIPMENT

These Terms and Conditions for Sale of Power Generation Equipment, together with the quote ("Quote"), sales order ("Sales Order"), and/or credit application ("Credit Application") on the front side or attached hereto, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer identified in the Quote ("Customer") and Cummins Inc. ("Cummins") and supersede any previous representation, statements, agreements or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. Customer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become a binding agreement between the parties on the earliest of the following to occur: (i) Cummins' receipt of Customer's purchase order or purchase order number; (ii) Customer's signing or acknowledgment of this Agreement; (iii) Cummins' release of equipment to production pursuant to Customer's oral or written instruction or direction; (iv) Customer's payment of any amounts due to Cummins; or (v) any other event constituting acceptance under applicable law. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, specifications, agreement (whether upstream or otherwise), or any other terms and conditions related thereto, then such specifications, terms, document, or other agreement: (i) shall be null and void and of no legal effect on Cummins, and (ii) this Agreement shall remain the governing terms of the transaction.

**1. SCOPE.** Cummins shall supply power generation equipment and any related parts, materials and/or services expressly identified in this Agreement (collectively, "Equipment"). No additional services, parts or materials are included in this Agreement unless mutually agreed upon by the parties in writing. A Sales Order for Equipment is accepted on a hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received from Customer. A Quote is limited to the plans and specifications section specifically referenced in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation or fuel, unless otherwise stated and mutually agreed to in writing by the parties. Unless otherwise agreed by Cummins in writing, this Quote is valid for a maximum period of thirty (30) days from the date appearing on the first page of this Quote ("Quote Validation Period"). At the end of the Quote Validation Period, this Quote will automatically expire unless accepted by Customer prior to the end of the Quote Validation Period. The foregoing notwithstanding, in no event shall this Quote Validation Period be deemed or otherwise considered to be a firm offer period nor to establish an option contract, and Cummins hereby reserves its right to revoke or amend this Quote at any time prior to Customer's acceptance.

**2. SHIPPING; DELIVERY; DELAYS.** Unless otherwise agreed in writing by the parties, Equipment shall be delivered FOB origin, freight prepaid to first destination. For consumer and mobile products, freight will be charged to Customer. Unless otherwise agreed to in writing by the parties, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. Cummins may deliver in installments. A reasonable storage fee, as determined in Cummins' sole discretion, may be assessed if delivery of the Equipment is delayed, deferred, or refused by Customer. In the event Customer fails to take any or all shipments of Equipment ordered hereunder within thirty (30) days of the agreed upon delivery date, Cummins shall have the right, in its sole discretion to either (i) charge a minimum storage fee in the amount of one and one-half percent (1.5%) per month of the total quoted amount; or (ii) consider the Equipment abandoned and, subject to local laws, may (a) make the Equipment available for auction or sale to other customers or the public, or (b) otherwise use, destroy, or recycle the Equipment at Customer's sole cost and expense. The foregoing remedies shall be without prejudice to Cummins' right to pursue other remedies available under the law, including without limitation, recovery of costs and/or losses incurred due to the storage, auction, sale, destruction, recycling, or otherwise of the Equipment. Offloading, handling, and placement of Equipment and crane services are the responsibility of Customer and not included unless otherwise stated. All shipments are made within normal business hours, Monday through Friday. Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order and will be in effect after engineering drawings have been approved for production. Cummins shall use commercially reasonable efforts to meet estimated dates, but shall not be liable to customer or any third party for any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or any unforeseen event, circumstance, or condition beyond Cummins' reasonable control including, but not limited to, acts of God, actions by any government authority, civil strife, fires, floods, windstorms, explosions, riots, natural disasters, embargos, wars, strikes or other labor disturbances, civil commotion, terrorism, sabotage, late delivery by Cummins' suppliers, fuel or other energy shortages, or an inability to obtain necessary labor, materials, supplies, equipment or manufacturing facilities. *AS A RESULT OF COVID-19 RELATED EFFECTS OR INDUSTRY SUPPLY CHAIN DISRUPTIONS, TEMPORARY DELAYS IN DELIVERY, LABOR OR SERVICES FROM CUMMINS AND ITS SUB-SUPPLIERS OR SUBCONTRACTORS MAY OCCUR. AMONG OTHER FACTORS, CUMMINS' DELIVERY OBLIGATIONS ARE SUBJECT TO CORRECT AND PUNCTUAL SUPPLY FROM OUR SUB-SUPPLIERS OR SUBCONTRACTORS, AND CUMMINS RESERVES THE RIGHT TO MAKE PARTIAL DELIVERIES OR MODIFY ITS LABOR OR SERVICE. WHILE CUMMINS SHALL MAKE COMMERCIALY REASONABLE EFFORTS TO MEET THE DELIVERY, SERVICE OR COMPLETION*

*OBLIGATIONS SET FORTH HEREIN, SUCH DATES ARE SUBJECT TO CHANGE. IN THE EVENT DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE IS DELAYED, HOWEVER OCCASIONED, DUE TO EVENTS BEYOND CUMMINS' REASONABLE CONTROL, THEN THE DATE OF DELIVERY, SHIPPING, INSTALLATION, OR PERFORMANCE FOR THE EQUIPMENT OR SERVICES SHALL BE EQUITABLY EXTENDED FOR A PERIOD EQUAL TO THE TIME LOST, PLUS REASONABLE RAMP-UP.*

- 3. PAYMENT TERMS; CREDIT; RETAINAGE.** Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of the invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Equipment. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay Cummins' costs and expenses (including reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins. Retainage is not acceptable nor binding, unless required by statute or accepted and confirmed in writing by Cummins prior to shipment. If Customer fails to make any payments to Cummins when due and payable, and such failure continues for more than sixty (60) days from the date of the invoice, or less if required by applicable law, then Cummins may, at Cummins' sole discretion and without prejudice to any other rights or remedies, either (i) terminate this Agreement; or (ii) postpone delivery of any undelivered Equipment in Cummins' possession and/or suspend its services until payment for unpaid invoices is received.
- 4. TAXES; EXEMPTIONS.** Unless otherwise stated, the Quote excludes all applicable local, state and federal sales and/or use taxes, permits and licensing. Customer must provide a valid resale or exemption certificate prior to shipment of Equipment or applicable taxes will be added to the invoice.
- 5. TITLE; RISK OF LOSS.** Unless otherwise agreed in writing by the parties, title and risk of loss for the Equipment shall pass to Customer upon delivery of the Equipment by Cummins to freight carrier or to Customer at pickup at Cummins' facility.
- 6. INSPECTION AND ACCEPTANCE.** Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects, and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Cummins within three (3) days from date of delivery after which time Equipment shall be deemed accepted. Cummins shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's reasonable satisfaction, Customer may reject the Equipment (but shall protect the Equipment until returned to Cummins) or allow Cummins another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.
- 7. LIEN; SECURITY AGREEMENT.** Customer agrees that Cummins retains all statutory lien rights. To secure payment, Customer grants Cummins a Purchase Money Security Interest in the Equipment. If any portion of the balance is due to be paid following delivery, Customer agrees to execute and deliver such security agreement, financing statements, deed of trust and such other documents as Cummins may request from time to time in order to permit Cummins to obtain and maintain a perfected security interest in the Equipment; or in the alternative, Customer grants Cummins a power of attorney to execute and file all financing statements and other documents needed to perfect this security interest. Cummins may record this Agreement, bearing Customer's signature, or copy of this Agreement in lieu of a UCC-1, provided that it shall not constitute an admission by Cummins of the applicability or non-applicability of the UCC nor shall the failure to file this form or a UCC-1 in any way affect, alter, or invalidate any term, provision, obligation or liability under this Agreement. The security interest shall be superseded if Customer and Cummins enter into a separate security agreement for the Equipment. Prior to full payment of the balance due, Equipment will be kept at Customer's location noted in this Agreement, will not be moved without prior notice to Cummins, and is subject to inspection by Cummins at all reasonable times.
- 05.01.2023
- 8. CANCELLATION; CHARGES.** Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. If Customer seeks to cancel all or a portion of an order placed pursuant to this Agreement, and Cummins accepts such cancellation in whole or in part, Customer shall be assessed cancellation charges as follows: (i) 10% of total order price if cancellation is received in Cummins' office after Cummins has provided submittals and prior to releasing equipment to be manufactured; (ii) 25% of total order price if cancellation is received in Cummins' office after receipt of submittal release to order, receipt of a purchase order for a generator already on order with the factory, or is asked to make any hardware changes to the equipment already on order with the factory; (iii) 50% of total order price if cancellation is received in Cummins' office sixty (60) or fewer days before the scheduled shipping date on the order; or (iv) 100% of total order price if cancellation is received in Cummins' office after the equipment has shipped from the manufacturing plant.
- 9. TERMINATION.** Cummins may, at any time, terminate this Agreement for convenience upon sixty (60) days' written notice to Customer. If the Customer defaults by (i) breaching any term of this Agreement, (ii) becoming insolvent or declared bankrupt, or (iii) making an assignment for the benefit of creditors, Cummins may, upon written notice to Customer, immediately terminate this Agreement. Upon such termination for default, Cummins shall immediately cease any further performance under this Agreement, without further obligation or liability to Customer, and Customer shall pay Cummins for any Equipment or services supplied under

this Agreement, in accordance with the payment terms detailed in Section 3. If a notice of termination for default has been issued and is later determined, for any reason, that the Customer was not in default, the rights and obligations of the parties shall treat the termination as a termination for convenience.

**10. MANUALS.** Unless otherwise stated, electronic submittals and electronic operation and maintenance manuals will be provided, and print copies may be available upon Customer's request at an additional cost.

**11. TRAINING; START UP SERVICES; INSTALLATION.** Startup services, load bank testing, and owner training are not provided unless otherwise stated. Site startup will be subject to the account being current and will be performed during regular Cummins business hours, Monday to Friday. Additional charges may be added for work requested to be done outside standard business hours, on weekends, or holidays. One visit is allowed unless specified otherwise in the Quote. A minimum of two-week prior notice is required to schedule site startups and will be subject to prior commitments and equipment and travel availability. A signed site check sheet confirming readiness will be required, and Cummins personnel may perform an installation audit prior to the startup being completed. Any issues identified by the installation audit shall be corrected at the Customer's expense prior to the start-up. Portable load banks for site test (if offered in the Quote) are equipped with only 100 feet of cable. Additional lengths may be arranged at an extra cost. Cummins is not responsible for any labor or materials charged by others associated with start-up and installation of Equipment, unless previously agreed upon in writing. Supply of fuel for start-up and/or testing, fill-up of tank after start up, or change of oil is not included unless specified in the Quote. All installation/execution work at the site including, but not limited to: civil, mechanical, electrical, supply of wall thimbles, exhaust extension pipe, elbows, hangers, expansion joints, insulation and cladding materials, fuel/oil/cooling system piping, air ducts, and louvers/dampers is not included unless specified in the Quote. When an enclosure or sub-base fuel tank (or both) are supplied, the openings provided for power cable and fuel piping entries, commonly referred to as "stub-ups", must be sealed at the site by others before commissioning. All applications, inspections and/or approvals by authorities are to be arranged by Customer.

**12. MANUFACTURER'S WARRANTY.** Equipment purchased hereunder is accompanied by an express written manufacturer's warranty ("Warranty") and, except as expressly provided in this Agreement, is the only warranty offered on the Equipment. A copy of the Warranty is available upon request. While this Agreement and the Warranty are intended to be read and applied in conjunction, where this Agreement and the Warranty conflict, the terms of the Warranty shall prevail.

**13. WARRANTY PROCEDURE.** Prior to the expiration of the Warranty, Customer must give notice of a warrantable failure to Cummins and deliver the defective Equipment to a Cummins location or other location authorized and designated by Cummins to make the repairs during regular business hours. Cummins shall not be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc., communication expenses, meals, lodging, and incidental expenses incurred by Customer or employees of Customer, "downtime" expenses, overtime expenses, cargo damages and any business costs and losses of revenue resulting from a warrantable failure.

**14. LIMITATIONS ON WARRANTIES.**

**THE REMEDIES PROVIDED IN THE WARRANTY AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.**

The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to designated power rating; (b) inappropriate use relative to application guidelines; (c) inappropriate use of an EPA-SE application generator set relative to EPA's standards; (d) normal wear and tear; (e) improper and/or unauthorized installation; (f) negligence, accidents, or misuse; (g) lack of maintenance or unauthorized or improper repair; (h) noncompliance with any Cummins published guideline or policy; (i) use of improper or contaminated fuels, coolants, or lubricants; (j) improper storage before and after commissioning; (k) owner's delay in making Equipment available after notification of potential Equipment problem; (l) replacement parts and accessories not authorized by Cummins; (m) use of battle short mode; (n) owner or operator abuse or neglect such as: operation without adequate coolant, fuel, or lubricants; over fueling; over speeding; lack of maintenance to lubricating, fueling, cooling, or air intake systems; late servicing and maintenance; improper storage, starting, warm-up, running, or shutdown practices, or for progressive damage resulting from a defective shutdown or warning device; or (o) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

**15. INDEMNITY.** Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Equipment supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed to by, in whole or in part, the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.

#### 16. LIMITATION OF LIABILITY

NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY OR NEGLIGENCE), FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY), OR IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF EQUIPMENT UNDER THIS AGREEMENT OR THE USE OR PERFORMANCE OF EQUIPMENT SUPPLIED UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.

**17. DEFAULT; REMEDIES.** Customer shall be in breach and default if: (a) any of the payments or amounts due under this Agreement are not paid; (b) Customer fails to comply, perform, or makes any misrepresentation relating to any of the Customer's obligations or covenants under this Agreement; or (c) prior to full payment of the balance due, Customer ceases to do business, becomes insolvent, makes an assignment for the benefit of its creditors, appoints a receiver, commences an action for dissolution or liquidation, or becomes subject to bankruptcy proceedings, or the Equipment is attached, levied upon, seized under legal process, is subjected to a lien or encumbrance, or transferred by operation of law or otherwise to anyone other than Cummins. Upon the occurrence of any event of Customer's default, Cummins, at its sole option and without notice, shall have the right to exercise concurrently or separately any one or all of the following remedies, which shall be cumulative and not alternative: (a) to declare all sums due, and to become due, under this Agreement immediately due and payable; (b) to commence legal proceedings, including collection actions and specific performance proceedings, to enforce performance by Customer of any and all provisions of this Agreement, and to be awarded damages or injunctive relief for the Customer's breach; (c) to require the Customer to deliver the Equipment to Cummins' branch specified on the face of this Agreement; (d) to exercise one or more of the rights and remedies available to a secured party under applicable law; and (e) to enter, without notice or liability or legal process, onto any premises where the Equipment may be located, using force permitted by law, and there to disconnect, remove and repossess the Equipment, the Customer having waived further right to possession after default. A waiver of any event of default by Cummins shall not be a waiver as to any other or subsequent default.

**18. CUSTOMER REPRESENTATIONS; RELIANCE.** Customer is responsible for obtaining, at its cost, permits, import licenses, and other consents in relation to the Equipment, and if requested by Cummins, Customer shall make these permits, licenses, and consents available to Cummins prior to shipment. Customer represents that it is familiar with the Equipment and understands operating instructions and agrees to perform routine maintenance services. Until the balance is paid in full, Customer shall care for the Equipment properly, maintain it in good operating condition, repair and appearance; and Customer shall use it safely and within its rated capacity and only for purpose it was designed. Even if Customer's purchase of Equipment from Cummins under this Agreement is based, in whole or in part, on specifications, technical information, drawings, or written or verbal advice of any type from third parties, Customer has sole responsibility for the accuracy, correctness and completeness of such specifications, technical information, drawings, or advice. Cummins make no warranties or representations respecting the accuracy, correctness and completeness of any specifications, technical information, drawings, advice or other information provided by Cummins. Cummins makes no warranties or representations respecting the suitability, fitness for intended use, compatibility, integration or installation of any Equipment supplied under this Agreement. Customer has sole responsibility for intended use, for installation and design and performance where it is part of a power, propulsion, or other system. Limitation of warranties and remedies and all disclaimers apply to all such technical information, drawings, or advice. Customer acknowledges and agrees by accepting delivery of the Equipment that the Equipment purchased is of the size, design, capacity and manufacture selected by the Customer, and that Customer has relied solely on its own judgment in selecting the Equipment.

**19. CONFIDENTIALITY.** Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.

**20. GOVERNING LAW AND JURISDICTION.** This Agreement and all matters arising hereunder shall be governed by, interpreted, and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the federal and state courts of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim

arising in connection with this Agreement or any related matter, and hereby waive any right to claim such forum would be inappropriate, including concepts of forum non conveniens.

**21. INSURANCE.** Upon Customer's request, Cummins will provide to Customer a Certificate of Insurance evidencing Cummins' relevant insurance coverage.

**22. ASSIGNMENT.** This Agreement shall be binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.

**23. INTELLECTUAL PROPERTY.** Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a license or any other rights to use any of the intellectual property rights of Cummins.

**24. PRICING.** To the extent allowed by law, actual prices invoiced to Customer may vary from the price quoted at the time of order placement, as the same will be adjusted for prices prevailing on the date of shipment due to economic and market conditions at the time of shipment. Subject to local laws, Cummins reserves the right to adjust pricing on goods and services due to input and labor cost changes and/or other unforeseen circumstances beyond Cummins' control.

**25. MISCELLANEOUS.** Cummins shall be an independent contractor under this Agreement. All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in this Agreement. No amendment of this Agreement shall be valid unless it is writing and signed by an authorized representative of the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. These terms are exclusive and constitute the entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for, and Customer has agreed to purchase of the Equipment pursuant to these Terms and Conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such Terms and Conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement. In the event Cummins incurs additional charges hereunder due to the acts or omissions of Customer, the additional charges will be passed on to the Customer, as applicable. Headings or other subdivisions of this Agreement are inserted for convenience of reference and shall not limit or affect the legal construction of any provision hereof. The Parties' rights, remedies, and obligations under this Agreement which by their nature are intended to continue beyond the termination or cancellation of this Agreement, including but not limited to the Section 16. Limitation of Liability provision contained herein, shall survive the expiration, termination, or cancellation of this Agreement.

**26. COMPLIANCE.** Customer shall comply with all laws applicable to its activities under this Agreement, including, without limitation, any and all applicable federal, state, and local anti-bribery, environmental, health, and safety laws and regulations then in effect. Customer acknowledges that the Equipment, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Equipment or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable all laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall act as the importer of record with respect to the Equipment and shall not resell, export, re-export, distribute, transfer, or dispose of the Equipment or related technology, directly or indirectly, without first obtaining all necessary written permits, consents, and authorizations and completing such formalities as may be required under such laws, rules, and regulations. In addition, Cummins has in place policies not to distribute its products for use in certain countries based on applicable laws and regulations including but not limited to UN, U.S., UK, and European Union regulations. Customer undertakes to perform its obligations under this Agreement with due regard to these policies. Strict compliance with this provision and all laws of the territory pertaining to the importation, distribution, sales, promotion and marketing of the Equipment is a material consideration for Cummins entering into this Agreement with Customer and continuing this Agreement for its term. Customer represents and warrants that it has not and shall not, directly or through any intermediary, pay, give, promise to give or offer to give anything of value to a government official or representative, a political party official, a candidate for political office, an officer or employee of a public international organization or any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities for the purposes of inducing such person to use his influence to assist Cummins in obtaining or retaining business or to benefit Cummins or any other person in any way, and will not otherwise breach any applicable laws relating to anti-bribery. Any failure by Customer to comply with these provisions will constitute a default giving Cummins the right to immediate termination of this Agreement and/or the right to elect not to recognize the warranties associated with the Equipment.



Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of those laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.

**27. To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The employee notice requirements set forth in 29 CFR Part 471, Appendix A to Subpart A, are hereby incorporated by reference into this contract.**