

OLD DOMINION UNIVERSITY STANDARD CONTRACT

Contract No.: **23-ODU-28-CCC**

This contract entered into by and between Carter Machinery Company, Inc. hereinafter called the "Contractor" and Old Dominion University, called the "University".

I. WITNESSETH that the Contractor and the University, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

II. PERIOD OF PERFORMANCE:

- (1) The contract period shall commence on upon final contract acceptance and execution, as evidenced by the latest execution date on the contract signature page, and will be in effect through June 30, 2024. Where contract commencement date is in conflict with final execution date, final execution date shall prevail.
- (2) Upon mutual agreement between both the Contractor and the University, this contract and subsequent period(s) of performance may be renewed for up to four (4) additional one (1) year periods.
- (3) The Contractor agrees that as part of this agreement, Contractor's response to the University's IFB #23-ODU-28-CCC, including any and all associated terms and conditions, scope of service, and related pricing for same shall remain in effect throughout any and all "periods of performance", unless otherwise modified in writing.

III. CONTRACT AGREEMENT:

The contract agreement shall consist of the following documents:

- (1) This signed form;
- (2) Contractor's "Pricing Schedule", as specified in section IX;
- (3) Any associated purchase order issued as award acceptance for specific services per project request; and,
- (4) Where this Agreement is silent, the University's original Invitation for Bid and, all associated exhibits and addenda shall control.

IV. SCOPE OF SERVICES: As required by the University, the Contractor shall provide emergency generators and miscellaneous related equipment for hurricane season and other emergency requirements as needed throughout the year by Old Dominion University.

A. GENERAL

The contractor shall furnish all labor, materials and equipment necessary to provide emergency generators for rental for the University's emergency needs for residence halls, dining commons, public safety, etc. The Contractor shall provide significant equipment to maintain critical infrastructure across the campus that would require backup power during day-top-day activities during and after an emergency disaster. The Contractor shall furnish and maintain the requirement equipment size as call for under this contract.

The Contractor shall have on hand at all times such equipment to adequately and efficiently perform the services described herein. Replacements shall be at no additional charge to the University for those generators that require additional maintenance / repair services.

B. SPECIFIC REQUIREMENTS:

1. This plan will provide the University with the first right of refusal for the equipment detailed herein and as attached per the Pricing Schedule and shall guarantee the mobilization and delivery of generator equipment within 72 hours from notification from the University.
2. In the event a Tropical Storm Watch or other weather advisory as issued by the National Weather Service for any portion of Virginia or the North Carolina Coastline, the Contractor representative will contact the University at the numbers provided and request Delivery, On-Hold, or Equipment Forfeit instructions. A decision on behalf of University will be required within 4 hours of the initial call. If delivery instructions are received, the Contractor will begin mobilizing the equipment to the site specified by the University. If 'On-Hold' instructions are received, the Contractor will place the units on rent on our yard and await delivery instructions. The University will be notified of the location of the generator equipment and approximate delivery time to delivery location provided. If equipment is declined altogether then the University forfeits their guarantee of the equipment with the understanding that additional equipment is not guaranteed and may not become available for an extended duration.

3. In the event of a major storm heading towards the entire East Coast and multiple states are in line for impact, a call from the Contractor's representative will come sooner as equipment starts to move up and down the coast.

4. When the equipment is placed on rent a one-week minimum rental period at unlimited duty rates will apply. Rental Rates are provided on the Pricing Schedule. Equipment is considered on rent from the time that it is ordered until it is returned to its originating location.

5. In the event of multiple incidences during a single coverage period, the Contractor will not guarantee the availability of any additional quantity at any given time above those identified in the Pricing Schedule.

6. Third party freight to be invoiced at the Contractor's invoiced cost, a copy of the third party hauler's invoice shall be provided upon request. Equipment may need to be shipped in from great distances resulting in significant associated freight charges, freight estimates can be given at time of equipment order. Freight charges for equipment delivered via the Contractor's trucks to be determined based on local conditions at the time of delivery.

7. When generators are delivered to the University, generators must have a minimum of a 100 gallons. The University will be responsible for insuring generators are fueled during the rental period while on site at the University. Upon return of the generators, the University will insure the generators are returned with a minimum of 100 gallons (or the same amount as it was delivered).

8. Should an afterhours call require an employee to open the Contractor's local store for equipment pick-up, loading or unloading, or other event, an After Hours Emergency Response Charge of \$300 will be assessed for each occurrence. This charge will not apply to any after-hours service calls, or equipment swap-outs resulting from service related issues.

Under the rental agreement when the equipment is in use, the Contractor shall have a service technician available twenty-four (24) hours a day, seven (7) days a week at no additional cost to the University. All service calls placed to the Contractor shall respond with 'on-site technician service' within two (2) hours of notification from the University.

9. Contractor further understands and agrees that no employee of Old Dominion University, other than the Executive Director for Strategic Sourcing and Payment Solutions or Designee, is authorized to sign any rental or other agreement that contains terms and conditions other than those contained in this agreement or in a purchase order issued against this contract, and that any signature of a University employee shall be interpreted as the University's acknowledgement of delivery only.

10. Universities Responsibilities:
- a. All final electrical connections;
 - b. Lifting and rigging of the equipment on site as required;
 - c. Fueling of equipment while on site;
 - d. Monitoring of fuel level.

V. REPORTING AND DELIVERY REQUIREMENTS: UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES: The following reports shall be submitted as indicated:

A. **PERIODIC PROGRESS REPORTS/INVOICES:** The Contractor shall provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority businesses.

B. **FINAL ACTUAL INVOLVEMENT REPORT:** The Contractor shall submit to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the contract, and the actual percent of the total estimated contract value.

VI. TERMS AND CONDITIONS:

A. **ADVERTISING:** Contractor agrees that during the entire term of this contract no indication of such sales or services to the University will be used in product literature or advertising.

B. **APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The University and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 23-38.90). The Contractor shall comply with all applicable federal, state and local laws, rules and regulations and policies of the University.

C. **APPLICABLE LEGISLATION AND MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia, specifically § 23-38.90 of the Code of Virginia and its associated Rules Governing the Procurement of Goods, Services, Insurance and Construction (“the Rules”) and the Purchasing Manual for Universities of Higher Education and their Contractors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is accessible on the Internet at www.odu.edu/procurement under “Information for Contractors”.

D. **ASSIGNMENT OF CONTRACT:** This contract shall not be assignable in whole or in part without the written consent of the University.

E. **AVAILABILITY OF FUNDS:** The University shall be bound hereunder only to the extent of the funds available or which may hereafter become available during each subsequent fiscal year and/or contract term, as applicable, and any requirement by Contractor for any total or partial compensation or payment by the University of unpaid fees, whether current or future, for lost profit and/or as liquidated damages in the event of early termination of the then current term if for other than breach by the University is prohibitive.

F. **AUDIT:** Contractor agrees that they shall retain all books, records, and other documents relative to this contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.

G. **CHANGES TO THE CONTRACT:** During the term of this contract, including any and all applicable extensions and/or renewals, changes may be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written contract to modify the scope of the contract.

2. The University may request and issue change orders within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the University a credit for any savings. Said compensation shall be determined by one of the following methods:

a. By mutual agreement between the parties in writing; or

b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the University’s right to audit the Contractor’s records and/or to determine the correct number of units independently; or

c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the University with all vouchers and records of expenses incurred and savings realized. The University shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the University within thirty (30) days from the date of receipt of the written order from the University. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the

Commonwealth of Virginia *Purchasing Manual for Universities of Higher Education and their Contractors*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the University or with the performance of the contract generally.

H. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the University, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the University may have.

I. **DISCOUNTS:**

1. **Prompt Payment Discounts:** The University will pay within 30 days after acceptance. A prompt payment discount offered for prompt payment of (20) calendar days or longer will be calculated.

J. **DRUG-FREE WORKPLACE:** (*the Rules §11.*)

During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or Contractor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

K. **EMPLOYMENT DISCRIMINATION:** (*the Rules §10.*)

During the performance of any resulting contract, the Contractor agrees that:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.
3. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
4. The contractor shall include the provisions of subdivisions 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

L. **ENVIRONMENTAL LIABILITY:** Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the Contractor, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, sub consultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.

M. **EXCLUSIVITY:** The University reserves the right to procure goods or services covered under this contract from a third party when, in the University's sole discretion, it is deemed to be in the University's best interest.

N. FINAL INSPECTION: At the conclusion of the work, the Contractor shall demonstrate to the authorized University's Contract Administrator that the work is fully operational and in compliance with contract specifications and codes. Any deficiencies shall be promptly and permanently corrected by the Contractor at the Contractor's sole expense prior to final acceptance of the work.

O. GUARANTEE OF WORK:

1. Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one (1) year from the date of final acceptance of the entire project by the University in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the University.
2. If, within the guarantee period, defects are noticed by the University which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the University rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior or not in accordance with the terms of the contract, then the Contractor shall, promptly upon receipt of notice from the University, such notice being given not more than two weeks after the guarantee period expires, and without expense to the University:
 - i. Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
 - ii. Make good all damage to the structure, site, equipment, or contents thereof, which is the result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contracts; and
 - iii. Make good any work, materials, equipment, contents of structures, and/or disturbance of the site in fulfilling any such guarantee.
3. In any case, where in fulfilling the requirements of the contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the University and guarantee such restored work to the same extent as it was guaranteed under such other contract.
4. If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the University may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.
5. All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the contract shall be subject to the term of this section during the first year of the life of such special guarantee.
6. Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the contract documents. This paragraph relates only to the specific obligation of the Contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the contract documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this contract.
7. In the event the work of the Contractor is to be modified by another Contractor, either before or after the final inspection, the first Contractor shall remain responsible in all respects under the guarantee of work and under any other warranties provided in the contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the Contractor modifying its work. Both the first Contractor and the Contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which he is modifying. If any Contractor shall claim that another Contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the Contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other Contractor. Any Contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the Contractor whose work he is modifying.

P. INDEMNIFICATION: Contractor agrees to indemnify, defend and hold harmless the University, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not

attributable to the sole negligence of the University or to failure of the University to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

Q. PAYMENT PROVISIONS:

1. By the University:

a. Prompt Payment: (the Rules §42.)

i. The University shall promptly pay for the completely delivered goods or services by the required payment date.

ii. Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia.

iii. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

b. Defect Or Impropriety In The Invoice Or Goods And/Or Services Received: (the Rules §43.)

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the University shall notify the Contractor of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within 15 days after receipt of the invoice or the goods or services.

c. Date Of Postmark Deemed To Be Date Payment Is Made: (the Rules §44.)

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of these Rules.

d. Interest Penalty; Exceptions: (the Rules §44.)

i. Interest shall accrue, at the rate determined pursuant to subsection ii., on all amounts owed by the University to a Contractor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

ii. The rate of interest charged the University pursuant to subsection i. shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812 of the Code of Virginia.

iii. Notwithstanding subsection i., no interest penalty shall be charged when payment is delayed because of disagreement between the University and a Contractor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

iv. This section shall not apply to retainae on construction contracts that provides for progress payments, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a Contractor from receiving interest on such funds under an approved escrow agreement.

v. Notwithstanding subsection i., no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection 2. on amounts withheld that remains unpaid after seven days following the payment date.

2. To Contractor:

Under this contract, Contractor is hereby obligated:

i. To submit all invoices for goods/services ordered, delivered and accepted directly to:

- a) Old Dominion University
Finance Office
Rollins Hall, Room 202
Norfolk, Virginia 23529; or
- b) invoice@odu.edu

ii. All invoices shall include:

- a) Contractor Name, 'Remit To' Address, FEIN, or Social Security Number (Individual Contractor);
- b) Invoice Number, Invoice Date, Payment Terms and Discounts, and Payment Due Date;
- c) Purchase Order Number;
- d) University Contact;

- e) Description of provided goods/services;
- f) Quantity Delivered per line item;
- g) Unit and Extended Cost per line item; and
- h) Total Amount Due

iii. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

iv. All goods or services provided shall be billed by the Contractor at the agreed to contract price.

v. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the University shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve the University of its prompt payment obligations with respect to those charges which are not in dispute.

vi. When applicable, Contractor shall deliver to the University, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the University, or other appropriate penalties may be assessed in lieu of withholding such payment.

3. To Subcontractors: (the Rules §45.)

Under this contract, Contractor shall be obligated:

i. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the University for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

ii. To notify the University and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

iii. To pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the University, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the University.

R. **SEVERABILITY:** The provisions of this contract shall be deemed to be severable, and should any or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

S. **TERMINATION WITH CAUSE:**

1. In the event that the Contractor shall for any reason or through any cause be in default of the terms of the contract, the University may give the Contractor written notice of such default by certified mail/return receipt requested.

2. Prior to termination of the contract, the University shall give the Contractor and its surety ten (10) calendar day's written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the University within said ten (10) days, the University may rescind the notice of termination. If Contractor does not, the termination for cause shall become effective at the end of the ten-day (10) notice period.

3. In the alternative, the University may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the University finds acceptable. If at any time more than ten (10) days after the notice of termination, the University determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the University may immediately terminate the contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

4. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia

or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

5. Upon termination, the Contractor shall withdraw its personnel and equipment, cease performance of any further work under the contract, and turn over to the University any work in process for which payment has been made.

6. The University shall take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the work, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the University, together with any other expenses of terminating the contract and having it completed by others.

7. In the event of violations of law, safety or health standards and regulations, the contract may be immediately cancelled and terminated by the University and provisions herein with respect to opportunity to cure default shall not be applicable.

T. **TERMINATION BY UNIVERSITY FOR CONVENIENCE:**

1. The University may terminate any resulting contract at any time for convenience, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease work and remove from the project site all of its labor forces and materials that the University elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as University may require to assign to the University the Contractor's interest in all subcontracts and purchase orders designated by University. After all such steps have been taken to University's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

- i. All amounts due for work performed subsequent to the latest Request for Payment through the date of termination;
- ii. Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination;
- iii. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence; and
- iv. Upon payment of the forgoing, University shall have no further obligations to the Contractor of any nature.

2. In no event shall termination for the convenience of the University terminate the obligations of the Contractor's surety on its payment and performance bonds.

U. **TESTING AND INSPECTION:** The University reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

V. **WAIVER:** No failure of the University to exercise any right or power given to it by law or by any resulting contract, or to insist upon strict compliance by Contractor with any of the provisions of any resulting contract, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the University's right to demand strict compliance with the terms of any resulting contract.

VII. SPECIAL TERMS AND CONDITIONS:

A. **ACCESS TO WORK:** The University, the University's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the work at all times. The Contractor shall provide proper facilities for access and inspection.

B. **AUTHORIZED CONTRACT PARTICIPATION:** In accordance with the University's Rules Governing Procurement of Goods, Services, Insurance and Construction ("Rules Document"), specifically §6, Cooperative Procurement, it is the intent of this contract to allow any public body, public or private health or educational University's, or the University's affiliated agencies and/or corporations, access and use of any subsequent contract(s), as authorized by the Contractor(s).

Participation in this cooperative procurement is strictly voluntary. If authorized by the Contractor(s), any resultant contract(s) may be extended to the entities as indicated above to purchase at contract prices in accordance with contract terms and conditions. The Contractor(s) shall notify the University in writing of any entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The Contractor(s) will provide semi-annual usage reports for all entities accessing the contract(s). Participating entities shall place their own orders directly with the Contractor(s), and shall fully and independently administer their use of the contract(s), including contractual disputes, invoicing and payments, without direct administration from the University. The University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the Contractor(s) to extend participation and use of the contract(s). It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of the contract(s) no matter the circumstances.

Use of this contract does not preclude any participating entity from using other contracts or competitive processes as the need may be.

C. **CONTRACT AND RENEWAL TERM:**

1. The initial term of any resulting contract shall be for a one (1) year period, commencing from the date of acceptance and expiring on **June 30, 2024**;
2. Any resulting contract may be renewed by the University for four (4) successive one-year periods under the terms and conditions of the original contract except as stated in 2.a. and 2.b. below. Cost considerations may be negotiated only at the time of renewal. Written notice of the University's intention to renew shall be given approximately 90 days prior to the expiration date of each contract period.
 - a. If the University elects to exercise the option to renew the contract for an additional one-year period **after the initial term**, the contract price(s) for the additional one year shall not exceed the contract price(s) of the initial contract term by the lesser of (1) the percentage increase/decrease of the Consumer Price Index (CPI) for All Urban Wage Earner and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100, for the previous twelve (12) month period, or (2) not to exceed 5%.
 - b. If during any subsequent renewal periods, the University elects to exercise the option to renew the contract, the contract price(s) for the subsequent renewal period shall not exceed the contract price(s) of the previous renewal period by the lesser of (1) the percentage increase/decrease of the Consumer Price Index (CPI) for All Urban Wage Earner and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100, for the previous twelve (12) month period, or (2) not to exceed 5%.

D. **COMPANY PERSONNEL STANDARDS:**

1. Contractor shall provide trained personnel who shall be qualified to properly maintain/perform/test for services specified herein. If any of the Contractor's personnel are not satisfactory in the performance of services to be furnished hereunder in a proper manner and satisfactory to the University, the Contractor shall remove any such personnel and replace them with satisfactory personnel.
2. Contractor shall use all reasonable care, consistent with its rights to manage and control its operations, not to employ any persons or use any labor or have any equipment or permit any condition to exist which shall or may cause or be conducive to pose any liability to the general public as well as any activity to be construed as a nuisance. The University retains the right to require the Contractor to halt all work activities until such conditions are resolved.

E. **CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT:** If the work should be stopped under any order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or of anyone employed by him, or if the owner should fail to pay to the contractor within thirty (30) days when no dispute exists as to the sum, then the contractor may, upon ten (10) calendar

days written notice to the owner, stop work or terminate the contract and recover from the owner payment for the cost of the work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the contractor can demonstrate that he would have had profit on the entire contract if he had completed the work. The contractor may not receive profit or any other type of compensation for parts of the work not performed. The contractor may recover the cost of physically closing down the job site, but no other costs of termination. The owner may offset any claims it may have against the contractor against the amounts due to the contractor.

F. EMERGENCY NOTIFICATION: In the event of a tropical storm watch or other emergency weather advisories through the year, the authorized representatives shall be contacted in the following order:

UNIVERSITY'S POINT OF CONTACTS:			
Order:	Name:	Phone Number:	Alternate Number:
1	Ralph Sloop – Electrical Supervisor rsloop@odu.edu	757-683-3876	757-508-7724
2	Jack Byrum – HVAC Supervisor jbyrum@odu.edu	757-683-6370	757-642-0291
3	Robert McKee– PM Supervisor rdmckee@odu.edu	757-683-3213	757-831-6847
4	Bobby Jackson – Asst Dir of Operations bjjackso@odu.edu	757-683-3877	757-633-1517
CONTRACTOR'S POINT OF CONTACTS:			
1	Joey Capelli – joey_capelli@cartermachinery.com	804-652-9490	804-836-5752
2	Al Dintino – Al_Dintino@cartermachinery.com	757-525-0073	804-337-3686
3	Wannie Cook – Wannie_Cook@cartermachinery.com	804-337-3686	804-337-3686

G. INSPECTION OF JOB SITE: Contractor certifies that they have inspected the job site and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the University.

H. INSTALLATION: All equipment must be operational, set in place at the desired location, and ready for use. All hauling and other debris must be removed from the premises.

I. INSURANCE: By signing this contract the Contractor certifies it will have the following insurance coverage at the time the contract is awarded and through the term of each contract renewal period. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The Contractor further certifies that the Contractor and any subcontractors will maintain these insurance coverage's during the entire term of the contract and that all insurance coverage's will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. **The University must be named as an additional insured and so endorsed on the policy.**
4. Automobile Liability - \$1,000,000 per occurrence.

J. PRODUCT SUBSTITUTION: During the term of any resulting contract, the Contractor is not authorized to substitute any item for that product identified in the original contract without the prior written consent by the University's Contract Administrator, or their designee.

K. PROTECTION OF PERSONS AND PROPERTY:

1. The Contractor expressly undertakes, both directly and through its subcontractor(s), to take every precaution at all times for the protection of persons and property which may come on the building site or be affected by the Contractor's operation in connection with the work.

2. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work.
3. The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia* shall apply to all work under this contract.
4. In an emergency affecting the safety or life of persons or of the work, or of the adjoining property, the Contractor, without special instruction or authorization from the University, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the University, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by paragraph G., of the General Terms and Conditions.

L. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of the University. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the University the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

M. TRAINING AND OPERATION OF EQUIPMENT:

The Contractor shall provide the University's operations and maintenance personnel with instruction and training in the proper operation of the equipment and related controls provided or altered in the work.

N. USE OF PREMISES AND REMOVAL OF DEBRIS:

1. The Contractor shall:
 - a. Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any Contractor, and
 - b. Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
2. The Contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.
3. The Contractor expressly undertakes, either directly or through his subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the contract; and to thoroughly clean all glass installed under the contract including the removal of all paint and mortar splatters and other defacements. If a Contractor fails to clean up at the completion of the work, the University may do so and charge for costs thereof to the Contractor.
4. The Contractor shall not operate or disturb the setting of any valves, waterlines, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the University. The Contractor shall give ample advance notice of the need for cut offs which will be scheduled at the convenience of the University.

O. WORK SITE DAMAGES: Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the University's satisfaction at the Contractor's expense.

VIII. PAYMENT METHOD:

- A. The University shall issue eVA 'Direct Orders' for required performance and delivery against any resulting contract.
- B. The Contractor shall be paid when (i) requested work is completed, (ii) the requested work is approved and accepted by the University, and (iii) Contractor has submitted to the Office of Finance/Accounts Payable a proper invoice for the approved, accepted and completed work.
- C. The Contractor shall not receive payment for work found by the University to be unsatisfactory, or performed in violation of federal, state, or local laws, codes, ordinances, rules or regulations.
- D. Progress Payments:
If requested in writing by the Contractor and approved in writing by the University, progress payments may be made under the following circumstances:
1. When total contract cost for all materials and services exceed \$25,000;
 2. When project completion time is anticipated to exceed sixty (60) days;
 3. Payments will only be made for:
 - a) Purchased materials and/or equipment related to the project that has been delivered on site and/or stored off-site;
 - b) Those same materials and/or equipment that has a total value of at least 10% of the project cost, not to exceed 75%; and
 - c) Materials and/or equipment that have satisfied i. and ii. above, and that have all proper invoicing and required documentation, as approved by the University's Contract Administrator or appropriate Project Manager.
 - d) Regardless of completion time frame and/or amount of expense outlay incurred by the Contractor, shall not be paid more than once every 30 days.

Note: *It shall be the responsibility of the selected Contractor to safeguard those materials and/or equipment that have been "prepaid" by the University, and shall also certify at the completion of the project that same was either (i) used during the performance and completion of the project, or (ii) turned over as property to the University.*

- E. Charge Cards Payments:
1. In an effort to increase administrative efficiency and streamline the invoice and payment process, the University may elect to process those contracted goods/services less than \$5,000, as applicable, via use of the University's Small Purchase Charge Card ("PCARD").
 2. In those instances deemed to be in "its best interest", the University may elect to process transactions via its 'Gold' PCARD, not to exceed transactions up to \$50,000 per order, or monthly transactions up to \$250,000 accumulative, unless otherwise approved and/or stipulated.

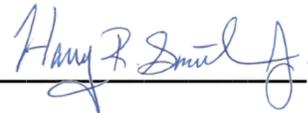
IX. PRICING SCHEDULE:

PRICING SCHEDULE - The contractor agrees to provide the services in compliance with the scope of work on an as needed basis for each generator size at the firm fixed rate for the specific rental period of this agreement as shown below: : In any instance where the contractor cannot provide the required services within an acceptable time frame, the University reserves the right to purchase these services on the open market and may hold the Contractor responsible for any resulting additional purchase and administrative costs.						
ITEM No.	QTY.	DESCRIPTION	LOCATION	DAY (each)	WEEK (each)	MONTH (each)
1	1	Generator, Diesel, 320KW, Providing: Caterpillar, 375KW	Roger Hall	\$1,500.00	\$3,000.00	\$8,900.00
2	3	Generator, Diesel, 1000KW, Providing: Caterpillar, 1000KW	Whitehurst Hall, Student Rec. Center, Broderick Dining Commons	\$3,400.00	\$6800.00	\$20,200.00
3	1	Generator, Diesel, 1500KW, Providing: Caterpillar, 2000KW	Webb Center	\$4,750.00	\$9,500.00	\$28,000.00
4	1	Generator, Diesel, 1000KW, Providing: Caterpillar, 1000KW	Barry Art Museum	\$3,400.00	\$6,800.00	\$20,200.00
5	1	Generator, Diesel, 320KW, Providing: Caterpillar, 375KW	Virginia House	\$1,500.00	\$3,000.00	\$8,900.00
6	161	4/0 x 50' Cam-Lock Cables	Cable	\$15.00	\$35.00	\$95.00
7	87	4/0 Female Pig Tails	F-Tail	\$5.00	\$10.00	\$15.00
8	87	4/0 Male Pig Tails	M-Tail	\$5.00	\$10.00	\$15.00
		**CONTINGENCY PLAN FEE for 'FIRST RIGHT OF REFUSAL':				No Charge
		** Contractor agrees to the 'first right of refusal' for the above referenced equipment and to guarantee the mobilization of generators and equipment within 72 hours from notification from the University.				

IN WITNESS WHEREOF, the University has caused this contract to be duly executed intending to be bound thereby.

UNIVERSITY: Old Dominion University

Date: July 13, 2023

By: 

Title: Assistant Director, Procurement Services