

OLD DOMINION UNIVERSITY CONTRACT

Contract No. 09-221-0040-EAH

This contract entered into by and between Carter Machinery Company (hereinafter the "Contractor"), and Old Dominion University (hereinafter the "Client").

I. **WITNESSETH** that Carter Machinery Company and the Client, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

II. PERIOD OF PERFORMANCE:

The contract period shall commence on August 1, 2009 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, 2010. Where contract commencement date is in conflict with final execution date, final execution date shall prevail. Upon mutual agreement between both Contractor and Client, this contract agreement may be renewed for up to four (4) successive one-year terms.

III. CONTRACT AGREEMENT:

The contract agreement shall consist of the following documents:

- (1) This signed document;
- (2) Contractor's Fee Schedule,
- (3) Where this Agreement is silent, the University's original Invitation for Bid and all associated addenda shall control.

IV. SCOPE OF SERVICES:

The Contractor shall provide to the Client, Maintenance for Emergency Generator Sets and Uninterruptible Power Supply (UPS) systems and associated services in accordance with the information and requirements contained in the original Invitation for Bid #09-221-0040-EAH, the original response to same by the Contractor.

- a. Services shall include the following components:
 - i. Routine, non-routine and emergency maintenance of installed emergency generator sets and uninterruptible power supply (UPS) systems.
 - ii. Standardized maintenance program adequate to ensure that all associated equipment operates dependably and when needed.
 - iii. Labor, supervision, equipment, tools and materials as necessary to, at a minimum, perform quarterly and annual preventive maintenance specified for the following systems:

Lot 1

Unit	Location	Model	Rating	Fuel
1-DG	Gornto Teletechnet Building	Caterpillar Model Number 3408	310KW	Gas
2-DG	E&CS Building	Cummins Power Model Number DFHD-5618744	1000KW	#2 Oil
3-DG	Hughes Hall	Onan-Cummins Model Number 600DEGB	600KW	#2 Oil
1-UPS	Gornto Teletechnet Building	Mitsubishi Model Number 9800A	125KVA	
2-UPS	E&CS Building	Mitsubishi Model Number 9800A	375KVA	
3-UPS	VMASC (Suffolk)	ETN Powerware Model Number 160	125 KVA	

Lot 2

Unit	Location	Model	Rating	Other	Fuel
1-DG	Powhatan 1	Onan 15.OR.IC-4R 7776AA	15KW	120/240/3ph	Natural Gas
2-DG	Powhatan 2	Coleman Power Station PM402532	25KW	120/240/3 ph Vols	Natural Gas
3-DG	Scotland House	Kohler 250REOZJD	250KW	120/208-3ph	Diesel
4-DG	Ireland and Virginia House	Catepillar D100-4	100KW	120/208/3ph	Diesel
5-DG	Whitehurst Hall	ONAN 30 Genset 30.OEK-15R/11719M	20KW	120/220/240 3 ph	Natural Gas

- iv. Contractor shall complete the first annual planned maintenance in September, 2009 (no later than September 31, 2009). Thereafter, Contractor shall schedule quarterly work no more than three (3) months, nor less than 11 weeks from the completion of the previous planned maintenance. Contractor shall schedule all work at least five (5) working days in advance with the contracting officer's representative.
- v. Non-Routine & Emergency Maintenance Requirements: Non-routine maintenance will be estimated and approved in accordance with Work Estimates (Time and Material Contracts) found below. Contractor shall schedule all approved, non-routine work at least five (5) working days in advance with the contracting officer's representative. The contractor shall provide a qualified repair technician, qualified to service the units listed in section III.A.1 above. Emergency service shall be available 24 hours per day, 7 days per week with a response time of no greater than two hours. Hourly rate categories are and estimates of annual requirements are given in the table below:

Regular Time	Overtime	Weekends & Holidays
Mon – Fri, 8:00AM to 5:00PM	Mon – Fri, 5:01PM to 7:59AM	12:00AM to 11:59PM
32 hrs	32 hrs	16 hrs

- vi. The Contractor shall perform preventive maintenance as specified below on the **diesel generator sets** listed above:

Quarterly (March, June, September):

1. Visually inspect engine generator area, noting cleanliness, lighting, hardware, and locks. Note any deficiencies on the inspection report.
2. Note any alarm indications on the control panel on inspection report.
3. Perform a lamp test. Note any deficiencies on the inspection report.
4. Note the position of the engine control switch on the inspection report.
5. Note the engine standby temperature on the inspection report.
6. Check crankcase oil level. Fill as necessary.
7. Check radiator coolant level. Fill as necessary.
8. Inspect the cranking battery connections and charging system. Note any deficiencies on the inspection report.
9. Note battery charge voltage and amperage readings on the inspection report.
10. Inspect battery fluid levels at each cell. Note any deficiencies on the inspection report.
11. Inspect intake air filters for cleanliness and any restrictions. Correct as necessary.
12. Inspect ventilation air louvers for restrictions. Correct as necessary.
13. Visually inspect the fuel storage tank and piping for signs of leaking. Note any deficiencies on the inspection report and report them by telephone the same day to the contracting officer's representative.
14. Inspect the exhaust system. Note any deficiencies on the inspection report.

15. Inspect the lube oil system. Note and review lube oil consumption rate on the inspection report.
16. Inspect radiator belts for proper tension and signs of deterioration. Note any deficiencies on the inspection report.
17. Inspect all hoses for signs of deterioration, damage or leakage. Note any deficiencies on the inspection report.
18. Inspect for loose control wiring. Tighten as necessary.
19. Inspect the engine safety controls. Verify proper operation. Note any deficiencies on the inspection report.
20. Inspect and verify proper operation of the control panel. Note any deficiencies on the inspection report.
21. Inspect control linkages fittings on fuel valve actuator. Lubricate as necessary. Note any deficiencies on the inspection report.
22. Drain moisture from fuel filter bowls.
23. Run in local, without load. Allow engine to reach normal operating temperature, operating for at least 30 minutes.
24. Record phase voltages and stability. Note any deficiencies on the inspection report.
25. Record phase frequency and stability. Note any deficiencies on the inspection report.
26. Record oil pressure at startup and again immediately before shut down. Note any deficiencies on the inspection report.
27. Record coolant temperature immediately before shutdown. Note any deficiencies on the inspection report.
28. Provide an Inspection and Maintenance report with recommended repairs, proposed work schedule and cost breakdown, to the contracting officer's representative within 5 working days of the inspection. The shall include date of inspection, model and location of equipment inspected, inspector's name, a checklist of items listed above noting satisfactory results and listing deficiencies as specified above.

Annually (December):

1. Perform quarterly inspection and maintenance tasks listed above.
 2. Inspect the cooling system, taking coolant sample and provide test report.
 3. Inspect the radiator seal cap. Clean or replace as necessary.
 4. Take lube oil sample and provide test report.
 5. Drain and properly dispose of lubricating oil and used filters. Provide and replace oil and oil filters.
 6. Remove and properly dispose of fuel filters. Provide and replace fuel filters.
 7. Review and propose schedule to accomplish manufacturer's recommended adjustments and upgrades based on runtime.
 8. Conduct complete operational load test. For diesel generator sets 1-DG and 2-DG, this test will be conducted with annual operational load test of the associated UPS system.
 9. Provide an Inspection and Maintenance report with recommended repairs and upgrades, proposed work schedule and cost breakdown, to the contracting officer's representative within 5 working days of the inspection. The shall include date of inspection, model and location of equipment inspected, inspector's name, a checklist of items listed above noting satisfactory results and listing deficiencies as specified above.
- vii. The Contractor shall perform preventive maintenance as specified below on the **UPS systems**, including sealed-cell batteries set out in the Scope of Work:

Quarterly (March, June, September):

Sealed Cell Batteries:

1. Visually inspect general appearance of batteries and connections. Check for bulging of batteries. Note any deficiencies on the inspection report.
2. Measure and record the system voltage on the inspection report.
3. Measure and record the float current on the inspection report.
4. Measure and record the temperature of each battery's negative terminal on the inspection

report.

Other UPS System Components:

5. Visually inspect each UPS for debris that may reduce clearance around unit. Remove as necessary.
6. Note any logic monitor alarm indications and record alarm history on inspection report.
7. Check for excessive heat, noise or vibration and note on inspection report.
8. Record UPS display meter readings on inspection report.
9. Verify proper display functions. Note any deficiencies on the inspection report.
10. Inspect air intake filters for cleanliness and restrictions. Clean as necessary.
11. Inspect and ensure proper operation of the ventilation system. Note any deficiencies on the inspection report.
12. Note UPS system percentage of total load capacity on inspection report.
13. Inspect performance of remote communications interfaces. Note any deficiencies on the inspection report.
14. Perform online inspection of UPS module, making a comprehensive examination of internal and external operating parameters. Note any deficiencies on the inspection report.
15. Verify calibration of display metering by recording actual readings using a true RMS meter. Note any deficiencies on the inspection report.
16. Record ambient room temperature on inspection report.
17. Provide an Inspection and Maintenance report with recommended repairs, proposed work schedule and cost breakdown, to the contracting officer's representative within 5 working days of the inspection. The shall include date of inspection, model and location of equipment inspected, inspector's name, a checklist of items listed above noting satisfactory results and listing deficiencies as specified above.

Annually (December):

- a. Sealed Cell Batteries:
 1. Perform quarterly maintenance tasks listed above.
 2. Measure and record the resistance of each connection on the inspection list.
 3. Measure and record impedance, conductivity or internal resistance for each unit on the inspection report.
 4. Measure and record each connection's torque on the inspection report.
 5. Measure and record the AC ripple current or voltage for each battery on the inspection report.
 6. Inspect battery posts for corrosion. As necessary neutralize corrosion with a one to one (one pound to one gallon) ratio mixture of water and bicarbonate of soda. Note on inspection report.
- b. Other UPS System Components:
 1. Perform offline inspection of UPS module. Note any deficiencies on the inspection report.
 2. Observe operation of transfer functions. Note any deficiencies on the inspection report.
 3. Perform an IF scan of all power connections while under load. Note any deficiencies on the inspection report.
 4. Visually inspect the following items, noting any deficiencies on the inspection report:
 1. DC ground detection offset.
- c. Printed circuit board connections for cleanliness, swabbing contacts as necessary.
- d. All power connections for signs of overheating.
- e. All subassemblies, bridges and legs for signs of component defects or stress.
- f. Inspect all capacitors for signs of leakage.
- g. Inspect for any open engineering changes and note in the upgrade recommendations required in the inspection report.
- h. Check the following internal operating parameters and record them on the inspection report, noting any deficiencies:
 1. DC ground detection offset.

2. Inverter leg current average.
 3. Output filter current average phase balance.
 4. Rectifier bridge current average leg balance.
 5. AC protection settings and operation.
 6. DC protection settings and operation.
 7. Input and output frequency and voltage bandwidth settings.
 8. DC filter capacitance.
 9. AC tank and trap filter capacitance.
 10. Power supply voltages and waveforms.
 11. Static switch leakage.
- i. Check the following internal operating parameters and record results as appropriate on the inspection report, and noting any deficiencies:
 1. System input voltages (all phases.)
 2. System input currents (all phases.)
 3. DC charging voltages (float and equalize) record settings, and adjust to nominal.
 - j. Perform rectifier phase on and walk up. Note any deficiencies on the inspection report.
 - k. Perform inverter phase on and walk up. Note any deficiencies on the inspection report.
 - l. Adjust all panel meters to measured values.
 - m. Check system bypass voltages (all phases.) Note any deficiencies on the inspection report.
 - n. Operate all system circuit breakers. Note any deficiencies on the inspection report.
 - o. Perform manual and UV transfer testing, verifying uninterrupted transfer waveform. Note any deficiencies on the inspection report.
 - p. Replace power module supply back up control battery cells.
 - q. Conduct complete operational load test. This test will be conducted with annual operational load test of the associated diesel generator sets, DG-1 or DG-2.
 - r. Provide an Inspection and Maintenance report with recommended repairs and upgrades, proposed work schedule and cost breakdown, to the contracting officer's representative within 5 working days of the inspection. The shall include date of inspection, model and location of equipment inspected, inspector's name, a checklist of items listed above noting satisfactory results and listing deficiencies as specified above.

B. Small, Women-Owned, Minority-Owned and Service Disabled Veteran Owned Business Participation:

1. The University is committed to (a) achieving the Commonwealth of Virginia's aspirational goal of forty percent (40%) SWAM participation for combined *prime contractor* and *subcontractor* spend, and (b) increasing participation of ***Department of Minority Business Enterprise (DMBE) Certified*** (i) small businesses, (ii) small woman-owned businesses, (iii) small minority-owned businesses, and (iv) businesses owned by service disabled veterans. The University also encourages Contractors to provide for participation of small businesses, businesses owned by women and minorities, and businesses owned by disabled veterans through partnerships, joint ventures, subcontracts, or other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses, and plans for involvement on this contract are required. By submitting a response, Contractor certifies that all information provided in response to this solicitation is true and accurate. Failure to provide the information required by this solicitation may ultimately result in response being deemed non-responsive, and ultimately rejected.
2. While it is the University's intent to enter into an exclusive agreement with one Contractor, whenever possible, all Contractors are encouraged to subcontract any applicable services by partnering with qualified vendors that have also been certified as small, small woman-owned, small minority-owned, or service disabled veteran owned businesses through the Commonwealth of Virginia's Department of Minority Business Enterprise (DMBE).
3. Any that can qualify for certification through DMBE must do so prior to the award of any contract. The qualification information shall be evidenced by that information specified in the Contractor's completed and submitted W-9 form.
4. **Goods and Services related Procurements:**
A Contractor that does not qualify for DMBE certification shall be required to provide quarterly reports to the University's Contract Administrator. The reports shall identify the subcontractors used during the performance of any subsequent contract, as follows:

- a. For **DMBE Certified** subcontractors, quarterly reports verifying (i) those DMBE certified subcontractors being used, (ii) scope of goods and/or services being provided, (iii) payments to subcontract vendor(s) for current quarter **and** year-to-date totals, and (iv) percentage of same payments related to "overall" contract totals for current quarter **and** year-to-date totals; and
- b. For **non DMBE Certified** subcontractors providing services for contracts that exceed **\$200,000**, quarterly reports verifying (i) non-certified subcontractors being used, (ii) scope of goods and/or services being provided, (iii) payments to subcontract vendor(s) for current quarter **and** year-to-date totals, and (iv) percentage of same payments related to "overall" contract totals for current quarter **and** year-to-date totals.

Note: Failure to provide the quarterly reports as requested will result in non-payment to Contractor for any services provided and invoiced during that period, shall remain unpaid until such reports are provided, and unless provided will be considered a breach of contract.

- c. For the purposes of this section, the following definitions shall apply:
 - a. **Good faith SWAM owned business participation efforts:** The sum total of efforts by a particular business to provide for equitable participation of SWAM subcontractors in the operations and contracts of such businesses.
 - 1. For past efforts, this sum total shall be comprised of the record of minority participation over the past two (2) years through employment, retention and promotion: subcontracting or joint ventures in the private sector; or a combination thereof.
 - 2. In connection with the performance of this contract, good faith efforts shall mean those measures which are proposed to allow equitable participation of SWAM subcontractors.
 - b. **Minority Owned Business Enterprise:** a business concern which is at least 51percent owned by one or more minorities or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.
 - 3. **Minority Individual:** "Minority" means a person who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:
 - 4. **Asian Americans:** means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Marinas, the Philippines, U. S. territory of the Pacific, India, Pakistan, Bangladesh and Sri Lanka and who are regarded as such by the community of which these persons claim to be a part.
 - 5. **African Americans:** means all persons having origins in any of the original peoples of Africa and who are regarded as such by the community of which these persons claim to be a part.
 - 6. **Hispanic Americans:** means all persons having origins in any of the Spanish speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who are regarded as such by the community of which these persons claim to be a part.
 - 7. **Native Americans:** means all persons having origins in any of the original peoples of North America and who are regarded as such by the community of which these persons claim to be a part or who are recognized by a tribal organization.

8. **Eskimos and Aleuts:** means all persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia and who are regarded as such in the community of which these persons claim to be a part.
- b. **Small Business Enterprise:** an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years.
- c. **Woman Owned Business Enterprise:** a business concern which is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership or limited liability company or other entity, at least 51 percent of the equity ownership interest in which is owned by one or more women, and whose management and daily business operations are controlled by one or more of such individuals.

V. TERMS AND CONDITIONS:

The following terms and conditions shall remain in effect for the duration of the contract period, including and all renewal periods:

- A. **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 contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- B. **ANTI-DISCRIMINATION:** The Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the *Virginia Public Procurement Act (VPPA)*. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia, § 2.2-4343.1E*).
In every contract over \$10,000 the provisions in 1. and 2. below apply:
 1. During the performance of this contract, the contractor agrees as follows:
 - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there 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.
 - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 2. The contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- C. **ETHICS IN PUBLIC CONTRACTING:** The Contractor certifies that their bid was made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other contractor, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- D. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** The Contractor certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- E. **DEBARMENT STATUS:** The Contractor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting bids on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
- F. **ANTITRUST:** By entering into a contract, the contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

J. **PAYMENT:**

1. **To Prime Contractor:**

- a. Invoices for items ordered, delivered and accepted shall be submitted by the contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- b. 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.
- c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public agency is being billed.
- d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- e. **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 Commonwealth 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 an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).

2. **To Subcontractors:**

- a. A contractor awarded a contract under this solicitation is hereby obligated:
 - (1) To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received

for work performed by the subcontractor(s) under the contract; or

- (2) To notify the University and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.
- b. The contractor is obligated 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.
3. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, 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 agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- K. **PRECEDENCE OF TERMS:** Paragraphs A-J of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- L. **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.
- M. **ASSIGNMENT OF CONTRACT:** The contract shall not be assignable by the contractor in whole or in part without the written consent of the University.
- N. **CHANGES TO THE CONTRACT:** Changes can 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 agreement to modify the scope of the contract.
 2. The University may order changes 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 Institutions of Higher Education and their Vendors*. 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.

- O. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, 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 Commonwealth may have.
- P. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- Q. **INSURANCE:** The Contractor certifies that if awarded the contract, it will have the following insurance coverages at the time the contract is awarded. 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 coverages during the entire term of the contract and that all insurance coverages 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 Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
4. Automobile Liability - \$1,000,000 per occurrence. (Only used if motor vehicle is to be used in the contract.)

- R. **ANNOUNCEMENT OF AWARD:** Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the University will publicly post such notice on the Department of Materiel Management's bid board for a minimum of 10 days.
- S. **DRUG-FREE WORKPLACE:** 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 vendor.

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 whom 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.

- T. **NONDISCRIMINATION OF CONTRACTORS:** The Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the contractor employs ex-offenders unless the University has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.
- U. **eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:** The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to Old Dominion University shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. All contractors must register in eVA; failure to register will result in the bid being rejected.

VI. **SPECIAL TERMS AND CONDITIONS**

- A. **ADVERTISING** No indication of sales or services to Old Dominion University will be used in product literature or advertising. The contractor shall not state in any of its advertising or product literature that the Commonwealth of Virginia or any agency or institution of the Commonwealth has purchased or uses its products or services.
- B. **AUDIT:** The contractor 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.
- C. **ASBESTOS:** Whenever and wherever during the course of performing any work under this contract, the contractor discovers the presence of asbestos or suspects that asbestos is present, he shall stop the work immediately, secure the area, notify the building owner and await positive identification of the suspect material. During the downtime in such a case, the contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers. In the event the contractor is delayed due

to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the contractor but without additional compensation due to the time extension.

- D. **AUTHORIZED CONTRACT PARTICIPATION:** Under the authority of the Code of Virginia 2.2-4304. Cooperative Procurement, it is the intent of this solicitation and resulting contract(s) to allow for cooperative purchasing by only the Virginia Association of State College and University Purchasing Professionals (VASCUPP) and all other Commonwealth of Virginia public institutions of higher education (to include four-year, two-year and community colleges). Current VASCUPP institutions include: College of William and Mary, University of Virginia, George Mason University, Virginia Military Institute, James Madison University, Old Dominion University, Virginia Tech, Radford University and Virginia Commonwealth University. A list of all other Virginia Public Colleges and Universities is available at <http://www.ExploreVirginiaColleges.com/>. In addition, the lead-issuing institution may allow local governments, school boards and other agencies serving local governments in their region access to this contract(s).

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

Use of this contract(s) does not preclude any participating public body from using other contracts or competitive processes as required by law.

- E. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the University shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- F. **CONTRACT PRICES:** Contract prices shall be in the form of a firm unit price for each item during the contract period.
- G. **CANCELLATION OF CONTRACT:** The University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- H. **CONTRACTOR/SUBCONTRACTOR LICENSE REQUIREMENT:** By my signature on this solicitation, I certify that this firm/individual and subcontractor are properly licensed for providing the goods/services specified.

Contractor Name: Carter Machinery

Subcontractor Name: _____

License # 2705083126A

Type Class A – Builder, Electrical and Machinery

- I. **CONTRACTOR REGISTRATION:** If a contract for construction, removal, repair or improvement of a building or other real property is for seventy thousand dollars (\$70,000) or more, or if the total value of all such contracts undertaken by contractor within any 12-month period is five hundred thousand dollars (\$500,000) or more, the contractor is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for seventy-five hundred dollars (\$7,500) or more but less than seventy thousand dollars (\$70,000), (one thousand dollars [\$1,000] for electrical, plumbing and HVAC work) the contractor is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for one-thousand dollars (\$1,000) or more but less than seventy-five hundred dollars (\$7,500) and is not for electrical, plumbing and HVAC work, the contractor is required to be licensed as a "CLASS C CONTRACTOR." The contractor shall place on the outside of the envelope containing the bid and shall place in the bid over his signature whichever of the following notations is appropriate, inserting his contractor license number:

Licensed Class A Virginia Contractor No. 2705083126A _____
Specialty Builder, Electrical and Machinery

- J. **CONTRACTOR'S TITLE TO MATERIALS:** No materials or supplies for the work shall be purchased by the contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The contractor warrants that he has clear title to all materials and supplies for which he invoices for payment.
- K. **FINAL INSPECTION:** At the conclusion of the work, the contractor shall demonstrate to the authorized Owners representative 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.
- L. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the Commonwealth of Virginia, 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.
- M. **INSPECTION OF JOB SITE:** My signature on this contract constitutes certification that I have inspected the job site and am 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.
- N. **INSTALLATION:** All items must be assembled and set in place, ready for use. All crating and other debris must be removed from the premises.
- O. **MAINTENANCE MANUALS:** The contractor shall provide with each piece of equipment an operations and maintenance manual with wiring diagrams, parts list, and a copy of all warranties.
- P. **SMALL, WOMEN, AND MINORITY-OWNED BUSINESSES SUBCONTRACTING AND EVIDENCE OF COMPLIANCE:**
- A. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such business to small, women, and/or minority-owned (SWAM) businesses. If SWAM subcontractors are used, the prime contractor agrees to report the use of SWAM subcontractors by providing the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided.
- B. Each prime contractor who wins an award in which provision of a small, women or minority-owned (SWAM) procurement plan is a condition of the award, shall deliver to the contracting agency or

institution, 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. When such business has been subcontracted to these firms and upon completion of the contract, the contractor agrees to furnish the purchasing office at a minimum the following information: name of firm, phone number, total dollar amount subcontracted, category type (small, women, or minority-owned), and type of product/service provided. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate remedies may be assessed in lieu of withholding such payment.

- Q. **PREVENTIVE MAINTENANCE:** The contractor shall provide necessary preventive maintenance, required testing and inspection, calibration and/or other work necessary to maintain the equipment in complete operational condition during the warranty period.
- R. **PRICE ESCALATION/DE-ESCALATION:** Price adjustments may be permitted for changes in the contractor's cost of materials not to exceed the increase in the following index/indices: CPI-W. Price escalation may be permitted only at the end of this period and each 365 days thereafter and only where verified to the satisfaction of the University. However, "across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the University.

Contractor shall give not less than 30 days advance notice of any price increase to the University. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The contractor shall document the amount and proposed effective date of any general change in the price of materials. Documentation shall be supplied with the contractor's request for increase which will: (1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth of Virginia; and (2) verify the amount or percentage of increase which is being passed on to the contractor by the contractor's suppliers.

The University will notify the using agencies and contractor in writing of the effective date of any increase which it approves. However, the contractor shall fill all purchase orders received prior to the effective date of the price adjustment at the old contract prices. The contractor is further advised that decreases which affect the cost of materials are required to be communicated immediately to the University.

- S. **PRIME CONTRACTOR RESPONSIBILITIES:** The contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that he may utilize, using his best skill and attention. Subcontractors who perform work under this contract shall be responsible to the prime contractor. The contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons employed by them as he is for the acts and omissions of his own employees.
- T. **RENEWAL OF CONTRACT:** This contract may be renewed by the University for four successive one year periods under the terms and conditions of the original contract except as stated in 1. and 2. 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, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the ***Consumer Price Index (CPI) for All Urban Wage Earners and Clerical Workers (CPI-W), All U.S. Items, for base period 1982-84=100***, for the previous twelve (12) month period.
 - 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 increased/decreased by more than the percentage increase/decrease of the ***Consumer Price Index (CPI) for All Urban Wage***

Earners and Clerical Workers (CPI-W), All U.S. Items, for the base period 1982-84=100,
for the previous twelve (12) month period.

- U. **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.
- V. **WARRANTY (COMMERCIAL):** The contractor agrees that the goods or services furnished under any award resulting from this solicitation shall be covered by the most favorable commercial warranties the contractor gives any customer for such goods or services and that the rights and remedies provided therein are in addition to and do not limit those available to the University by any other clause of this solicitation. A copy of this warranty should be furnished with the bid.
- W. **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.
- X. **WORK ESTIMATES (TIME AND MATERIAL CONTRACTS):** Under this time and material contract, *except in the case of emergency repair to restore a failed generator after the primary electrical supply has already failed*, the contractor shall furnish the University with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the contractor's hourly rates specified in the contract, and the total material cost. Material costs shall be billed at contractor's actual invoice costs (contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the contract. If the University determines that the estimated price is not fair and reasonable, the University has the right to ask the contractor to reevaluate the estimate. If the revised estimate is determined to be not fair and reasonable, the University reserves the right to obtain additional quotes from other vendors. A work order will be issued to the contractor, as the authority to proceed with the work, which will incorporate the contractor's estimate and the terms and conditions of the contract. The contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

VI. COMPENSATION AND METHOD OF PAYMENT:

The Contractor shall be paid by the Client in accordance with the schedule of fees submitted in the original bid as noted below.

For services provided herein, the University will make payments to the Contractor within thirty days upon submission of a valid invoice referencing services provided and associated costs. All invoices shall include the contract number and/or purchase order number.

A. Invoicing

The invoice shall list each lot separately and shall include a break down of each unit within each lot. Invoices shall reference contract 09-221-0040-EAH and associated purchase order number. Original invoices shall be sent to:

Old Dominion University, Finance Office
Rollins Hall, Room 202
Norfolk, VA 23529

Copies of invoices shall be sent to:

Old Dominion University, Facilities Management
Attn: Janis Turner
4401 Powhatan Avenue
Norfolk, VA 23529

B. Fees:

- i. Contractor shall provide routine, non-routine and emergency maintenance for emergency generator sets. The fees per quarterly and annual inspection are as listed below:

LOT 1 - FACILITIES							
Unit	Location	Model	Rating	Fuel	Quarterly PM/ qtr. Price	Annual PM	TOTAL PM
1-DG	Gornto Teletechnet Building	Caterpillar Model Number 3408	310KW	Gas	\$198.44	\$198.44	\$793.76
2-DG	E&CS Building	Cummins Power Model Number DFHD-5618744	1000KW	#2 Oil	\$488.02	\$488.02	\$1,952.08
3-DG	Hughes Hall	Onan-Cummins Model Number 600DEGB	600KW	#2 Oil	\$324.46	\$324.46	\$1,297.84
1-UPS	Gornto Teletechnet Building	Mitsubishi Model Number 9800A	125KVA		\$826.25	\$826.25	\$3,305.00
2-UPS	E&CS Building	Mitsubishi Model Number 9800A	375KVA		\$1,047.00	\$1,047.00	\$4,188.00
3-UPS	VMASC (Suffolk)	ETN Powerware Model Number 160	125 KVA		\$826.25	\$826.25	\$3,305.00
ANNUAL TOTAL							\$14,841.68

LOT 2 - HOUSING							
Unit	Location	Model	Rating	Fuel	Quarterly PM/ qtr. Price	Annual PM	TOTAL PM
1-NG	Powhatan 1	Onan 15.OR.IC-4R 7776AA	15KW	Natural Gas	\$ 108.70	\$ 108.70	\$ 434.80
2-NG	Powhatan 2	Coleman Power Station PM402532	25KW	Natural Gas	\$ 108.70	\$ 108.70	\$ 434.80
3-DG	Scotland House	Kohler 250REOZJD	250KW	Diesel	\$ 198.44	\$ 198.44	\$ 793.76
4-DG	Ireland and Virginia House	Catepillar D100-4	100KW	Diesel	\$ 258.14	\$ 258.14	\$ 1,032.56
5-NG	Whitehurst Hall	ONAN 30 Genset 30.OEK-15R/11719M	20KW	Natural Gas	\$ 99.16	\$ 99.16	\$ 396.64
ANNUAL TOTAL							\$ 3,092.56

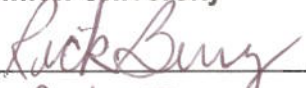
Hourly Rates are as listed below:

Regular Time	\$95.00
Overtime	\$142.50
Weekend/ Holiday	\$142.50

- ii. 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 Commonwealth 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 an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia, § 2.2-4363*).
- iii. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Old Dominion University

By: 

Print: Rick Berry

Title: Executive Director, Construction and Procurement Services

Date: 7/13/09