



# CITY OF SUFFOLK

P.O. BOX 1858, SUFFOLK, VA, 23439-1858, T: (757) 514-7520; FAX (757) 514-7524

## ADDENDUM NO. 2

City of Suffolk  
RFP #2014-00105-JS  
July 22, 2014

Purchasing Division  
441 Market Street, Room 105  
Suffolk, VA 23434-5237  
Phone: (757) 514-7520 / Fax: (757) 514-7524  
<http://www.suffolkva.us/purchasing>

## GENERATOR LEASING AND MAINTENANCE

The Request for Proposal (RFP) for Generator Leasing and Maintenance, June 27, 2014 has been amended as follows:.

**Attached are a copy of the current contract and a copy of an individual equipment lease.**

Attachment A (8 pages)  
Attachment B (1 page)

Contract Officer: \_\_\_\_\_

Jay Smigielski, Purchasing Agent

If you have any questions regarding this Addendum, please contact Jay Smigielski, Purchasing Agent at [jsmigielski@suffolkva.us](mailto:jsmigielski@suffolkva.us)

Acknowledged by: \_\_\_\_\_ Date: \_\_\_\_\_

# ATTACHMENT A

Tidewater Energy Services, LLC

Master Equipment Lease & Service Agreement

Lessor and Lessee have executed this Equipment Lease Agreement effective 10/1/01 and hereby agree to the terms contained below and in any attachments made a part of this Equipment Lease Agreement.

This Lease and the attachments hereto constitute the entire agreement of the parties with respect to the leasing of the Equipment and the other subject matter of this Lease. This Lease supersedes all prior written and/or oral understandings or agreements with respect to the subject matter hereof, and no change, modification, addition, or termination of this Lease shall be enforceable unless in writing and signed by Lessor and Lessee.

Lessee:

City of Suffolk  
441 Market Street  
Suffolk, VA 23434

Signature:



Myles E. Standish      City Manager  
[Print Signatory's Name]      [Print Title]

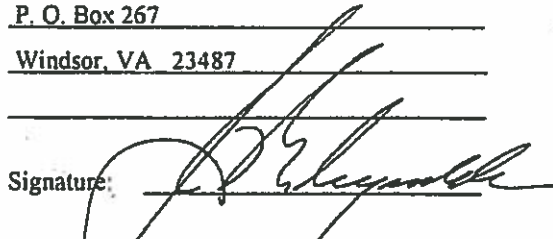
Date:

10/2/01

Lessor:

Tidewater Energy Services, LLC  
P. O. Box 267  
Windsor, VA 23487

Signature:



J. M. Reynolds      Manager  
[Print Signatory's Name]      [Print Title]

Date:

9/27/01

In consideration of the mutual covenants hereinafter contained, the parties hereby agree as follows:

1. **LEASE OF EQUIPMENT.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, subject to the terms of this Equipment Lease Agreement ("Lease" or "Lease Agreement"), the equipment (collectively, the "Equipment," any one item of which may be referred to individually as an "Item of Equipment") described in any Schedule A ("Schedule A") executed by Lessor and Lessee and made a part hereof. Lessee hereby authorizes Lessor to include in any Schedule A the serial number and other information identifying the Equipment when determined by Lessor.

Each such Schedule A when executed by the parties shall be deemed to be a part of this Lease, it being understood and agreed that this Lease shall be a Master Lease. All Schedules, addenda or other attachments to this Lease executed by Lessor and Lessee are hereby incorporated herein and made a part thereof.

In the event it is necessary to amend the terms of a Schedule A to reflect a change in one or more of the following conditions:

- (a) Change in nature or size of Leased equipment; or
- (b) Change in preventative maintenance contract cost incurred by Lessor; or
- (c) Operation of Leased equipment annually in excess of the manufacturer's rated operational life divided by the term (number of years) of the Lease as contained in Schedule A;

Lessee agrees that any such amendment shall be described in a letter from Lessor to Lessee, and unless Lessee objects thereto in a writing delivered to Lessor within fifteen (15) days of receipt of such letter from Lessor to Lessee, such Schedule A shall be deemed amended and such amendments shall be incorporated herein.

2. **RENTALS/LEASE TERM.** Lessee agrees to pay Lessor rentals for each Item of Equipment leased under this Lease as set forth in the Schedule A applicable to such Item of Equipment. All rentals shall be payable as described to Lessor at Lessor's mailing address set forth in such Schedule A, or to such other person or at such other place as Lessor may from time to time designate in writing. "Scheduled Lease Commencement Date" for purposes of this Lease shall be the first day of the month following the In-Service Date or such other date as may be provided in the Schedule A. "In-Service Date" shall be the date Equipment is delivered and accepted by Lessee for lease as provided herein. The "Scheduled Lease Term" shall be as set forth in the applicable Schedule A. Rentals for each Item of Equipment shall commence on the Scheduled Lease Commencement Date with respect to each Item of Equipment. If the In-Service Date occurs prior to the Scheduled Lease Commencement Date, Lessor shall be entitled to a rental ("Interim Rent") for the period from such In-Service Date to the Scheduled Lease Commencement Date (the "Interim Period"). Interim Rent shall be computed by dividing all rentals other than Interim Rent due under the Lease by the actual number of days in the Scheduled Lease Term and multiplying this result by the actual number of days from In-Service Date to Scheduled Lease Commencement Date. The Scheduled Lease Term, including any Minimum Term as described in Paragraph 3 below, as set forth in the Schedule A, together with the Interim Period, if any, shall constitute the Lease Term ("Lease Term") for each Item of Equipment. Lessee agrees to pay Lessor at the expiration or other termination of the Lease Term, additional rents, if specified under Special Terms described in the Schedule A. The termination of this Lease with respect to certain Items of Equipment shall not affect the continuation of this Lease with respect to other Items of Equipment not subject to such termination. In the event the Lessee exercises the option to renew the Lease, rentals for the renewal period shall be agreed to by the parties at the time of renewal.
3. **MINIMUM LEASE TERM.** The Minimum Lease Term ("Minimum Term") shall be set forth in the Schedule A for each Item of Equipment and shall commence on the Scheduled Lease Commencement Date. If Lessor agrees to terminate this Lease prior to the expiration of the Minimum Term with respect to an Item of Equipment, Lessor shall, in addition to all other charges specified in this Lease, charge Lessee an early termination fee equal to the Equipment cost multiplied times the number of months remaining in the minimum lease term divided by the number of months of the minimum lease term. (The formula shall be:  $\frac{\text{Cost of Generators}}{120 \text{ months}} \times \text{Remainder of lease} = \text{Money Owed Lessor.}$ )
- Upon completion of the Minimum Term, the Lessee is deemed to have continued the Lease on a month-to-month basis, until completion of the Scheduled Lease Term unless the Lessee notifies the Lessor in writing 30 days prior to the end of the Minimum Term that it desires to terminate the Lease.
4. **LATE CHARGES.** If Lessee fails to pay any rental or other amount required to be paid by Lessee to Lessor, within ten (10) days after the due date thereof, Lessee shall (in addition to all other amounts due Lessor) pay Lessor the lesser of one and a half percent (1.5%) per month, or the maximum amount allowed by law until paid on such unpaid amounts.
5. **SECURITY DEPOSIT.** If a Security Deposit is specified in the Schedule A, Lessee agrees to pay such amount to Lessor within 30 days following the Scheduled Lease Commencement Date. If Lessee has fulfilled all terms and conditions herein, the Security Deposit 1) may be applied to the final lease payment, or 2) may be returned to Lessee without interest, or 3) may be applied to any purchase option exercised by Lessee at the expiration of the Lease.
6. **WARRANTIES (VENDOR NOT AN AGENT).** The parties acknowledge that: Lessee has relied upon Lessor's recommendation for the selection of the Equipment and that Lessor will deliver, install, rearrange and maintain the Equipment in accordance with its obligations hereunder; Lessor is not the manufacturer of the Equipment nor the manufacturer's agent nor a dealer therein; the Equipment is of a size, design, capacity, description and manufacture selected by Lessor. Lessor warrants that all services performed by Lessor hereunder will be of good workmanship, consistent with generally accepted industry standards. Lessor shall not be liable to Lessee and Lessee hereby waives any claim it may have against Lessor for any loss, damage (consequential or otherwise) or expense caused directly or indirectly by the Equipment leased hereunder, unless proven to be the result of gross negligence on the part of Lessor. Lessee understands and agrees that neither vendor nor any sales representative or other agent of vendor, is an agent of Lessor.

7. **LOCATION/INSPECTION/MARKING.** The Equipment at all times shall be located at the address specified in the applicable Schedule A unless Lessee has notified Lessor in writing of a change of location for each Item of Equipment. Lessee shall make the Equipment available for inspection by Lessor's representatives during Lessee's normal business hours and shall make Lessee's log, maintenance and other records pertaining to the Equipment available for inspection and duplication by Lessor's representatives. Lessee shall affix to or place on the Equipment such labels, plates, or other markings indicating ownership in the Equipment as may be directed and supplied by Lessor.
8. **USE.** Lessee agrees all Equipment will be operated by competent and qualified personnel only and in accordance with applicable operating instructions, laws, government regulations and applicable insurance policies.
9. **RISK OF LOSS; GENERAL INDEMNITY.** Lessee hereby assumes the risk of bodily injury or death, and of damage to property, including the Equipment, and the loss of such property, from whatsoever cause during the Lease Term. Lessee shall indemnify and hold Lessor harmless from and against any and all claims, losses, liabilities (including patent infringement, negligence, tort and strict liability), damages, judgments, suits and all legal proceedings, and any and all costs and expenses in connection therewith (including attorneys' fees) arising out of or in any manner connected with the manufacture, sale, purchase, financing, ownership, delivery, rejection, non-delivery, possession, use, transportation, storage, condition, operation, maintenance, repair, return or other disposition of the Equipment or with this Lease, including, without limitation, claims for injury to or death of persons, for damage to property, for violation of any law, rule or regulation of any public authority, and for environmental damage and clean-up. Lessee shall give Lessor prompt notice of any such claim or liability. The provisions of this Paragraph shall survive the expiration or termination of this Lease. Lessee agrees that upon written notice by Lessor or the assertion of any claim, action, damage, obligation, liability, or lien, Lessee shall, at Lessor's written request, assume the full responsibility for the defense thereof. Notwithstanding the terms contained in this Paragraph to the contrary, Lessee shall not indemnify Lessor for any damages incurred through the gross negligence or willful misconduct of Lessor, its officers, employees or agents.
10. **ALTERATIONS/REPAIRS.** Any improvement, replacement, addition, accessory, or repair part for the Equipment shall become the property of Lessor free of all liens and encumbrances and shall be deemed part of the Equipment. The Equipment is, and shall at all times be and remain, personal property, notwithstanding that any Item of Equipment or any part thereof shall now be or hereafter become in any manner affixed or attached to real property or any improvements thereof.
11. **MAINTENANCE.** Lessor shall pay all costs and expenses resulting from the normal use and operations within the manufacturer's design specifications of each Item of Equipment. Lessor shall include as a part of the monthly lease rate contained in Schedule A all costs and expense of a maintenance agreement, offered by the manufacturer's agent or other source, and provide monthly monitoring of the Equipment. Lessor shall provide to Lessee's designated representative reports of such monthly monitoring on a quarterly or more frequent basis. Lessor, at its expense, shall keep the Equipment in good repair, condition and working order. Lessee shall report to Lessor immediately any Equipment operational failure or maintenance required. Lessor shall respond to emergency calls (equipment failures) within twenty-four (24) hours and prudently proceed to restore failed equipment to operational condition. Lessee may at its option periodically evaluate Lessor's performance under this paragraph and review such performance evaluation with Lessor's agent.
12. **INSURANCE.** Lessee shall at its own expense acquire and maintain, during the term hereof, with such insurers, in such form and under such policies as shall be satisfactory to Lessor, both: (a) all risk property insurance, naming Lessor as loss payee, in amounts and under coverages to provide for rebuilding, repairing or replacing the Equipment in the event of any damage, destruction, loss or theft of the Equipment. The amount of such insurance shall be at least equal to the Equipment Cost described in the Schedule A for each item of Equipment; and (b) comprehensive public liability insurance including coverage for any bodily injury, death or property damage which may be caused by or related to the Equipment or its operation, in amounts satisfactory to Lessor. Such insurance shall name Lessor as an additional insured.

Lessee shall furnish to Lessor a certificate of insurance indicating that such insurance coverages are in effect at the time the Equipment is delivered and shall indicate that such insurance cannot be canceled or altered without at least thirty (30) days prior written notice to Lessor. If Lessee fails to pay insurance required to be provided by Lessee under this Lease, Lessor may, but is not obligated to provide such insurance. Lessee shall, upon demand reimburse Lessor for any costs, fees or expenses incurred in providing such insurance.

Lessor may acquire and maintain, during the term hereof, all risk property insurance in amounts and under coverages to provide for rebuilding, repairing or replacing the Equipment in the event of any damage, destruction, loss or theft of the Equipment.

**13. CASUALTY OCCURRENCE.**

- a) For purposes of this Lease, a "Casualty Occurrence" shall mean any Item of Equipment destroyed, irreparably damaged, lost, stolen, unaccounted for, or taken or requisitioned by condemnation or otherwise during the term of this Lease.
- b) In the event that any Item of Equipment shall suffer a Casualty Occurrence, Lessee shall promptly and fully inform Lessor with respect thereto. Lessee shall pay to Lessor, on the first day of the month following the giving of such notice, an amount ("Casualty Loss Value") equal to the sum of: (i) the amount which will cause the Lessor to realize the same rate of return up to the date of the Casualty Occurrence that the Lessor would have realized had the Lease of the Equipment been in effect for the entire Lease Term; and (ii) all installments of rental then due with respect to that Item of Equipment. The total rental described in the Schedule A which contained an Item of Equipment for which a Casualty Loss Value was paid, shall be reduced by a percentage derived by dividing the Cost of the Item of Equipment experiencing the Casualty Occurrence by the Total Equipment Cost described in such Schedule A. Lessor shall be entitled to receive and retain any proceeds from any insurance with respect to such Item of Equipment up to the amount of the Casualty Loss Value. Provided an Event of Default has not occurred and is continuing, Lessor shall pay over such insurance proceeds to Lessee to the extent such amounts exceed the Casualty Loss Value or the entire insurance proceeds received if Lessee has previously paid the Lessor the Casualty Loss Value. Upon Lessor's receipt of such payment, Lessee shall be entitled to whatever interest Lessor may have in said Item of Equipment, in its then condition and location, without warranties, express or implied, and this Lease shall terminate with respect to such Item of Equipment.

**14. EVENTS OF DEFAULT BY LESSEE.** The following shall constitute Events of Default by Lessee with respect to a Schedule:

- a) Lessee shall fail to pay all or any part of a rental payment or any other payment which continues unpaid ten (10) days beyond due date.
- b) Lessee shall fail to perform or shall materially breach any of the other covenants herein and shall continue to fail to observe or perform the same for a period of ten (10) days after written notice thereof by Lessor; or
- c) Without Lessor's consent, Lessee removes, sells, transfers, assigns, parts with possession, or sublets any Item of Equipment; or
- d) Lessee creates, incurs, or suffers to exist any mortgage, lien, or other encumbrance or attachment of any kind whatsoever upon or affecting the Equipment or this Lease or any of Lessor's interests thereunder; or
- e) Lessee makes an assignment for the benefit of creditors, ceases or suspends its business, admits in writing its inability to pay its debts as they mature; or bankruptcy, reorganization or other proceedings for the relief of debtors or benefit of creditors shall be instituted by or against Lessee; or
- f) Any representation or warranty, made by Lessee herein or in any document or certificate furnished to Lessor, proves to be incorrect in any material respect when made; or
- g) If Lessee is a business entity, the dissolution, merger, or reorganization of Lessee; or
- h) If Lessee is an individual, Lessee dies or is judicially declared incompetent; or
- i) Any representation and warranty made by Lessee in Paragraph 23 proves to be incorrect in any respect.

In this Paragraph 14, "Lessee" also means any guarantor of Lessee's obligations under the Lease and "Lease" also means any guaranty of those obligations.

15. **REMEDIES UPON DEFAULT BY LESSEE.** Upon the occurrence of any Event of Default by Lessee and at any time thereafter, Lessor may do any one or more of the following with or without terminating this Lease:
- a) **Declare the entire amount of rental** and other charges due and to become due hereunder for the entire Lease Term immediately due and payable;
  - b) Take immediate possession of any and all Equipment with notice;
  - c) Sell or lease any Equipment or otherwise dispose, hold, or use such Equipment at Lessor's sole discretion;
  - d) Demand payment of all additional costs incurred by Lessor in the course of correcting any material default;
  - e) Proceed against any or all security given in connection herewith which includes but is not limited to sureties and guarantors;
  - f) Upon notice to Lessee, terminate this Lease with respect to Schedules in default. A termination hereunder shall only occur upon such notice by Lessor and only as to such Items of Equipment included in such notice. This Lease shall continue in full force and effect as to the remaining Items of Equipment, if any;
  - g) Exercise any other right or remedy available to Lessor under the Uniform Commercial Code or any other applicable law. If this Lease is deemed at any time to be one intended as security, Lessee agrees that the Equipment shall secure all indebtedness by Lessee to Lessor;
  - h) Recover from Lessee, not as a penalty **but as liquidated damages**, an amount equal to the sum of: (i) any accrued and unpaid rentals as of the date the Lessor obtains possession of the Equipment following Lessee's default ("Default Date"); plus (ii) the present value of all future rentals reserved in the Lease and contracted to be paid over the unexpired term of the Lease discounted at a rate equal to the rate of a U. S. Treasury Bill with a maturity closest to the unexpired term of the lease as of the default date; plus (iii) all costs and expenses incurred by Lessor in any repossession, recovery, storage, repair, sale, re-lease or other disposition of the Equipment including reasonable attorney's fees and costs incurred in connection with or otherwise resulting from the Lessee's default; plus (iv) the present value of the estimated residual value of the Equipment as of the Expiration of the Lease discounted at a rate equal to the rate of a U. S. Treasury Bill with a maturity closest to the unexpired term of the Lease; less the amount received by Lessor upon sale or re-marketing of such Items of Equipment, if any.
  - i) If the Lessor has entered into any re-marketing agreement applicable to Equipment described in a Schedule in default, the procedures for remedies upon default shall be subject to the following:
    - 1) Lessor shall notify Lessee in writing of Lessee's default with respect to a Schedule under this Lease.
    - 2) Within 60 days of Lessor becoming aware of Lessee's default with respect to Equipment described in a Schedule, Lessor shall make written demand under any re-marketing agreement Lessor has entered into applicable to such equipment.
    - 3) Upon payment to Lessor pursuant to such re-marketing agreement, Lessor shall notify Lessee in writing specifying the amount received by Lessor under such agreement and shall demand that Lessee pay to Lessor any other amounts due under this Lease. Lessee agrees to pay to Lessor such amount within ten (10) days of receipt of such written demand.
    - 4) If Lessor does not receive any payment under any re-marketing agreement within 30 days of making the demand described in (2) above, Lessor shall demand in writing that Lessee pay to Lessor all amounts due Lessor under this Lease. Lessee agrees to pay to Lessor such amounts within ten (10) days of receipt of such written demand.

Notwithstanding Paragraph 15(h) above, Lessor and Lessee agree that in the event it is adjudged or otherwise determined that following an Event of Default, Lessor is entitled to the present value of future rentals reserved in the Lease, the discount rate shall be equal to the **rate on a U. S. Treasury Bill** with a maturity closest to the unexpired term of the Lease at the time the Event of Default occurred. Lessor's rights and remedies provided hereunder or by law shall be cumulative and shall be in addition to all other rights and remedies available to Lessor. Lessor's failure to strictly enforce any provisions of the Lease or any other right available to Lessor shall not be construed as a waiver thereof or as excusing Lessee from future performance. Lessee shall pay Lessor all costs and expenses, incurred by Lessor in any repossession, recovery, storage, repair, re-lease or other disposition of the Equipment, including reasonable attorney's fees as a result of or arising out of an Event of Default.

16. **EVENTS BY DEFAULT BY LESSOR.** The failure of Lessor to perform those items of "maintenance" as described in Paragraph 11 shall constitute an Event of Default.
17. **REMEDIES UPON DEFAULT BY LESSOR.** Upon the occurrence of any Event of Default by Lessor as defined in Paragraph 16, Lessee shall provide written notice of the particulars of such default by certified mail to Lessor's manager. Lessor shall correct such items of default within thirty (30) days following the receipt of the aforesaid notice. Should such Event(s) of Default by Lessor not be corrected within the above described period, Lessee may cancel the equipment schedule(s) which are the subject of the Event(s) of Default. In the event of such cancellation, the Lessor shall remove the subject Equipment within thirty (30) days or sell the subject Equipment to Lessee at a mutually agreed upon price.
18. **ASSIGNMENT AND SUBLEASE.**
- a) Lessee shall not assign or in any way dispose of all or any of its rights or obligations under this Lease or enter into any sublease of all or any part of the Equipment without the prior written consent of Lessor, which consent shall not be reasonably withheld. Any attempted assignment by Lessee without such consent shall be null and void and shall be an Event of Default under this Lease.
  - b) Lessor shall have the right, with notice to Lessee, to assign or create a security interest in this Lease, or assign any of its rights or interest in this Lease, or in the Equipment. If Lessee is given notice of such assignment or security interest, Lessee shall acknowledge such assignment or security interest in writing upon terms satisfactory to Lessor. Upon written notice to Lessee from Lessor of any assignment or of any security interest created by Lessor hereunder, Lessee shall pay rentals directly to such assignee if directed in writing by Lessor to do so. Any assignee of Lessor shall have all of the rights, but none of the obligations, of Lessor under this Lease and Lessee agrees that it will not assert against any assignee of Lessor any defense, counterclaim, or offset that Lessee may have against Lessor. Lessee acknowledges that any assignment or transfer by Lessor shall not materially change Lessee's duties or obligations under this Lease nor materially increase the burdens or risks imposed on Lessee.
19. **OWNERSHIP.** Title to the Equipment shall not pass to Lessee and Lessee shall have no right, title, or interest therein except as expressly set forth in this Lease.
20. **RETURN OF EQUIPMENT.** If Lessee does not exercise any purchase option provided in this Lease, at the expiration of the Lease Term or other termination of this Lease, Lessor shall, at its own expense, be responsible for pickup and delivery of the Equipment. The Lessee shall not encumber, restrict or limit Lessor's access to retrieve the Equipment at the expiration of the lease term.
21. **LESSEE'S OPTIONS.** So long as no Event of Default has occurred and is continuing, at the expiration of the Minimum Term, Lessee shall have the option to: (i) purchase the Equipment at the Purchase Option Amount specified on the applicable Schedule A; (ii) continue the Lease as provided in Paragraph 3 of this Lease; or (iii) have the Equipment returned to Lessor as provided in Paragraph 18 herein. At the expiration of the Scheduled Lease Term, Lessee shall have the option to: (i) purchase the Equipment at the Purchase Option Amount specified on the applicable Schedule A; (ii) renew the Lease as provided in Paragraph 2 herein; or (iii) return the Equipment to Lessor as provided herein.
22. **NOTICES.**
- a) Any requirement of the Uniform Commercial Code of reasonable notice shall be met if such notice is given at least five (5) days before the time of sale, disposition, or other event or thing giving rise to the requirement of notice.
  - b) All notices or communications under this Lease shall be in writing, shall be delivered by Federal Express or equivalent commercial courier or mailed to the parties at the addresses set out for them in this Lease, and any notice so addressed and mailed by registered mail or hand delivered and left with a responsible person shall be deemed to have been given when so mailed or delivered.
  - c) Lessor and Lessee may in writing at any time, and from time to time, change the address to which notice shall be so delivered or mailed.

**23. POWER OF ATTORNEY/AFFIRMATION OR SECURITY INTEREST.**

Lessee hereby irrevocably appoints and constitutes Lessor and each of Lessor's officers, employees, or agents as Lessee's true and lawful agent and attorney-in-fact for the purpose of filing financial statements relating to this Lease and the Equipment, including amendments thereto, pursuant to the uniform commercial code as adopted in the state or states where the Equipment is located; Lessor being hereby authorized and empowered to sign **Lessee's name on one or more of such financing statements, documents or instruments.**

In the event this Lease should be construed as a Lease intended as security, Lessee affirms that Lessor has a security interest in the Equipment and all rentals payable hereunder, proceeds (including insurance proceeds) of the Equipment, and all amounts arising from the sale or other disposition of the Equipment.

**24. NON-CANCELABLE LEASE; OBLIGATIONS UNCONDITIONAL; WAIVER.**

**This Lease cannot be cancelled or terminated except as expressly provided herein. Lessee hereby agrees that Lessee's obligation to pay all rentals and perform all other obligations hereunder shall be absolute, irrevocable, unconditional and independent and shall be paid and performed without abatement, deduction or offset of any kind or nature whatsoever. Any action by Lessee against Lessor for any default by Lessor under this Lease, including breach or warranty or indemnity, shall be commenced within one (1) year after any such cause of action accrues.**

**25. REPRESENTATIONS AND WARRANTIES OF LESSEE.**

Lessee represents and warrants that: (i) Lessee is duly qualified to do business wherever necessary to carry on its present business and operations; (ii) **Lessee has full power, authority and legal right to enter into and perform this Lease and the execution, delivery and performance of such documents have been duly authorized, do not require the approval of any governmental body, will not violate any judgment, order, law or regulation applicable to Lessee or any provision of Lessee's charter, code, certificate of incorporation or bylaws, if any, or constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Lessee under any agreement or instrument to which Lessee is a party or by which Lessee or its assets may be bound or affected;** (iii) this Lease and all schedules and attachments shall have been duly entered into, delivered and shall constitute, legal, valid and binding obligations of Lessee, enforceable in accordance with their terms when executed by Lessor and Lessee; (iv) Lessor, its agents and assigns, shall have full access upon the real property where the Equipment is located ("Property") to install, inspect, repair, rebuild, disassemble, or remove the Equipment without further notice, to or further permission of, charge for, or obligation to, any person or entity ("Parties"), and in the event of default by Lessee in the payment or performance of any of Lessee's obligations and liabilities to Lessor, Lessor or its agents or assigns may remove the Equipment or any part thereof from the Property without objection, delay, hindrance or interference by the Parties, and in such case, the Parties will make no claim or demand whatsoever against the Equipment.

**26. ENFORCEABILITY/CAPTIONS.**

- a) If any part, term, or provision of this Lease is held by any court to be unenforceable or prohibited by law, the rights and obligations of the parties shall be construed and enforced with that part, term, or provision limited so as to make it enforceable to the greatest extent allowed by law, or if it is totally unenforceable, as if this Lease did not contain that particular part, term, or provision.
- b) The headings in this Lease have been included for ease of reference only and shall not be considered in the construction or interpretation of this Lease.
- c) The Lease shall in all respects be governed by and construed in accordance with the laws of the Commonwealth of Virginia.
- d) This Lease shall inure to the benefit of Lessor, its successors, and assigns, and all obligations of Lessee shall bind its permitted successors and assigns.
- e) No director, officer or employee of Lessee shall be liable for the obligations of Lessee hereunder except for acts which constitute fraud or willful misconduct.



**27. REPRESENTATIONS AND WARRANTIES OF LESSOR.**

Lessor represents and warrants that: (i) Lessor is duly qualified to do business wherever necessary to carry on its present business and operations; (ii) Lessor has full power, authority and legal right to enter into and perform this Lease and the execution delivery and performance of such documents have been duly authorized, do not require the approval of any governmental body, will not violate any judgment, order, law or regulation applicable to Lessor or any provision of Lessor's certificate of incorporation or bylaws, if any, or constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Lessee under, any agreement or instrument to which Lessor is a party by which Lessor or its assets may be bound or affected; (iii) this Lease and all schedules and attachments shall have been duly entered into, delivered and shall constitute, legal, valid and binding obligations of Lessor, enforceable in accordance with their terms when executed by Lessor and Lessee.

**28. STORAGE OF COMBUSTIBLE FUEL.** Any storage of combustible or flammable fuels associated with the operation of the Equipment shall comply with all applicable federal, state, and local regulations for the storage of hazardous substances and combustible fuels. Specifically, storage of fuels in underground and/or above-ground tanks shall be registered with the Virginia Department of Environmental Quality within 30 days of installation in compliance with the statutes of the Commonwealth of Virginia and regulations of the Virginia Department of Environmental Quality and/or the U. S. Environmental Protection Agency. Lessee hereby agrees to comply with all such regulations.

**29. ANNUAL FUNDING.** The Lease will be subject to annual funding by the City Council of the City of Suffolk, Virginia for equipment, services and work specified hereunder. In the event the City Council fails to appropriate the funds necessary to provide the equipment and perform the services and work specified in the Lease and other lease documents, this Lease shall be deemed canceled. When funds are not appropriated or otherwise made available to support continuation of performance of the service or work that is subject of this Lease in a subsequent fiscal year, the Lease shall be canceled in accordance with the provisions of Paragraph 3 of this Lease and the Lessor shall be reimbursed in accordance with the provisions thereof.

**30. PROPER VENUE.** This Lease shall be governed by and construed in accordance with the laws of the State of Virginia. The parties agree that proper venue, in the event of litigation concerning this matter, shall be in the Circuit Court for the City of Suffolk.

Equipment Lease & Service Agreement

Schedule A

This Schedule A, when executed by both Lessee and Lessor, shall be made a part of that Master Equipment Lease and Service Agreement dated October 1, 2001, and Supplement dated October 1, 2002 between Lessee and Lessor.

Location

City of Suffolk Municipal Building (Transfer Switch and Generator Installation)  
441 Market Street  
Suffolk, VA

Equipment

Manufacturer Cutler-Hammer  
Year 2003  
Model CH800  
Serial Number KD 0000929-1  
Rated Operational Life \_\_\_\_\_ Hours  
Capacity Rating 800 Amp KW  
Operating Voltage 277 / 480 Volts 3 Phase 60 Hz

*6/25/04  
6/25/04  
GLS*

Lease Terms

Equipment Cost (delivered) and installed \$39655  
Minimum Lease Term 120 Months  
Preventative Maintenance Contract Cost \$240 Annually  
Delivery Date 6 / 13 / 20 04  
In-Service Date 6 / 25 / 20 04  
Lease and Service Payment \$875 Monthly  
Purchase Option Amount \$-0- (See Note Below)

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GLS*

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6/25/04  
GLS*

Beginning July 1, 2004, Lessee agrees to make monthly lease and service payments to Lessor in the amount as indicated about on the first day of each calendar month.

Lessee:

City of Suffolk  
441 Market Street  
Suffolk, VA 23434

*Robert S. Herbert*

Signature

Robert Herbert, City Manager

Print Name/Title

Date

10/20/03

Lessor:

Tidewater Energy Services, LLC  
P. O. Box 267  
Windsor, VA 23487

*J. M. Reynolds*

Signature

J. M. Reynolds, Manager

Print Name/Title

Date

10/7/03

NOTE: Equipment becomes the property of Lessee at lease conclusion.