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# MEMO

APPROVED  
2/5/2024



DATE: January 30, 2024  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Agreement – Nixon Power Services

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached agreement between the Board of County Commissioners of the county of Tulsa, Oklahoma on behalf of the Family Center for Juvenile Justice and Nixon Power Services for maintenance on the Kohler 2000REOZMD Generator from December 1, 2023, through November 30, 2024, at a fee of \$2,342.00 as further described in the attached.

Respectfully submitted for your approval and execution.

MME / hsl

SUBMITTED FOR: The February 5, 2024 BOCC meeting agenda.

CMF# 20240201



APPROVED  
2/5/2024

# Planned Maintenance Agreement Renewal

Date: 10/30/2023

Contract #: PM1092

From: Lynne Gunther  
 Company: Nixon Power  
 Address: 7777 Northshore Place  
 City/State/Zip: North Little Rock, AR 72118  
 Phone: 501-537-8456  
 Email: lgunther@nixonpower.com

To: Board of County Commissioners  
 Company: Family Center for Juvenile Justice  
 Address: 500 W Archer  
 City/State/Zip: Tulsa, OK 74103  
 Phone: 918-596-5901  
 Email: cpumphrey@tulsacounty.org

I am pleased to present the following 1-year planned maintenance agreement for your consideration.

**Equipment Covered:**

- Kohler 2000REOZMD Serial Number 3393GMGC0004

**Services Provided:**

- Annual Service

Term: 1 Year Total Price: \$2,342.00

**Additional Services (not included in Total Price above):**

- Battery replacement including labor (requires 4 batteries) Yes \_\_\_\_\_ No \_\_\_\_\_ Add \$1,919.00

**Clarifications:**

1. Pricing does not include applicable sales taxes.
2. Pricing is valid for thirty (30) days from date of proposal.
3. Agreement valid 12/1/2023 thru 11/30/2024.
4. The person signing is doing so in accordance with the terms and conditions.

If this agreement meets with your approval, please return a signed and dated copy to lgunther@nixonpower.com. Thank you for the opportunity to be of service. If you have any questions, do not hesitate to call me at 501-537-8456.

CMF# 20240201

Sign

2/5/2024  
 Date

\_\_\_\_\_  
 P.O. (if applicable)

Attest: Michael Willis, County Clerk

APPROVED AS TO FORM/ LEGALITY

ASSISTANT DISTRICT ATTORNEY  
 Andrew C. Mihelich



# Planned Maintenance Agreement

Planned Maintenance Performed	Service	Inspection
Perform walk around inspection	✓	✓
Check coolant level; add as needed	✓	✓
Check coolant lines, radiator, radiator cap, and water pump	✓	✓
Change coolant filters	✓	
Check belts; tighten if necessary	✓	✓
Check block heater for proper operation	✓	✓
Check oil level; add as needed	✓	✓
Check lubricating system gaskets	✓	✓
Change oil and oil filters	✓	
Check bearings for grease loss; add if necessary	✓	✓
Check crankcase breather; clean if necessary	✓	✓
Check air filters; clean if necessary	✓	✓
Check air intake piping for loose connections	✓	✓
Check turbocharger for excessive end play clearance	✓	✓
Check battery connections; tighten if necessary	✓	✓
Check battery terminals; clean if necessary	✓	✓
Perform battery conductance test	✓	✓
Check battery charger for proper operation	✓	✓
Check ignition system (gaseous engines)	✓	✓
Check fuel lines, fuel vents, and fuel pump (diesel engines)	✓	✓
Change fuel filters (diesel engines)	✓	
Check exhaust system for signs of wet stacking (diesel engines)	✓	✓
Check alternator accessible components	✓	✓
Check generator leads and voltage regulator wiring; secure if necessary	✓	✓
Check for firmware updates; apply if necessary	✓	✓
Perform visual inspection of ATS	✓	✓
Check line-to-line and line-to-neutral for all phases	✓	✓
Perform start test from generator (without load)	✓	✓
Check for abnormal noise or vibration	✓	✓
Check controller for proper engine monitoring data levels	✓	✓
Check controller for proper generator monitoring data levels	✓	✓
Check ECM for proper operation	✓	✓
Check output voltage and frequency; adjust if necessary	✓	✓
Check all safety shutdowns	✓	✓
Confirm unit is in automatic mode	✓	✓
Check for rodent infestation	✓	✓
Ensure enclosure doors are shut and locked	✓	✓

## TERMS AND CONDITIONS

Nixon Power is herein referred to as the "SERVICE CONTRACTOR" and the customer purchasing goods and/or services ("Goods") from SERVICE CONTRACTOR is referred to as the "OWNER". These Terms and Conditions, price list or schedule, quotation, acknowledgement, SERVICE CONTRACTOR's scope of work, or invoice from SERVICE CONTRACTOR relevant to the sale of the Goods and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by SERVICE CONTRACTOR to OWNER. SERVICE CONTRACTOR's acceptance of OWNER's authorization to proceed is expressly conditional on OWNER's assent to all of SERVICE CONTRACTOR's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of OWNER's purchase order. OWNER's acceptance of the Goods will manifest OWNER's assent to these Terms and Conditions. SERVICE CONTRACTOR reserves the right in its sole discretion to refuse service or issuance of repair.

**PRICES:** The price quoted shall remain in effect for thirty (30) days after the date of proposal provided an unconditional authorization from OWNER is received and accepted by SERVICE CONTRACTOR within this period. Price does not include applicable sales taxes, which will be added at the time of invoicing.

**TAXES:** Current or future taxes or government charges (or increase in same) which SERVICE CONTRACTOR is required to pay or collect in connection with this sale shall be added to the price and/or billed to OWNER separately at SERVICE CONTRACTOR's election.

**TERMS OF PAYMENT:** Unless otherwise specified by SERVICE CONTRACTOR, terms are net thirty (30) days from the date of SERVICE CONTRACTOR's invoice in U.S. currency. If the OWNER wishes to use a credit card as the form of payment, a 5% convenience fee may be added to the total invoice amount. SERVICE CONTRACTOR shall have the right to terminate the agreement or suspend further performance under this agreement if OWNER fails to make any payments when due. OWNER shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to SERVICE CONTRACTOR is not paid when due, it shall bear interest at a rate to be determined by SERVICE CONTRACTOR, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should OWNER's financial responsibility become unsatisfactory to SERVICE CONTRACTOR, cash payments or security satisfactory to SERVICE CONTRACTOR may be required by SERVICE CONTRACTOR for future deliveries of Goods. If such cash payment or security is not provided, SERVICE CONTRACTOR may discontinue delivery of Goods.

**SHIPMENT AND DELIVERY:** While SERVICE CONTRACTOR will use all reasonable commercial efforts to maintain the delivery and/or performance date(s) quoted by SERVICE CONTRACTOR, all shipping dates and/or performance date(s) are approximate and not guaranteed. SERVICE CONTRACTOR shall not be bound to tender delivery of any Goods, for which OWNER has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by OWNER for any reason, OWNER agrees to reimburse SERVICE CONTRACTOR for any and all storage costs and other additional expenses resulting there from. Risk of loss and legal title shall pass from SERVICE CONTRACTOR to OWNER upon delivery to and receipt by carrier at SERVICE CONTRACTOR's shipping point. All shipments of Goods are F.O.B. SERVICE CONTRACTOR's shipping point. Any claims for shortages or damages suffered in transit are the responsibility of OWNER and shall be submitted by OWNER directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

**LIMITED WARRANTY:** The Goods are manufactured and inspected with care by experienced craftsmen. The Manufacturer warrants, for the period of ninety (90) days, each product to be free from defects in materials and workmanship. Repair, replacement, or appropriate adjustment at the Manufacturer's option will be furnished if the product, upon SERVICE CONTRACTOR's inspection, is found to be properly installed, maintained, and operated in accordance with Manufacturer's instruction manuals. The warranty does not apply to malfunctions caused by damage, unreason able to use, misuse, repair or service by unauthorized persons, or normal wear and tear. For more information regarding the specific Manufacturer's warranty coverage applicable to the Goods within this proposal, refer to the applicable Warranty Technical Publication, which will be made available by SERVICE CONTRACTOR upon request.

**LIMITATION OF LIABILITY:** The sole and exclusive remedy for breach of any warranty hereunder shall be limited to repair, correction, or replacement at OWNER's election. SERVICE CONTRACTOR shall not be liable for damages caused by delay in performance and the remedies of OWNER set forth in this agreement are exclusive. In no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, other tort, or otherwise), shall SERVICE CONTRACTOR's liability to OWNER and/or its customers exceed the price paid by OWNER for specific Goods provided by SERVICE CONTRACTOR giving rise to the claim or cause of action. All reasonable efforts shall be extended in performing the service as requested by the OWNER, but SERVICE CONTRACTOR shall not be liable for any and all losses, or consequential damage that arises out of delays, misuse by OWNER, his agents, or employees. Replacement and installation of equipment, components, or accessories that fail to provide satisfactory performance due to obsolescence or design conditions are not included.

**OWNER AGREES THAT SERVICE CONTRACTOR'S LIABILITY SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES:** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment.

**TECHNICAL SUPPORT:** It is expressly understood that any technical advice furnished by SERVICE CONTRACTOR with respect to the use of the Goods is given without charge, and SERVICE CONTRACTOR assumes no obligation for liability for the advice given, or results obtained, all such advice being given and accepted at OWNER's risk.

**EXCUSE OF PERFORMANCE:** SERVICE CONTRACTOR shall not be liable for delays in performance or for non-performance due to acts of God; acts of OWNER; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders, or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond SERVICE CONTRACTOR's reasonable control.

**DELIVERIES/SERVICES:** Deliveries may be suspended for an appropriate period of time or canceled by SERVICE CONTRACTOR upon notice to OWNER in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing. If SERVICE CONTRACTOR determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited, or made impracticable due to causes set forth in the preceding paragraph, SERVICE CONTRACTOR may allocate its available supply of the Goods and/or such material (without obligation to acquire other supplies of any such Goods and/or material) among its purchasers on such basis as SERVICE CONTRACTOR determines to be equitable without liability for any failure of performance which may result there from.

**CANCELLATION:** OWNER may cancel order(s) only upon written notice and upon payment to SERVICE CONTRACTOR of SERVICE CONTRACTOR's cancellation charges which include, among other things, all submittal, engineering, and other manufacturers cancellation costs and expenses incurred and to cover commitments made by SERVICE CONTRACTOR. SERVICE CONTRACTOR's determination of such cancellation charges shall be conclusive.

**CHANGES:** OWNER may request changes or additions to the Goods consistent with SERVICE CONTRACTOR's specifications and criteria. In the event such changes or additions are accepted by SERVICE CONTRACTOR, SERVICE CONTRACTOR may revise the price and dates of delivery and/or performance dates. SERVICE CONTRACTOR reserves the right to change designs and specifications for the Goods without prior notice to OWNER. SERVICE CONTRACTOR shall have no obligation to install or make such change in any Goods manufactured prior to the date of such change.

**BILLABLE SERVICES:** Additional charges will be billed to OWNER at SERVICE CONTRACTOR's then prevailing labor rates for any of the following: a) any services not specified in SERVICE CONTRACTOR's quotation or subsequent engineering submittal; b) any services performed at times other than SERVICE CONTRACTOR's normal service hours; c) if reasonable site and/or equipment access is denied SERVICE CONTRACTOR service representative; and d) if it is necessary, due to local circumstances, to hire an outside contractor, SERVICE CONTRACTOR service personnel will provide supervision only and the cost of such contract labor will be charged to OWNER. **Any claim for additional services must be approved by Owner in writing to be binding upon owner. County cannot agree to pay contingent funds in a future fiscal year, thus a contingent that may require additional billing such as this must be approved at the time the contingency arises. See Okla. Constitution Article 10, Section 26.**

**GENERAL PROVISIONS:** These Terms and Conditions supersede all other communications, negotiations, and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Terms and Conditions shall be binding upon SERVICE CONTRACTOR unless made in writing and signed on its behalf by a duly authorized representative of SERVICE CONTRACTOR. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these Terms and Conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by SERVICE CONTRACTOR's receipt, acknowledgement, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by OWNER, such acceptance is expressly conditional upon OWNER's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by SERVICE CONTRACTOR in any quotation, acknowledgement, or publication are subject to correction.

**HOURS OF OPERATION:** SERVICE CONTRACTOR's normal business hours are from 7:00 AM to 4:00 PM, Monday through Friday. All proposed work will be performed during these normal business hours unless otherwise specified.

