

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
CHATHAM COUNTY APPROVING A CONTRACT TO BE ENTERED INTO
BETWEEN ATLANTIC POWER SOLUTIONS, INC. AND CHATHAM COUNTY**

WHEREAS, Chatham County has solicited bids for a contract to maintain and service County owned emergency generators; and

WHEREAS, Atlantic Power Solutions, Inc. submitted the lowest bid for the maintenance of the County's emergency service generators; and

WHEREAS, Walter Petty has more than a ten percent (10%) ownership interest in Atlantic Power Solutions, Inc.; and

WHEREAS, on the 2nd day of November, 2010 Walter Petty was elected as a County Commissioner for Chatham County and was sworn into office on the 6th day of December, 2010; and

WHEREAS, N. C. Gen. Stat. § 14-234(d1) provides an exception to the conflict of interest prohibitions of N. C. Gen. Stat. § 14-234(a) for public officers in counties with no town or city located therein with a population of more than 15,000 based on the most recent official federal census; and

WHEREAS, the Chatham County Board of Commissioners finds and determines that there is no town or city located within Chatham County that has a population of more than 15,000 based on the most recent federal census; and

WHEREAS, Atlantic Power Solutions, Inc. is currently maintaining the County's generators under a contract approved and ratified by the Chatham County Board of Commissioners on or about the 6th day of September, 2011 pursuant to N. C. Gen. Stat. §14-234(d1); and

WHEREAS, the County has determined that a new contract should be entered into which will run concurrently with the County's July 1 to June 30 fiscal year; and

WHEREAS, generators are essential to the operation of the County's emergency management program during periods of power outages caused by hurricanes and other natural disasters, and

WHEREAS, without adequately operating generators the County will be unable to provide emergency services to its citizens and residents; and

WHEREAS, the Chatham County staff has recommended that the County enter into the contract attached hereto as Appendix A (the "Contract") with Atlantic Power Solutions, Inc. because the service it has received and is receiving from Atlantic Power Solutions, Inc. is superior to the quality of service it has received from any other service provider in the past; and

WHEREAS, the price quoted by Atlantic Power Solutions, Inc is cheaper than the price quoted by any other bidder; and

WHEREAS, the average estimated response time to a failed generator by Atlantic Power Solutions, Inc is three (3) times faster than any other bidder; and

WHEREAS, the Chatham County Board of Commissioners, after taking into consideration the price and quick response time, has determined that it is in the best interest of Chatham County to enter into the Contract with Atlantic Power Solutions, Inc.;

NOW, THEREFORE, BE IT RESOLVED by the Chatham County Board of Commissioners:

1. That the Contract to be entered into between Chatham County and Atlantic Power Solutions, Inc., dated and made effective as of the 1st day of July, 2013, for annual generator maintenance in the amount of \$9,255.00 for scheduled service and \$85.00 per hour (time and a half for after hours) for repairs and maintenance beyond scheduled service and emergency repairs, plus installed parts at a 20% mark up, is hereby specifically approved.
2. That this Resolution be recorded in the official minutes of Chatham County and that said minutes specifically state that Walter Petty did not vote on or otherwise participate in the consideration or adoption of this Resolution.
3. That the Clerk and Finance Officer of Chatham County are hereby directed to comply with the posting and reporting requirements of N. C. Gen. Stat. § 14-234(d1) with respect to this Resolution and the Contract.

Introduced: _____

Adopted: _____

Lindsay K. Ray
Deputy Clerk to the Board
Chatham County Board of Commissioners

APPENDIX 1

AGREEMENT BETWEEN CHATHAM COUNTY AND ATLANTIC POWER SOLUTIONS, INC.

SCOPE OF WORK

Name of Services to be Performed: Generator Maintenance and Repair Services
Contractor will provide the following services to the County fleet of stand-by generators.
Service A performed first followed within six months by Service B.

Service A. Removal and Replace engine lubricant
Removal and Replace lube filter or filters
Removal and Replace fuel filter or filters
Removal and Replace air cleaner as required
Test engine coolant
Inspect engine air inlet system
Inspect and test engine coolant system
Inspect and test engine exhaust system
Inspect and test engine fuel control system
Inspect and test engine safety shut downs
Inspect and test engine instrumentation controls
Inspect alternator wiring control/distribution
Inspect alternator bearing for proper lubrication
Run, evaluate, and record unit performance data

Service B. Inspect engine air inlet system
Inspect and test engine coolant system
Inspect and test engine exhaust system
Inspect and test engine fuel control system
Inspect and test engine safety shut downs
Inspect and test engine instrumentation/controls
Inspect alternator wiring control/distribution
Inspect alternator bearing for proper lubrication
Run, evaluate, and record unit performance data

GENERATORS TO BE SERVICED

Quantity	Model	Size	Fuel Type	Location	Cost
01	Spectrum	535kw	Diesel	Water Plant Jordan Lake	945.00
01	Kohler	180kw	Diesel	West Chatham Senior Center	590.00
01	SDMO	125kw	Diesel	Water Maint. Trailer Mounted	510.00

01	SDMO	120kw	Diesel	EOC Pittsboro	590.00
01	Armstrong	100kw	Diesel	COA Pittsboro	510.00
01	SDMO	60kw	Diesel	EOC Pittsboro Trailer Unit	450.00
01	Spectrum	300kw	Diesel	Water Tower Jack Bennett Rd.	625.00
01	Spectrum	60kw	Diesel	EOC Pittsboro Trailer Unit	450.00
01	Gillette	42kw	LP	Sheriff's Office	450.00
01	Generac	35kw	Diesel	Bynum Lift Station	450.00
01	Spectrum	19kw	LP	School Bus Garage	285.00
01	Gillette	12kw	Gas	EOC Pittsboro Portable	100.00
01	Gillette	12kw	Gas	Siler City EMS Base	100.00
01	Sentry Pro	12kw	LP	Alltel Tower Pittsboro	115.00
01	Generac	10kw	LP	Harpers Cross Roads	115.00
01	Generac	8kw	LP	Fire Tower Pittsboro	115.00
01	Gillette	8kw	LP	Hart's Farm Tower	115.00
01	Onan	5.5kw	Gas	Mobile One Pittsboro	165.00
01	Gillette	5kw	Gas	EOC Pittsboro	100.00
01	HiPower	60kw	Diesel	EOC Pittsboro Trailer Unit	450.00
01	Kohler	35kw	Diesel	EOC Pittsboro Trailer Unit	450.00
01	Sentry Pro	30kw	Diesel	Courthouse Annex	450.00
01	Kohler	350kw	Diesel	Hwy 902 Pittsboro	625.00
01	Gillette	65kw	LP	Back-up EOC	500.00
TOTAL					\$9,255.00

including but not limited to travel, lodging, copying, overhead, outside 'consultants' and other similar and dissimilar expenses and charges.

4. **TERMINATION.** The County reserves the right to terminate this Agreement upon thirty (30) days written notice for any reason deemed by the County to serve the public interest. This termination for convenience will not be made when termination is authorized under any other provision of this Agreement.

In the event of termination for convenience, the County shall pay the Contractor those costs directly attributable to Services received by the County in compliance with this Agreement prior to termination. Provided, however, that no costs will be paid to the Contractor which are coverable in the Contractor's normal course of doing business. The County is not liable for loss of any profits anticipated to be made hereunder, or any special, consequential, or other damages.

This Agreement may be terminated for cause as follows: If the Services provided by the Contractor under this Agreement are unsatisfactory or unacceptable, as determined by the County, this Agreement may be terminated for default.

Grounds for termination for default shall include, but not be limited to:

- a) Failure to respond to all reasonable requests by the County to provide Services covered by this Agreement.
- b) Failure to maintain any equipment required to provide the Services in accordance with the requirements of this Agreement and with all laws.
- c) Lack of proper insurance as required under this Agreement.
- d) Charging rates in excess of those listed in this Agreement and in Appendix 1.
- e) Inefficient, or unsafe practices in providing the Services
- f) Other actions which may impact unfavorably on the faithful performance of this Agreement.

5. **INSURANCE.** The Contractor shall maintain insurance policies at all times within minimum limits as follows:

<u>Coverage</u>	<u>Minimum Limits</u>
Worker's Compensation	Statutory Limits
General/Professional Liability	\$100,000/\$500,000/\$100,000
Automobile Liability	\$250,000/\$100,000

All insurance policies shall be issued by companies authorized to do business under the laws of the State of North Carolina with an A.M. Best Company rating of not less than A. The Contractor shall furnish Certificates of Insurance to the County, naming the County as an additional insured, prior to commencement of providing Services. The certificates shall clearly indicate that the Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County.

Compliance with the foregoing requirements shall not relieve the Contractor from its liability and obligations under this Agreement.

6. **CONFIDENTIALITY.** All proprietary data and information, if any, furnished to the Contractor by the County shall be regarded as confidential, shall remain the sole property of the County, and shall be held in confidence and safekeeping by the Contractor for the sole use of the Parties and the Contractor under the terms of this Agreement. The Contractor agrees that its officers, employees and agents will not disclose to any person, firm, or entity other than the County or County's designated legal counsel, accountants, practice management consultants any confidential information about the County.

The Contractor agrees to carry out its obligations to the County in compliance with all privacy and security regulations required by law.

7. **STATUS OF PARTIES.** Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between the Contractor and the County. The Contractor and its employees and representatives are independent contractors, solely responsible for its or their performance under this Agreement and shall have no legal authority to bind the County.

8. **HOLD HARMLESS AGREEMENT.** The Contractor agrees to indemnify and hold the County, its agents, servants and employees harmless from and against any and all claims, losses, liabilities, costs, expenses, charges, and damages arising from, or relating to, this Agreement, including but not limited to attorney's fees, with respect to any cause arising out of, resulting from, or in connections with (a) any breach by the Contractor of any clause, condition or provision of this Agreement; (b) any breach or violation by the Contractor of any applicable criminal or civil law; or (c) any other cause resulting from any act or failure to act by the Contractor in accordance with this Agreement. The Contractor shall promptly assume the defense of any claim, suit or action within the scope of this indemnification at its expense, upon being notified thereof.

9. **ASSIGNMENT AND SUBCONTRACTING.** Neither this Agreement nor any rights or obligations hereunder shall be subcontracted, assigned, or delegated by the Contractor without the prior written consent of the County, which consent may be withheld in the County's sole discretion.

10. **MODIFICATIONS.** This Agreement may be amended or modified by the mutual written consent of the Parties. A modification is not enforceable against the County unless it is signed by the County Manager, Purchasing Agent or other duly authorized official.

11. **NOTICES.** Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited with the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Chatham County
Attn Tony Tucker

Atlantic Power Solutions
Attn Walter Petty

PO Box 613
Pittsboro, North Carolina 27312

2287 Bonlee Bennett Road
Siler City, NC 27344

12. NO WAIVER. No waiver by either Party of any default by the other Party in the performance of any particular provision of this Agreement shall invalidate any other paragraph of this Agreement or operate as a waiver of any future default, whether like or different in character.

13. SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

14. GOVERNING LAW. This Agreement shall be governed and construed in accordance of the laws of the state of North Carolina.

CHATHAM COUNTY, NORTH CAROLINA, a body politic and corporate of the State of North Carolina

BY: _____
Charlie Horne, County Manager

ATTEST:

BY: _____
Lindsay K. Ray, Deputy Clerk to the Board

ATLANTIC POWER SOLUTIONS, INC.

BY: _____
Walter Petty, President

ATTEST:

BY: _____
Secretary of Corporation

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INC.

SCOPE OF WORK

This Instrument has been pre-audited in the manner required by the Local Government Fiscal Budget Act.

Vicki McConnell, Finance Officer

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