

Resolution No. 3062

A Resolution of the City of Sanford, Florida, amending the City's annual operating budget for the fiscal year beginning October 1, 2021 and ending September 30, 2022; providing for implementing administrative actions; providing for a savings provision; providing for conflicts; providing for severability and providing for an effective date.

Whereas, the Commission of the City of Sanford, Florida has adopted an annual operating budget for the fiscal year beginning October 1, 2021 and terminating on September 30, 2022 specifying certain projected revenues and expenditures for the operations of Sanford municipal government; and

Whereas, the City's budget presumes that each department generally will, to the best of their ability, maintain its expenditures within its allocated budgeted level and exercise prudence in expending funds during the course of the City's fiscal year; and

Whereas, from time-to-time circumstances and events may require that the original City budget may need revision; and

Whereas, the City Commission, in its judgment and discretion, has the authority to adjust the budget to more closely coincide with actual and expected events.

Now, therefore, be it adopted and resolved by the City Commission of the City of Sanford, Florida as follows:

Section 1. Adoption of Budget Amendment.

The annual operating budget of the City of Sanford for the fiscal year beginning October 1, 2021 and terminating on September 30, 2022 is hereby revised and amended by Attachment "A". The Attachment is hereby incorporated into this Resolution as if fully set forth herein verbatim. Except as amended herein, the annual operating budget for the City of Sanford for fiscal year beginning October 1, 2021 and

terminating on September 30, 2022 shall remain in full force and effect.

Section 2. Implementing administrative actions.

The City Manager, or designee, is hereby authorized and directed to implement the provisions of this Resolution by means of such administrative actions as may be deemed necessary and appropriate.

Section 3. Savings.

The prior actions of the City of Sanford relating to the adoption of the City budget and related activities are hereby ratified and affirmed.

Section 4. Conflicts.

All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

Section 5. Severability.

If any section, sentence, phrase, word, or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Resolution not otherwise determined to be invalid, unlawful, or unconstitutional.

Section 6. Effective Date.

This Resolution shall become effective immediately upon enactment.

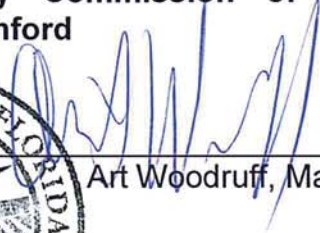
Passed and adopted this 12th day of September, 2022.

Attest:

City Commission of the City of
Sanford



Traci Houchin, MMC, FCRM
City Clerk



Art Woodruff, Mayor

For use and reliance of the Sanford
City Commission only.
Approved as to form and legality.



William Colbert, City Attorney

ATTACHMENT A REQUEST FOR BUDGET AMENDMENT

Fiscal Year 2022
Department: Fire

Division: Operations

09/12/2022

CHANGES IN REVENUES

REVENUE ACCOUNT NUMBER					Current	Current	Amount of	Adjusted	
Fund	Revenue	Act Cd	Ele	Project #	Budget	Balance	Change	Unrealized	
001	0000	389	98	00	Use of Reserves	\$ 10,908,366	\$ 10,908,366	\$ 32,311	10,940,677
TOTAL CHANGES IN REVENUES							\$ 32,311		

CHANGES IN EXPENDITURES

EXPENDITURE ACCOUNT NUMBER					Current	Current	Amount of	Remaining	
Fund	Dpt/Div	Activity	Obj	Ele	Project #	Budget	Balance	Change	Balance
001	3001	522	46	00		\$ 398,366	4,543	34,311	429,677
TOTAL CHANGES IN EXPENDITURES							\$ 34,311		

REASON FOR AMENDMENT: The purchase of E32 repairs.

DIRECTOR APPROVAL: [Signature] DATE: 5/27/2022

FINANCE APPROVAL: Cynthia Lindsay DATE: 8/29/22

CITY MANAGER APPROVAL: [Signature] DATE: 9/12/22

CITY COMMISSION AGENDA DATE: Sept 12, 2022 APPROVED Y

FOR FINANCE USE

Entry Date: 9/13/2022 Batch Number: B# 5313 Document #: BA 12-101
S. Posey
Res# 3062
CCM# 22-219



**CITY COMMISSION MEMORANDUM 22-219
SEPTEMBER 12, 2022 AGENDA**

TO: Honorable Mayor and Members of the City Commission
PREPARED BY: Ronnie McNeil Jr., Fire Chief
SUBMITTED BY: Norton N. Bonaparte, Jr., ICMA-CM, City Manager
SUBJECT: Budget Amendment Resolution No. 3062

STRATEGIC PRIORITIES:

- Unify Downtown & the Waterfront
- Promote the City's Distinct Culture
- Update Regulatory Framework
- Redevelop and Revitalize Disadvantaged Communities

SYNOPSIS:

Approval of Resolution No. 3062, to amend the budget in the amount of \$32,331 to repair Fire Engine 32 is requested.

FISCAL/STAFFING STATEMENT:

Reserve funds are requested to fund the repair of Fire Engine 32 (E32), unit #13 in the amount of \$32,331.11.

BACKGROUND:

Due to two extreme repair expenditures this fiscal year, the Fire Department has exceeded the amount budgeted for apparatus repairs. The Operations Division FY2022 current apparatus available repair funds are insufficient to cover the repair of E32. E32 is Out Of Service (OOS) and has been evaluated for repair with an estimated repair cost \$32,331 which exceeds funds currently available to cover this repair. With E32 OOS we only have one reserve engine available.

The Fire Department recently approved a major repair to Fire Engine 132 (E132), Unit #14 with repair costs totaling \$50,610 which will utilize the majority of our current PO 38219 balance. The repair cost of E132 in addition to the continuing minor maintenance/repairs of other apparatus' will deplete PO 38219 before the fiscal year end.

LEGAL REVIEW:

There is no legal review requested of the City Attorney.

RECOMMENDATION:

City Staff recommends that the City Commission approve Resolution No. 3062, to amend the budget for the purchase of apparatus repairs and increase the current PO 38219 in the amount of \$32,331.

SUGGESTED MOTION:

“I move to approve Resolution No. 3062, to amend the budget for the purchase of apparatus repairs and increase the current PO 38219 in the amount of \$32,331.”

Attachments: Resolution No. 3062
E32 Repair Estimate



Payment terms are 30 days from invoice date unless otherwise agreed upon in writing. Remit to:
 Cummins Sales and Service
 PO Box 772639
 Detroit, MI 48277-2639

ORLANDO FL BRANCH
 4820 ORANGE BLOSSOM TRAIL
 MV#95745
 ORLANDO, FL 32810-
 (407)298-2080

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BILL TO

TEN-8 FIRE & SAFETY, LLC
 2904 59TH AVE DR E
 BRANDENTON, FL 34203-

OWNER

TEN 8 FIRE EQUIPMENT IN
 141 MARITIME DR
 SANFORD, FL 32771-6319
 RODNEY ROBINSON - 941 7567779

PAGE 1 OF 5

*** CHARGE ***

DATE	CUSTOMER ORDER NO.	DATE IN SERVICE	ENGINE MODEL	PUMP NO.	EQUIPMENT MAKE
08-AUG-2022		26-AUG-2013	ISL9 CM2350 L101		PIERCE
CUSTOMER NO.	SHIP VIA	FAIL DATE	ENGINE SERIAL NO.	CPL NO.	EQUIPMENT MODEL
148432		20-JUL-2022	73545464		PUMPER
REF. NO.	SALESPERSON	PARTS DISP.	MILEAGE/HOURS	PUMP CODE	UNIT NO.
219782			107536 / 9814		E32

QUANTITY ORDERED	BACK ORDERED	QUANTITY SHIPPED	PART NUMBER	DESCRIPTION	PRODUCT CODE	UNIT PRICE	AMOUNT
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OSN/MSN/VIN

N/A

COMPLAINT

ACTIVE CEL CODES AND OIL LEAKS

CAUSE

DIAGNOSE FOR OIL LEAKS

CYL GASKET, OIL PAN, OIL COOLER, FRONT COVER AND FRONT GEAR HOUSING, REAR MAIN AND FLY HOUSING, REPTO SEAL, VALVE COVER, ROCKER BOX, OIL FILL TUBE

ALSO HAS HIGH CRANKCASE PRESSURE WITH ALL THE OIL LEAKS FOUND CYLINDER HEAD FAILED RUSE GUIDELINES, LINERS POLISHED AND HAVE VERTICLE LINES, RECOMMENDING UNIT FOR AN INFRAME.

NOW 3 INFRAME WITH 3 YRS 1500,000 MILES

REGEN
 ROADTEST
 QUOTE TO REMOVE CYLINDER HEAD AND INSTPECT FOR ANYBOTHER DAMAGE

INSPECT CYLINDER HEAD FOR REUSE

CORRECTION

THEN QUOTE FOR OIL LEAKS AND REPAIR
 QUOTE TO PERFORM NOW 3 INFRAME TO REPAIR ALL OOIL LEAKS AND EXCESIVE HIGH CRANKCASE PRESSURE

DIAGNOSE FOR OIL LEAKS

CYL GASKET, OIL PAN, OIL COOLER, FRONT COVER AND FRONT GEAR HOUSING, REAR MAIN AND FLY HOUSING, REPTO SEAL, VALVE COVER, ROCKER BOX, OIL FILL TUBE

ALSO HAS HIGH CRANKCASE PRESSURE WITH ALL THE OIL LEAKS FOUND CYLINDER HEAD FAILED RUSE GUIDELINES, LINERS POLISHED AND HAVE VERTICLE LINES, RECOMMENDING UNIT FOR AN INFRAME.

Completion date : 21-Jul-2022 11:00AM. Estimate expires : 26-Aug-2022 09:03AM.

Billing Inquiries? Call (877)480-6970

THERE ARE ADDITIONAL CONTRACT TERMS ON THE REVERSE SIDE OF THIS DOCUMENT, INCLUDING LIMITATION ON WARRANTIES AND REMEDIES, WHICH ARE EXPRESSLY INCORPORATED HEREIN AND WHICH PURCHASER ACKNOWLEDGES HAVE BEEN READ AND FULLY UNDERSTOOD.

AUTHORIZED BY (print name) _____ SIGNATURE _____ DATE _____



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OSN/MSN/VIN N/A

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INSPECT CYLINDER HEAD FOR REUSE

THEN QUOTE FOR OIL LEAKS AND REPAIR
 CUSTOMER BILLABLE

COVERAGE

REMARK

SRO

THANK YOU THANK YOU FOR USING CUMMINS SALES & SERVICE.
 NO 999 TIME

DIAGNOSTIC CHARGE: 3,610.00

1	0	5529501RX	HEAD,CYLINDER	DRC	3,913.92	3,913.92
1	0	4942132D	HEAD, CYLINDER	CLEAN	375.00	375.00
-1	0	4942132D	HEAD,CYL ISC/QSC ISL/QSL	DIRTY	375.00	- 375.00
1	0	5579344	KIT,UPPER ENGINE GASKET	CECO	294.08	294.08
6	0	5404408	ORDERED ITEM LINER,CYLINDER	CECO	155.34	932.04
6	0	4955530	KIT,ENGINE PISTON	CECO	329.36	1,976.16
1	0	3945917	SET,MAIN BEARING (STD)	CECO	237.52	237.52
6	0	3950661	BEARING,CONNECTING ROD	CECO	18.46	110.76
6	0	3966244	BEARING,CON ROD (STD)	CECO	21.81	130.86
1	0	3930408	GASKET,OIL PAN	CECO	145.67	145.67

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OSN/MSN/VIN		N/A					
1	0	0	3939352	GASKET,OIL SUC CONNECTION	CECO	3.74	3.74
1	0	0	3164070	SEALANT	CECO	60.90	60.90
1	0	0	5273379	THERMOSTAT	CECO	48.37	48.37
2	0	0	3945326	SEAL,O RING	CECO	6.30	12.60
1	0	0	CV50628	ELEMENT,CV	FLG	160.47	160.47
3	0	0	3163075	PAINT	CECO	18.47	55.41
1	0	0	LF9009	PAC, LF	FLG	55.01	55.01
27	0	0	C891001QT	PB 1 S GN2 15W40 BULK QT	VALVOLINE	3.54	95.58
12	0	0	CC2825	705290 VALVOLINE ES COMP EG	FLG	17.11	205.32
1	0	0	FF63054-NN	PAC,FF	FLG	63.46	63.46
1	0	0	FS1065	FF63008 FLG PAC, FS	FLG	52.10	52.10
1	0	0	AF61112	AIR FILTER	S1-NSPART3	134.30	134.30
1	0	0	155-122	MISC CLAMPSHOSES ETC	S1-NSPART3	352.50	352.50
1	0	0	FREIGHT	FREIGHT CHRGS SERVICE	C1-FREIGHT	650.00	650.00
1	0	0	EXTENDED WARRANTY	CERTIFICATE	C1-CERTIFICATES	2,100.00	2,100.00
1	0	0	LF9548	PAC, LF	FLG	79.08	79.08
1	0	0	3899283	SEAL,O RING	CECO	9.17	9.17
1	0	0	3899728	SEAL,O RING	CECO	12.63	12.63
1	0	0	3973512	SEAL,O RING	CECO	3.30	3.30
1	0	0	5443707	GASKET,CONNECTION	CECO	7.40	7.40

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OSN/MSN/VIN		N/A					
3	0	0	4934545	HARNES, WIRING	CECO	71.00	213.00
1	0	0	3936876	SEAL, RECTANGULAR RING	CECO	3.82	3.82
1	0	0	3036666	SEAL, O RING	CECO	2.35	2.35
1	0	0	3906696	SEAL, RECTANGULAR RING	CECO	6.27	6.27
1	0	0	3918174	GASKET, OIL COOLER CORE	CECO	16.88	16.88
1	0	0	3929011	GASKET, LUB OIL CLR COVER	CECO	21.53	21.53
1	0	0	4089544	KIT, SEAL	CECO	126.31	126.31
1	0	0	3936302	SEAL, RECTANGULAR RING	CECO	33.07	33.07
1	0	0	3899283	SEAL, O RING	CECO	9.17	9.17
1	0	0	3161025	SEAL, DUST	CECO	24.45	24.45
1	0	0	3944293	GASKET, GEAR HOUSING	CECO	84.63	84.63
1	0	0	5440813	GASKET, ACC DRIVE SUPPORT	CECO	14.28	14.28
1	0	0	ORDERED ITEM MISC	3685614 CECO MISC HOSES AND GASKETS	S1-NSPART2	567.00	567.00

PARTS:	13,025.11
PARTS COVERAGE CREDIT:	0.00CR
TOTAL PARTS:	13,025.11
SURCHARGE TOTAL:	0.00
LABOR:	19,206.00
LABOR COVERAGE CREDIT:	0.00CR
TOTAL LABOR:	19,206.00
MISC.:	- 3,510.00
MISC. COVERAGE CREDIT:	0.00CR

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OSN/MSN/VIN N/A

TOTAL MISC.:	-	3,510.00	
HAZ WASTE DISPOSAL			100.00
MISCELLANEOUS			- 3,610.00
TAX EXEMPT NUMBERS:			
	LOCAL		0.00

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SUB TOTAL:	32,331.11
TOTAL TAX:	0.00
TOTAL AMOUNT: US \$	32,331.11

AUTHORIZED BY (print name) _____ SIGNATURE _____ DATE _____

APPENDIX A
TERMS AND CONDITIONS

These Terms and Conditions, together with the estimate/quote (the "Quote") and/or invoice ("Invoice") attached to these Terms and Conditions, are hereinafter collectively referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified on the Quote and/or Invoice and Cummins Inc. ("Cummins") and supersede any previous agreement or understanding (oral or written) between the parties with respect to the subject matter of this Agreement. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, constitutes a waiver of, or serves to explain or interpret, the Terms and Conditions set forth in this Agreement. Electronic transactions between Customer and Cummins will be solely governed by the Terms and Conditions of this Agreement, and any terms and conditions on Customer's website or other internet site will be null and void and of no legal effect on Cummins. In the event Customer delivers, references, incorporates by reference, or produces any purchase order or document, any terms and conditions related thereto shall be null and void and of no legal effect on Cummins.

1. **SCOPE OF SERVICES; PERFORMANCE OF SERVICES.** Cummins shall supply part(s) and/or component(s) and/or engine(s) and/or generator set(s) ("Goods") and/or perform the maintenance and/or repair ("Services") on the equipment identified in the Quote and/or Invoice ("Equipment"), if applicable, in accordance with the specifications in the Quote and/or Invoice. No additional services or goods are included in this Agreement unless agreed upon by the parties in writing, or otherwise, as applicable.
2. **CUSTOMER OBLIGATIONS.** If necessary, Customer shall provide Cummins safe and free access to Customer's site and arrange for all related services and utilities necessary for Cummins to safely and freely perform the Services. During the performance of the Services, Customer shall fully and completely secure all or any part of any facility where the Equipment is located to remove and mitigate any and all safety issues and risks, including but not limited to injury to facility occupants, customers, invitees, or any third party and/or property damage or work interruption arising out of the Services. If applicable, Customer shall make all necessary arrangements to address and mitigate the consequences of any electrical service interruption which might occur during the Services. Customer is responsible for operating and maintaining the Equipment in accordance with the owner's manual for the Equipment.
3. **INVOICING AND PAYMENT.** Unless otherwise agreed to by the parties in writing and subject to credit approval by Cummins, payments are due thirty (30) days from the date of Invoice. If Customer does not have approved credit with Cummins, as solely determined by Cummins, payments are due in advance or at the time of supply of the Goods and/or Services. If payment is not received when due, in addition to any rights Cummins may have at law, Cummins may charge Customer eighteen percent (18%) interest annually on late payments, or the maximum amount allowed by law. Customer agrees to pay all Cummins' costs and expenses (including all reasonable attorneys' fees) related to Cummins' enforcement and collection of unpaid invoices, or any other enforcement of this Agreement by Cummins.
4. **TAXES; EXEMPTIONS.** The Invoice includes all applicable local, state, or federal sales and/or use or similar taxes which Cummins is required by applicable laws to collect from Customer under this Agreement. Customer must provide a valid tax exemption certificate or direct payment certificate prior to shipment of the Goods or performance of the Services, or such taxes will be included in the Invoice.
5. **DELIVERY; TITLE AND RISK OF LOSS.** Unless otherwise agreed in writing by the parties, any Goods supplied under this Agreement shall be delivered FOB Origin, freight prepaid to the first destination. If agreed, any charges for third party freight are subject to adjustment to reflect any change in price at time of shipment. Unless otherwise agreed to, packaging method, shipping documents and manner, route and carrier and delivery shall be as Cummins deems appropriate. All shipments are made within normal business hours, Monday through Friday. Unless otherwise agreed in writing by the parties, title and risk of loss for any Goods sold under this Agreement shall pass to Customer upon delivery of Goods by Cummins to freight carrier or to Customer at pickup at Cummins' facility.
6. **DELAYS.** Any delivery, shipping, installation, or performance dates indicated in this Agreement are estimated and not guaranteed. Further, delivery time is subject to confirmation at time of order. Cummins shall not be liable to Customer or any third party for any loss, damage, or expense suffered by Customer or third party due to any delay in delivery, shipping, installation, or performance, however occasioned, including any delays in performance that result directly or indirectly from acts of Customer or causes beyond Cummins' control, including but not limited to acts of God, accidents, fire, explosions, flood, unusual weather conditions, acts of government authority, or labor disputes.
7. **LIMITED WARRANTIES.**
 - a. New Goods: New Goods purchased or supplied under this Agreement are governed by the express written manufacturers' warranty. No other warranty for Goods supplied under this Agreement is provided under this Agreement.
 - b. Cummins Exchange Components, Other Exchange Components, and Recon: Cummins will administer the Cummins exchange component warranty and the warranties of other manufacturers' exchange components or Recon Components which are sold by Cummins. In the event of defects in such items, only manufacturers' warranties will apply.
 - c. HHP Exchange Engine: HHP Exchange Engines remanufactured by Cummins under this Agreement are governed by the express Cummins' written warranty. No other warranty for HHP exchange Engines supplied under this Agreement is provided under this Agreement.
 - d. General Service Work: All Services shall be free from defects in workmanship (i) for power generation equipment (including engines in such equipment), for a period of ninety (90) days after completion of Services or 500 hours of operation, whichever occurs first; or (ii) for engines, for a period of ninety (90) days after completion of Services, 25,000 miles or 900 hours of operation, whichever occurs first. In the event of a warrantable defect in workmanship of Services supplied under this Agreement ("Warrantable Defect"), Cummins' obligation shall be solely limited to correcting the Warrantable Defect. Cummins shall correct the Warrantable Defect where (i) such Warrantable Defect becomes apparent to Customer during the warranty period; (ii) Cummins receives written notice of the Warrantable Defect within thirty (30) days following discovery by Customer; and (iii) Cummins has determined that there is a Warrantable Defect. Warrantable Defects remedied under this provision shall be subject to the remaining warranty period of the original warranty of the Services. New Goods supplied during the remedy of Warrantable Defects are warranted for the balance of the warranty period still available from the original warranty of such Goods.
 - e. Used Goods: Used Goods are sold "as is, where is" unless exception is made in writing between Cummins and Customer. Customer agrees to inspect all used Goods before completing the purchase.
 - f. THE REMEDIES PROVIDED IN THE LIMITED WARRANTIES AND THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES PROVIDED BY CUMMINS TO THE CUSTOMER UNDER THIS AGREEMENT. EXCEPT AS SET OUT IN THE WARRANTY AND THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, CUMMINS EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, ENDORSEMENTS, AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY OR COMMON LAW IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF FITNESS FOR A PURPOSE OR MERCHANTABILITY.
8. **INDEMNIFICATION.** Customer shall indemnify, defend and hold harmless Cummins from and against any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, brought against or incurred by Cummins related to or arising out of this Agreement or the Services and/or Goods supplied under this Agreement (collectively, the "Claims"), where such Claims were caused or contributed, in whole or in part, by the acts, omissions, fault or negligence of the Customer. Customer shall present any Claims covered by this indemnity, including any tenders for defense and indemnity by Cummins to its insurance carrier unless Cummins directs that the defense will be handled by Cummins' legal counsel at Customer's expense.
9. **LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER TERM OF THIS AGREEMENT, IN NO EVENT SHALL CUMMINS, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES CAUSED BY DELAY) IN ANY WAY RELATED TO OR ARISING FROM CUMMINS' SUPPLY OF GOODS OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT SHALL CUMMINS' LIABILITY TO CUSTOMER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH CUSTOMER OR ON CUSTOMER'S BEHALF UNDER THIS AGREEMENT EXCEED THE TOTAL COST OF GOODS AND SERVICES SUPPLIED BY CUMMINS UNDER THIS AGREEMENT GIVING RISE TO THE CLAIM. BY ACCEPTANCE OF THIS AGREEMENT, CUSTOMER ACKNOWLEDGES CUSTOMER'S SOLE REMEDY AGAINST CUMMINS FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN EVEN IF THE EXCLUSIVE REMEDY IN SECTION 7 IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.**
10. **GOVERNING LAW AND JURISDICTION.** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision. The parties agree that the court of the State of Indiana shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Agreement.
11. **ASSIGNMENT.** This Agreement is binding on the parties and their successors and assigns. Customer shall not assign this Agreement without the prior written consent of Cummins.
12. **CANCELLATION.** Orders placed with and accepted by Cummins may not be cancelled except with Cummins' prior written consent. Cummins may charge Customer a cancellation charge in accordance with current Cummins policy which is available upon request, in addition to the actual, non-recoverable costs incurred by Cummins.
13. **REFUNDS/CREDITS.** Goods ordered and delivered by Cummins under this Agreement are not returnable unless agreed to by Cummins. Cummins may, at its sole discretion, agree to accept Goods for return and provide credit where Goods are in new and saleable condition and presented with a copy of the original invoice. Credits for returns will be subject to up to a 15% handling/restocking charge and are limited to eligible items purchased from Cummins.
14. **INTELLECTUAL PROPERTY.** Any intellectual property rights created by either party, whether independently or jointly, in the course of the performance of this Agreement or otherwise related to Cummins pre-existing intellectual property or subject matter related thereto, shall be Cummins' property. Customer agrees to assign, and does hereby assign, all right, title, and interest to such intellectual property to Cummins. Any Cummins pre-existing intellectual property shall remain Cummins' property. Nothing in this Agreement shall be deemed to have given Customer a licence or any other rights to use any of the intellectual property rights of Cummins.
15. **COMPLIANCE WITH LAWS.** Customer shall comply with all laws applicable to its activities under this Agreement, including without limitation, any and all applicable national, provincial, and local export, anti-bribery, environmental, health, and safety laws and regulations in effect. Customer acknowledges that the Goods, and any related technology that are sold or otherwise provided hereunder may be subject to export and other trade controls restricting the sale, export, re-export and/or transfer, directly or indirectly, of such Goods or technology to certain countries or parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States, the United Kingdom and other jurisdictions. It is the intention of Cummins to comply with these laws, rules, and regulations. Any other provision of this Agreement to the contrary notwithstanding, Customer shall comply with all such applicable laws relating to the cross-border movement of goods or technology, and all related orders in effect from time to time, and equivalent measures. Customer shall accept full responsibility for any and all civil or criminal liabilities and costs arising from any breaches of these laws and regulations and will defend, indemnify, and hold Cummins harmless from and against any and all fines, penalties, claim, damages, liabilities, judgments, costs, fees, and expenses incurred by Cummins or its affiliates as a result of Customer's breach.
16. **CONFIDENTIALITY.** Each party shall keep confidential any information received from the other that is not generally known to the public and at the time of disclosure, would reasonably be understood by the receiving party to be proprietary or confidential, whether disclosed in oral, written, visual, electronic, or other form, and which the receiving party (or agents) learns in connection with this Agreement including, but not limited to: (a) business plans, strategies, sales, projects and analyses; (b) financial information, pricing, and fee structures; (c) business processes, methods, and models; (d) employee and supplier information; (e) specifications; and (f) the terms and conditions of this Agreement. Each party shall take necessary steps to ensure compliance with this provision by its employees and agents.
17. **MISCELLANEOUS.** All notices under this Agreement shall be in writing and be delivered personally, mailed via first class certified or registered mail, or sent by a nationally recognized express courier service to the addresses set forth in the Quote and/or Invoice. No amendment of this Agreement shall be valid unless it is in writing and signed by the parties hereto. Failure of either party to require performance by the other party of any provision hereof shall in no way affect the right to require such performance at any time thereafter or the enforceability of the Agreement generally, nor shall the waiver by a party of a breach of any of the provisions hereof constitute a waiver of any succeeding breach. Any provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms hereof. These terms are exclusive and constitute entire agreement. Customer acknowledges that the provisions were freely negotiated and bargained for and Customer has agreed to purchase of the Goods and/or Services pursuant to these terms and conditions. Acceptance of this Agreement is expressly conditioned on Customer's assent to all such terms and conditions. Neither party has relied on any statement, representation, agreement, understanding, or promise made by the other except as expressly set out in this Agreement.
18. All parts will be invoiced at the time of shipment. Pricing of parts will be determined at the time of shipment and will be either the price at order placement or the price at shipment, whichever is greater
19. Cummins Sales & Service North America reserves the right to adjust pricing on parts & services as and when deemed necessary