

## ADDENDUM

This Addendum is incorporated in, and made a part of, the Purchase Order CB 24048 (the “**PO**”) between City of Everett (the “**Buyer**”) and Cummins Inc. d/b/a Cummins Sales and Service (the “**Supplier**”). The Buyer and Supplier acknowledge and agree that, notwithstanding anything to the contrary in the PO, the following changes to the PO terms and conditions are hereby adopted and agreed to by the parties and made part of the PO. In the event of a conflict between the terms and provisions of this Addendum and the terms of the PO, the terms of this Addendum shall control, and any conflicting terms of the PO shall be null and void.

"The paragraph headings throughout this Addendum are for convenience and reference only and shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Addendum."

1. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER TERM OF THE PO, AND TO THE MAXIMUM EXTENT ALLOWED BY LAW, IN NO EVENT SHALL SUPPLIER, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO BUYER, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY, OR NEGLIGENCE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, LIQUIDATED, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION DOWNTIME, LOSS OF PROFIT OR REVENUE, LOST RENTS, LOSS OF DATA, LOSS OF OPPORTUNITY, DAMAGE TO GOODWILL, ENHANCED DAMAGES, MONETARY REQUESTS RELATING TO RECALL EXPENSES AND REPAIRS TO PROPERTY, AND/OR DAMAGES RELATED OR OTHERWISE ATTRIBUTABLE TO DELAY), EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, AND TO THE MAXIMUM EXTENT ALLOWED BY LAW, IN NO EVENT SHALL SUPPLIER’S LIABILITY TO BUYER OR ANY THIRD PARTY CLAIMING DIRECTLY THROUGH BUYER OR ON BUYER’S BEHALF UNDER THE PO EXCEED THE TOTAL COST OF EQUIPMENT SUPPLIED BY SUPPLIER HEREUNDER. NOTHING IN THE PO EXCLUDES OR LIMITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. BY ACCEPTANCE OF THIS AGREEMENT, BUYER ACKNOWLEDGES BUYER’S SOLE REMEDY AGAINST SUPPLIER FOR ANY LOSS SHALL BE THE REMEDY PROVIDED HEREIN.
2. **Special Notice.** As a result of COVID-19 related effects or industry supply chain disruptions, temporary delays in delivery, labor or services from Supplier and its sub-suppliers or subcontractors may occur. Among other factors, Supplier’s delivery obligations are subject to correct and punctual supply from our sub-suppliers or subcontractors, and Supplier reserves the right to make partial deliveries or modify its labor or service. While Supplier shall make commercially reasonable efforts to meet the delivery, service or completion obligations set forth herein, such dates are subject to change. In the event delivery, shipping, installation, or performance is delayed, however occasioned, due to events beyond Supplier’s reasonable control, then the date of delivery, shipping, installation, or performance for the equipment or services shall be equitably extended for a period equal to the time lost, plus reasonable ramp-up.

**\*\*SIGNATURES TO FOLLOW ON NEXT PAGE\*\***

Agreed to and executed as of date of last signature below

Supplier: **Cummins Inc.**

By: *Raymond Caparas*

Name: Raymond Caparas

Title: Territory Manager

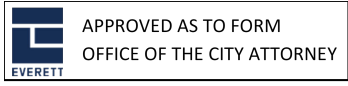
Buyer: **City of Everett**

By: *Cassie Franklin*

Name: Cassie Franklin

Title: Mayor

Attest: *Maria*














# PO Addendum to CB 24048\_03142024\_SD

Final Audit Report

2024-03-18

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 Agreement completed.

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