



City of Columbia

701 East Broadway, Columbia, Missouri 65201

Department Source: City Utilities - Water and Light

To: City Council

From: City Manager & Staff

Council Meeting Date: April 4, 2016

Re: Generator Sales Agreement with MBS Textbook Exchange, Inc.

Executive Summary

Staff has prepared for Council consideration an ordinance authorizing the City Manager to execute an agreement with MBS Textbook Exchange, Inc. (MBS) for the sale of generators and associated switchgear, located on the property of MBS that have been operating under a Local Site Generator Agreement. The Local Site Generator Agreement will terminate on June 30, 2016. Staff has worked with MBS to negotiate the sale of the generators and associated switchgear. MBS has agreed on a sales price of \$214,000 based on an appraisal from Fabick Power Systems, dated November 24, 2015.

Discussion

In 2007, the City entered into an agreement with MBS Textbook Exchange, Inc (MBS) to install diesel generators on their property. The initial purpose of these generators was to benefit both the City of Columbia's electric system by providing additional generation capacity and energy during times of peak electric demand and to provide MBS with standby/emergency generation for their facility in the event of a loss of power on the City's electric distribution system.

In May of 2013 new environmental regulations for stationary Compression Ignition (CI) Reciprocating Internal Combustion Engines (RICE) went into effect. These new regulations limit the operations of CI-RICE engines like the diesel generators mentioned above. These new regulations remove the ability for the City use these generators as generation capacity and significantly limits the ability to produce energy for non-emergency purposes. The regulations do not limit the ability for these generators to be utilized as standby generation for end use customers at this time.

With the loss of capacity and energy production capabilities, the City no longer receives its portion of the benefits from these diesel generators. In April 2015, staff reported that the City intends to not renew these customer agreements. In June, MBS was notified of the City's intent not to renew its agreement with them. Because the generators may still be utilized as standby/emergency power sources, staff has worked with MBS to negotiate an agreement to transfer ownership of these generators to them.

Staff has worked with MBS to negotiate the sale of the generators and associated switchgear. *MBS has agreed on a sales price of \$214,000 based on an appraisal from Fabick Power Systems, dated November 24, 2015.*

Fiscal Impact



City of Columbia

701 East Broadway, Columbia, Missouri 65201

Short-Term Impact: MBS has agreed on a sales price of \$214,000.

Long-Term Impact: None

Vision & Strategic Plan Impact

Vision Impacts:

Primary Impact: Not Applicable, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

Strategic Plan Impacts:

Primary Impact: Not Applicable, Secondary Impact: Not Applicable, Tertiary Impact: Not Applicable

Comprehensive Plan Impacts:

Primary Impact: Not Applicable, Secondary Impact: Not applicable, Tertiary Impact: Not Applicable

Legislative History

Date	Action
04/02/2007	B112-07 Council Bill Authorizing Local Site Generator Agreement with MBS Textbook Exchange, Inc
04/06/2015	REP 42-15 Report recommending not renewing Local Site Generator Agreements.
12/21/2015	R197-15 Authorizing a first addendum to the Local Site Generator Agreement with MBS Textbook Exchange, Inc.

Suggested Council Action

Staff recommends Council approve an ordinance authorizing the City Manager to execute an agreement with MBS Textbook Exchange, Inc. (MBS) for the sale of generators and associated switchgear.

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 89-16

AN ORDINANCE

authorizing a generators sale agreement with MBS Textbook Exchange, Inc. for the sale of two (2) generators and associated switchgear; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a generators sale agreement with MBS Textbook Exchange, Inc. for the sale of two (2) generators and associated switchgear. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2016.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

GENERATORS SALE AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") is made by and between MBS Textbook Exchange, Inc., a for profit business corporation whose address is 2711 West Ash St., Columbia, MO 65203 (hereinafter "MBS"), and the City of Columbia, Missouri, a municipal corporation whose address is 701 E. Broadway, Columbia, MO 65201 (hereinafter "City"), and is entered into on the date of the last signatory below (hereinafter "Effective Date"). City and MBS are each individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, City owns two (2) generators and associated switchgear, located on the property of MBS, that have been operating under a Local Site Generator Agreement between the Parties; and

WHEREAS, the Local Site Generator Agreement is terminating and City would like to sell the two (2) generators and associated switchgear; and

WHEREAS, MBS would like to purchase from City these two (2) generators and associated switchgear;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Parties hereto agree as follows:

1. DEFINITIONS

1.1. *Terms Defined Above.* As used in this Agreement, the terms "Agreement," "MBS," "City," and "Effective Date" will have the meanings indicated above.

1.2. *Additional Defined Terms.*

(a) "Appraisal Report": This is the report from Fabick Power Systems, dated November 24, 2015, making an appraisal on Generators. The report is attached hereto as EXHIBIT 1.

(b) "Generators": These are two (2) City-owned Cummins Generators and one (1) 13.8 kV City-owned Cummins Switchgear and one (1) 480 V City-owned Cummins Switchgear located at MBS Property, 2711 W. Ash St., Columbia, MO 65203, appraised in the Appraisal Report, and described as follows:

(i) 2008 CUMMINS GENERATOR 1
Model DQFAD-7082145
Serial No. D080174013

(ii) 2008 CUMMINS GENERATOR 2
Model DQFAD-7082145
Serial No. D08174004

- (iii) 2008 CUMMINS 13.8 kV SWITCHGEAR
Model SPCL 9999
Serial No. F080189101
- (iv) 2008 CUMMINS 480 V SWITCHGEAR
Model SPCL9999G-619A
Serial No. F080189102

2. PROPERTY TO BE SOLD, PAYMENT, DELIVERY

- 2.1. *Property to be Sold.* City agrees to sell Generators, as defined in this Agreement, to MBS.
- 2.2. *Payment.* MBS agrees to pay the amount of two-hundred fourteen thousand dollars (\$214,000) to City for Generators.
- 2.3. *Delivery.* Ownership of Generators shall transfer upon City's receipt of full payment by MBS.

3. LIMITED WARRANTY

GENERATORS ARE BEING SOLD AS IS, IN THEIR CURRENT CONDITION. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CITY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, LEGAL OR EQUITABLE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, RESPECTING THE GENERATORS AS DEFINED IN THIS AGREEMENT.

4. INDEMNITY PROVISIONS

- 4.1. *Hold Harmless Agreement.* To the fullest extent not prohibited by law, MBS shall indemnify and hold harmless City, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) arising by reason of any act or failure to act, negligent or otherwise, of MBS, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with MBS), of anyone directly or indirectly employed by MBS or by any subcontractor, or of anyone for whose acts MBS or its subcontractor may be liable, in connection with this Agreement and the sale of Generators. This provision does not, however, require MBS to indemnify, hold harmless, or defend City from its own actions, inactions (willful or otherwise), or its own negligence.

- 4.2. *No Waiver of Sovereign Immunity.* In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

5. GOVERNING LAW AND VENUE

This agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

6. MISCELLANEOUS

- 6.1. *Entire Agreement.* The terms and conditions of this Agreement constitute the complete and exclusive statement of the Agreement between the Parties.
- 6.2. *Amendments.* Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of City and MBS.
- 6.3. *Assignment Prohibited.* MBS shall not assign, transfer, or delegate any interest in this Agreement without the prior written consent of City. Any such attempted delegation or assignment shall be null and void.
- 6.4. *Solely for Benefit of Parties.* This agreement is for the sole benefit of City and MBS. Nothing in this agreement is intended to confer any rights or remedies on any third party.
- 6.5. *Severable.* Should any provision or section of this Agreement be void, unenforceable for any reason or unlawful, then that provision or section shall be deemed severable from this Agreement and shall not affect the enforceability or validity of any of the remaining provisions or sections of the Agreement or the Agreement as a whole.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the date of the last signatory to this Agreement.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

MBS TEXTBOOK EXCHANGE, INC.

BY: Andrew P. Angel
TITLE: CFO
DATE: 3/9/16

ATTEST

BY: Murphy
TITLE: V.P. of operations

GENERATORS SALE AGREEMENT

EXHIBIT 1

Fabick Power Systems
Appraisal Report

Dated November 24, 2015



Cummins Generator Appraisal

**Prepared By
Eugene Baker
Fabick Power Systems**

**SUMMARY OF APPRAISAL
OF
(2) CUMMINS GENERATORS**

**IN POSSESSION OF:
CITY OF COLUMBIA**

**ADDRESS:
2711 WEST ALLEN
COLUMBIA, MO. 65203**

**PREPARED FOR:
MARK PULLIAM
MBS
TEXTBOOK EXCHANGE, INC.
2711 WEST ALLEN
COLUMBIA, MO. 65203**

**EFFECTIVE DATE:
24 NOVEMBER 2015**

**PREPARED BY:
EUGENE BAKER
FABICK POWER SYSTEMS
101 FABICK DR.
FENTON, MO 63026**



24 November 2015

Mark Pulliam
VP for Distribution
MBS Textbook Exchange, Inc
2711 West Allen
Columbia, MO 65203

Mr. Pulliam

In accordance with your request on 23 November 2015, I have made an appraisal of (two) Cummins Generators in the possession of the City of Columbia, located at 2711 West Allen Columbia, MO. 65203.

The intended use for this appraisal is to establish a fair price for subject property. The intended user(s) of the appraisal is/are MBS Textbook Exchange, Inc.

The appraisal is based upon field examination of subject property, together with an investigation and analysis of all pertinent data.

The Replacement Cost, Sales Comparison, and Income approaches for establishing value were all considered. The Sales Comparison Approach was deemed most applicable and was used in determining the value of the subject property in this appraisal.

I would like to note that, since markets are constantly changing, the value(s) of the Generators may vary considerably within weeks and months to come.


Subject to the assumptions and limiting conditions attached to this appraisal, the appraised value of subject equipment, as of 11/24.2015, is estimated to be:

Two Hundred and Fourteen Thousand Dollars and no Cents

\$214,000.00

Thank you for this opportunity to be of service.

Sincerely,



Eugene Baker
Fabick Power Systems

Fabick Power Systems

101 Fabick Drive
Fenton, MO 63026
(636) 349-5500

Fabick CAT
One Fabick Dr.
Fenton, MO 63026
(636) 343.5900
(800) 845.9188
www.fabickcat.com

3033 Nash Road
Cape Girardeau, MO 63780
(573) 332.7109

1043 N. Service Road
Foristell, MO 63348
(800) 539.9217

7841 East ABC Lane
Columbia, MO 65202
(573) 442-6880

7050 Partnership Parkway
Jefferson City, MO 65101
(573) 636-3184

3534 East 20th St.
Joplin, MO 64801
(417) 624-3010

2222 E. Kearney St.
Springfield, MO 65803
(417) 866-6651

1321 County Road 5290
Willow Springs, MO 65793

TABLE OF CONTENTS

	Page
Title Page	1
Letter of Transmittal	2
Table of Contents	3
The Appraisal Process	4
The Sales Comparison Approach	4
Location of Generators	4
General Information	5
Intended Use of Appraisal	
Intended User(s) of the Appraisal	
Purpose of the Appraisal	
Assumptions and Limiting Conditions	6
Description and Appraised Value(s) of Generators	7
Appraiser Certification	8
Qualifications of the Appraiser	9
Comparable Generators	10

THE APPRAISAL PROCESS

In making the Generator appraisal, a sales comparison approach was deemed the most appropriate method to use for determining the value of the subject property.

An on-site inspections was made on 23 November 2015. Mark Pulliam, Mark Schellert was/were present during the inspection.

SALES COMPARISON APPROACH

The Sales Comparison Approach estimates value by comparing the subject Generators with similar Generators sold in a relevant market, and considers adjustments made for all differences that affect value, such as differences in characteristics or features of value, in market layer, and in time.

LOCATION OF GENERATORS

The subject property was located at 2711 West Ash Columbia, MO. 65203, as of 23 November 2015, the date the generators were inspected.

GENERAL INFORMATION

INTENDED USE OF THE APPRAISAL

The appraisal is to be used to establish a fair sales price for subject property.

INTENDED USERS OF THE APPRAISAL

The intended user(s) of this appraisal is/are MBS Textbook Exchange, Inc.

PURPOSE OF THE APPRASAL

The purpose of this appraisal is to establish a value of (2) Cummings Generators.

ASSUMPTIONS AND LIMITING CONDITIONS

1. Neither all nor part of this report is to be reproduced or distribution or publication without written consent of the writer.
2. The Generators appraised herein is/are to be the property of The City of Columbia. However, this appraisal makes no guarantee of actual ownership of said Generators.
3. The title to the Generators described herein is assumed to be good and marketable. The value found does not take into account and encumbrances or claims on the title the Generators, and no financing statement search has been made.
4. No responsibility is assumed for the outcome of any legal action in which this appraisal may be used as evidence, or for testifying in court without adequate notice for preparation. If future consultation, testimony, and/or deposition concerning this appraisal is required of the appraiser, it shall be done so with adequate time for preparation and at an additional fee for time and expenses.
5. The subject equipment is assumed to be in good working condition.
6. It is assumed the subject equipment is in good working order. If the client has any questions about this matter, it is the client's responsibility to order the appropriate inspection or test, at his/her expense, by qualified mechanic or technician. The appraiser does not have the skill or expertise needed to make such inspections. The appraiser assumes no responsibility for the mechanical condition of the subject equipment that may affect the values contained in this appraisal report.

DESCRIPTION OF SUBJECT EQUIPMENT**APPRASIED VALUES****2008 CUMMINS GENERATOR 1****\$107,000.00**

Model DQFAD-7082145

S/N D080174013

72 hrs.

121 Starts

438379 KWHRS

Condition: Very Good

2008 CUMMINS GENERATOR (2)**\$107,000.00**

Model DQFAD-7082145

S/N D080174004

74 hrs.

129 Starts

43858 KWHRS

Condition: Very Good

TOTAL APPRASIED VALUE:**\$214,000.00**

APPRAISERS CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, unbiased, professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest with respect to parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My compensation is not contingent upon the development, or reporting, of a predetermined value, or direction in value, that favors the cause of the client, the amount of the value estimate, attainment of stipulated result, or the occurrence of subsequent event directly related to the intended use of the appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have made a personal inspection of the property that is the subject of this report.
- This appraisal Report is confidential and may not be copied or used for any purpose other than that which is stated herein, or by any person or persons other than the client and those expressly authorized herein, without my prior, written consent. If this report is copied, reproduces, or used in any manner, it must be done in its entirety including the letter of Transmittal and any attachments. No change to any item in this appraisal report shall be made by anyone other than myself.



Recoverable Signature

X Eugene Baker

Eugene Baker

Fabick Power Systems

Signed by: eugene.baker@fabickcat.com

2007 Cummins 1000KW (no enclosure)	\$107,500.00
2008 Cummins 1000KW (no enclosure)	\$155,000.00
2013 Cummins 1000KW (no enclosure)	\$225,000.00
2015 Cummins 1000KW (no enclosure)	\$198,284.00
2000 CAT 1000KW (no enclosure)	\$79,000.00

ADDITIONAL INFORMATION:

