

**NOTICE OF SPECIAL MEETING AGENDA
CUSHING BOARD OF COMMISSIONERS
AND
THE BOARD OF TRUSTEES OF THE
CUSHING MUNICIPAL AUTHORITY
August 7, 2023
6:15 PM
100 JUDY ADAMS BLVD.**

THE BOARD MAY DISCUSS, CONSIDER, AND VOTE ON ANY ITEM LISTED ON
AGENDA IN ANY ORDER:

1. Call to Order

- a. Roll Call
- b. Declaration of Quorum

2. Consent Agenda

- a. Authorize the City Manager to issue a purchase order to Newnam's Equipment and Automotive, LLC of Stroud, Oklahoma, in an amount up to \$18,629.40, and to authorize payment.
- b. Authorize the City Manager to issue a purchase order to D&H United Fueling Solutions of Tulsa, Oklahoma in an amount up to \$7,650.61 for the upgrade of hardware and software for the Fuel Master fleet fueling system at the Service Center.

3. Items Removed from Consent Agenda

4. General Business

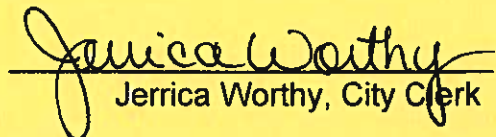
- a. Discussion and possible action to make additional repairs to Unit #10 at the Power Plant.
- b. Discussion and possible action to amend the FY 2023/2024 Power Plant budget.

5. Adjournment

Filed in the office of City Clerk and posted on the main lobby entrance door of City Hall at 3:55 PM on August 3, 2023.



Terry Brannon, City Manager



Jerrica Worthy, City Clerk

The City of
Cushing | Agenda Item Cover Sheet
OKLAHOMA

TO THE HONORABLE CHAIRMAN AND MEMBERS OF THE CITY COMMISSION / TRUSTEES OF
THE CUSHING MUNICIPAL AUTHORITY / TRUSTEES OF THE CUSHING HOSPITAL AUTHORITY

Date of Meeting: August 7, 2023

Agenda Item No: 2-A

Subject: Lawn Mower Replacement

Staff Resources: Terry Brannon, City Manager
Tim Ervin, WWTP Superintendent

I. Summary

Staff recommends the purchase of one new Grasshopper 725DT with a 61" deck riding mower for the wastewater treatment facility. The proposed purchase will replace an existing John Deere riding mower, which has far exceeded service life and has become cost prohibitive to repair. The proposed mower is from the same manufacturer and dealership that the Parks Department selected for their recent mower fleet replacements.

The following quote is reflective of State Contract pricing:

PROVIDER	PROJECTED COST
Newnam's Equipment and Automotive, LLC of Stroud, Oklahoma	\$18,629.40

II. Fiscal Impact:

Funding for this project was included in the FY 23 – 24 budget. Funding for this project will come from the 2009 Sales Tax Fund (138).

III. Recommended Action:

Authorize the City Manager to issue a purchase order to Newnam's Equipment and Automotive, LLC of Stroud, Oklahoma, in an amount up to \$18,629.40, and to authorize payment.

Grasshopper QuikQuote #57652N00106



Vendor:
Moridge Mfg. Inc.
105 Old Highway 81 S.
P.O. Box 810
Moundridge, KS 67107

Contact:
Brent Dobson
bdobson@grasshoppermower.com

Quoted by
Newnam's Feed & Supply
718 W Main St
Stroud, OK 74079
P: (918) 968-2077 F: (918) 290-2010

John Newnam
Owner
E: newnamsoutdoors@gmail.com
P: 918-968-2077 C: 918-290-1099

Quoted for
City of Cushing
Waste Water Treatment
Plant
100 Judy Abams Blvd
Cushing, OK 74010
E: cushingwtp@cityofcushing.org

State Contract pricing
OMNIA
PARTNERS
(U.S. Communities)

Contract ID: #22-6640
Contract Period:
05/15/2022-05/14/2025
Quoted Mar 1, 2023

Power Unit & Deck

Model 725DT (532127)
898cc MaxTorque? Diesel engine; "no-gears" T6?
pump-and-wheel-motor transmission; AntiVibe Power
Platform?; luxury seat and shock-absorbing footrest

3661PF - 61" w/ PowerFold (532810)

List	Contract
\$16,950.00	\$13,221.00
\$4,580.00	\$3,572.40

List Total: \$23,690.00

Contract: \$18,629.40

Grand Total: \$18,629.40

Make PO to: Moridge Mfg. Inc.

Fax PO to:

Email PO to:

bdobson@grasshoppermower.com

PO #:

Approved by:

Signature:

Date:

Wholegoods

533578 - Premier Suspension Seat

533544 - Hydraulic Deck Lift

List	Contract
\$775.00	\$658.75
\$1,385.00	\$1,177.25

TO THE HONORABLE CHAIRMAN AND MEMBERS OF THE CITY COMMISSION / TRUSTEES OF THE CUSHING MUNICIPAL AUTHORITY / TRUSTEES OF THE CUSHING HOSPITAL AUTHORITY

Date of Meeting: August 7, 2023

Agenda Item No: 2-B

Subject: Fuel-Master System Pedestal Upgrade

Staff Resources: Dalton Bird, I.T. Specialist, Jeremy Brown, Service Center Manager

I. Summary:

The Fuel-Master System used by fleet services allows staff at the Service Center to closely monitor and control who can use the refueling station and fuel consumption across the City of Cushing's fleet of vehicles and equipment. This allows for accounting and tracking of the consumption of both unleaded gasoline and diesel fuel from departmental totals down to individual employees. This means that Service Center employees can accurately trace fuel consumption daily if needed and ensure the proper amount is ordered each month to restock the fuel tanks.

The system is also designed to only allow individuals authorized by the Service Center and entered into the system to be able to dispense the fuel. This is done by using a special "ProKee" programmed to that vehicle that must be inserted into the Fuel-Master pedestal followed by a unique PIN for that employee. This authorization method allows for the 24-hour unattended use of these pumps by City of Cushing staff on an as needed basis, meaning that if a department or individual needs to refuel a vehicle or equipment past normal business hours they can do so.

With this proposed upgrade we will be replacing two main control boards inside the Fuel-Master pedestal and the face plate on the front of the system that accepts the ProKee as this has become worn after years of use and being exposed to the elements. We are also looking to purchase a batch of 50 new ProKees from Fuel-Master to replace ones worn during their normal use. This hardware upgrade will also be accompanied by a new software upgrade and the purchase of a maintenance plan for service and remote support for both the hardware and software.

PROVIDER	PROJECTED COST	QUOTE TYPE
D&H United Fueling Solutions	\$7,650.61	Quote

II. Fiscal Impact:

\$10,000 was set aside in the FY 23 – 24 budget for this project, which is being funded from fund 138-500-5017. This will not create a negative budget impact since funds have already been allocated for this project.

III. Recommended Action:

Authorize the City Manager to issue a purchase order to, and sign a purchase contract with, D&H United Fueling Solutions, in an amount up to \$7,650.61 for the purchase of all materials and labor associated with the system upgrade, and to authorize payment.

QUOTATION AND CONTRACT

To: City of Cushing
PO Box 311
Cushing, OK 74023

ATTENTION: Dalton Bird
REFERENCE: FM Upgrade

We are pleased to submit his quotation on our interpretation of your requirements, subject to terms and conditions printed on the reverse side of this proposal.

D&H UNITED FUELING SOLUTIONS WILL PROVIDE THE FOLLOWING:

1 - Upgrade, Legacy HW, LRU, Prokee Door	\$3,515.00	\$3,515.00
50 - Prokee - Blue	\$8.00	\$400.00
1 - Standard Maintenance Agreement	\$1,175.00	\$1,175.00
1 - Access to SQL Conversion (Maintenance Customers)	\$255.00	\$255.00

Service Scope of Work:

- Install (1) new LRU and SQL software upgrade kit on existing pedestal.
- Fuelmaster to load software upgrade on customer network PC (must be Windows 7 PRO or newer)
- Ensure connectivity to pumps.
- Travel and train

Excludes:

- ✓ Any permits or painting
- ✓ Any time waiting on requested network to make secure connection
- ✓ Any time waiting on Fuelmaster to load software.
- ✓ Any repairs to customers' existing equipment.
- ✓ Any reoccurring or yearly fees.

Note:

- Installation must comply with installation Manual, ie: wire and conduit
- Price for startup and training is for one trip only.
- Additional trips will be invoiced on a "Time and Material" basis

Material:	\$5,345.00
Install Material:	100.00
Equipment & Labor:	\$2,055.61
Total:	\$7,650.61

DISCLAIMER

Seller has not made any representation of warranty, express or implied, as to the title, merchantability, fitness for a particular purpose, compliance with specifications, conditions, design or operation of the equipment or any other representation of warranty with respect to the equipment: All such risks, as between seller and buyer are to be born by the buyer.

The undersigned agrees to all the Terms and Conditions set forth above and on the reverse side hereof and in witness thereof hereby executes this contract.

Sales Representative Justin Prough

Customer Acceptance:
Company Name _____

This Contract shall not become effective until signed below.
Company Acceptance
Officer Signature



4373 South 93rd East Ave, Tulsa, OK 74145 Phone: 918-663-9096

Page 1 of 1
Date July 19, 2023

QUOTATION AND CONTRACT

To: City of Cushing
PO Box 311
Cushing, OK 74023

ATTENTION: Dalton Bird
REFERENCE: FM Upgrade

We are pleased to submit his quotation on our interpretation of your requirements, subject to terms and conditions printed on the reverse side of this proposal.

D&H UNITED FUELING SOLUTIONS WILL PROVIDE THE FOLLOWING:

1 LRU Prokee door, SQL software upgrade \$5,445.00 \$5,445.00

Service Scope of Work:

- Install (1) new LRU and SQL software upgrade kit on existing pedestal.
- Fuelmaster to load software upgrade on customer network PC (must be Windows 7 PRO or newer)
- Ensure connectivity to pumps.
- Travel and train

Excludes:

- ✓ Any permits or painting
- ✓ Any time waiting on requested network to make secure connection
- ✓ Any time waiting on Fuelmaster to load software.
- ✓ Any repairs to customers' existing equipment.
- ✓ Any reoccurring or yearly fees.

Note:

- > Installation must comply with installation Manual, ie: wire and conduit
- > Price for startup and training is for one trip only.
- > Additional trips will be invoiced on a "Time and Material" basis

Material: \$5,445.00
Equipment & Labor: 2,055.61
Approximate Freight: 150.00
Total: \$7,650.61

DISCLAIMER

Seller has not made any representation of warranty, express or implied, as to the title, merchantability, fitness for a particular purpose, compliance with specifications, conditions, design or operation of the equipment or any other representation of warranty with respect to the equipment: All such risks, as between seller and buyer are to be born by the buyer.

The undersigned agrees to all the Terms and Conditions set forth above and on the reverse side hereof and in witness thereof hereby executes this contract.

Sales Representative Justin Prough

Customer Acceptance: Company Name

This Contract shall not become effective until signed below. Company Acceptance Officer Signature

Authorized Agent (please print)

Title

Signature

Date

Title

| Agenda Item Cover Sheet

TO THE HONORABLE CHAIRMAN AND MEMBERS OF THE CITY COMMISSION / TRUSTEES OF
THE CUSHING MUNICIPAL AUTHORITY / TRUSTEES OF THE CUSHING HOSPITAL AUTHORITY

Date of Meeting: August 7, 2023

Agenda Item No: 4-A

Subject: Power Production Plant Unit #10 Repair

Staff Resources: Terry Brannon, City Manager
Willie Green, Power Plant Superintendent

I. Summary

In May, staff were authorized by Trustees to begin repair work on unit #10. Since the commencement of work, further mechanical problems have been found. Staff have included a machine shop report from Cooper Machinery Services that details what has been discovered following the commencement of work. Given the breadth of information found in the machine shop report, a representative from Cooper Machinery Services will be here to succinctly articulate the findings.

II. Fiscal Impact

The FY 22 – 23 budget was amended to capture the current repair expenses. The current and proposed new budget breakdown is as follows:

Current project budget with a 25% contingency.....	\$715,000.00
New projected costs without a contingency.....	\$803,975.31
<u>New projected costs with a recommended 20% contingency.....</u>	<u>\$160,795.06</u>
New proposed project budget with all costs included.....	\$1,679,770.30

If the Trustees elect to authorize the continuance of work, a budget amendment in an amount up to \$965,000.00 will be required. Finance Director Jerrica Worthy has prepared a budget amendment and it's being presented as the next actionable item on the agenda.

III. Cost Analysis

As part of our agreement with the Grand River Dam Authority (GRDA), the Cushing Municipal Authority (CMA) receives capacity payments to produce power by unit #10 when our plant is requested to operate. When unit #10 is functional its monthly value is \$18,313.79 or \$219,765.48 per year. If after repair unit #10 remains functional, and there are no mechanical issues over an extended period, current costs to repair the engine will be recouped in 7.6 years.

IV. Recommended Action

Authorize the City Manager to issue a purchase order and sign any related documents causing the continuance of work to be performed by Cooper Machinery Services for the repair of Unit #10 at the Cushing Power Production Plant, in an amount up to \$965,000.00, and to authorize payment.

Machine Shop Report

Customer	City of Cushing	Date	7/27/23
Location	Cushing, OK	Customer P.O.	WO 435-237050-002-8180
Model & S/N	LSVB	Order Number	40030958
Unit #		Assembly Number	LSV

LSV Power Head As Found Report

Many head cores were found with extensive previous repairs. Metal stitching across the fire deck and cracked into the seat pockets. One head failed water testing. Images below. Qty 12 replacement cores are recommended. Of the 4 refurbishable heads 1 needs fire deck machined and all 4 have galled nut landings. Recommend upgrading intake valve stem sealing to modern style

Head #9 – Spark plug repairs, cracks coming from valve pockets,

Head #10 – Stitch repairs on fire deck, cracks coming from valve pockets,

Head #11 – Stitch Repairs on fire deck

Head # 13 – Stitch Repairs on fire deck

Head # 14 - Stitch Repairs on fire deck

Head # 16 - Stitch Repairs on fire deck

Head # 15 - Stitch Repairs on fire deck

Head # 2- Stitch Repairs on fire deck and cracked

Head # 3- Stitch Repairs on fire deck and cracked

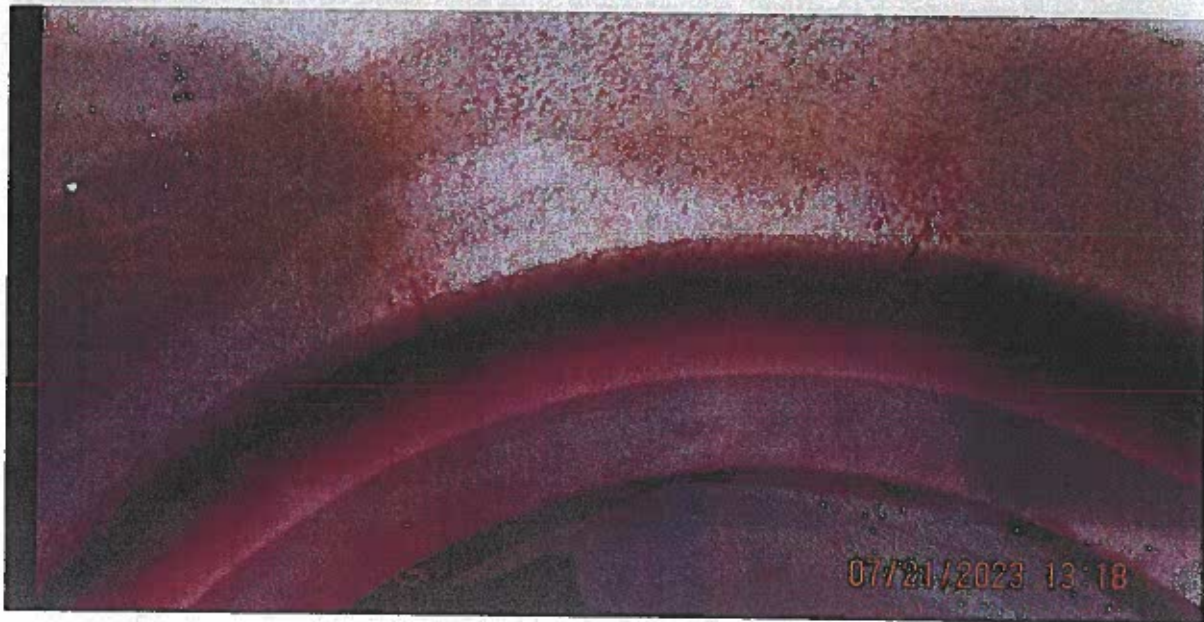
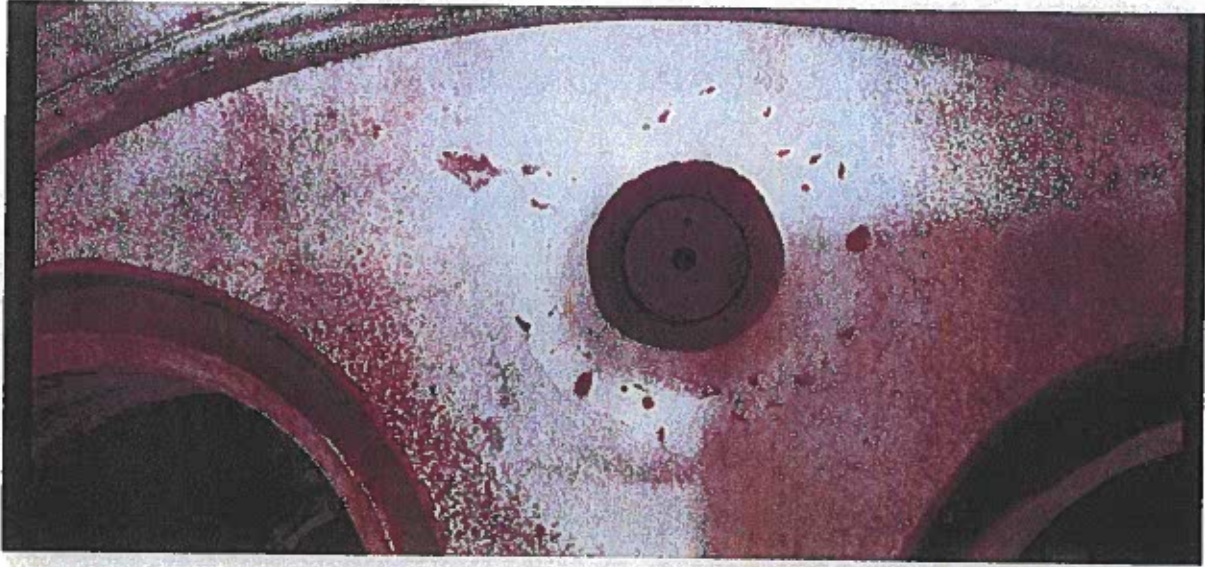
Head # 6- Stitch Repairs on fire deck and cracked

Head # 7- Stitch Repairs on fire deck and cracked

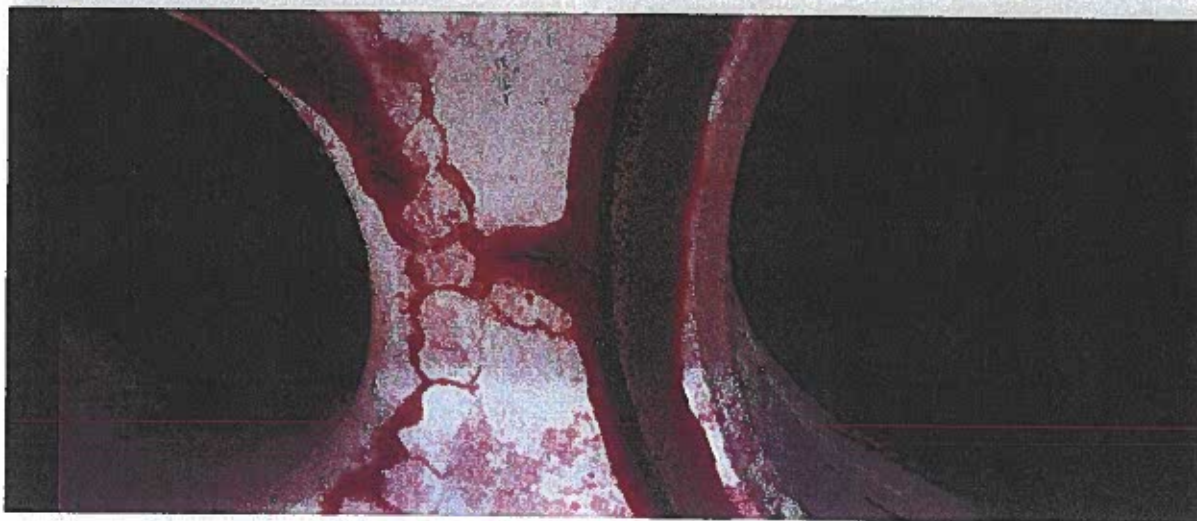
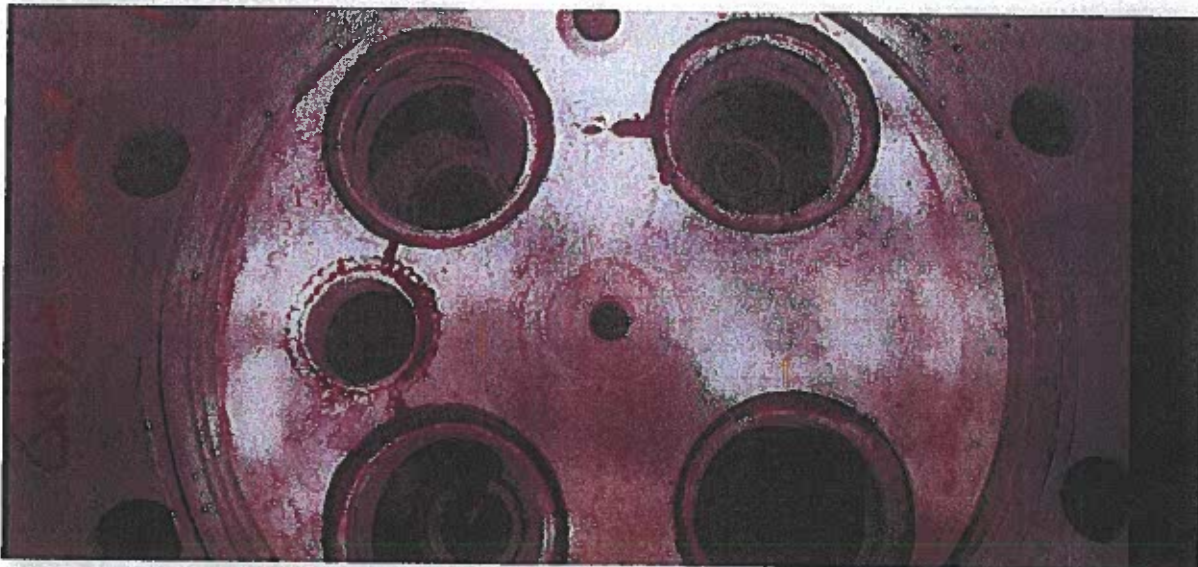
Head # 12 Did not pass water test. See image to right bubbles from testing. Cracked in exhaust guide port.



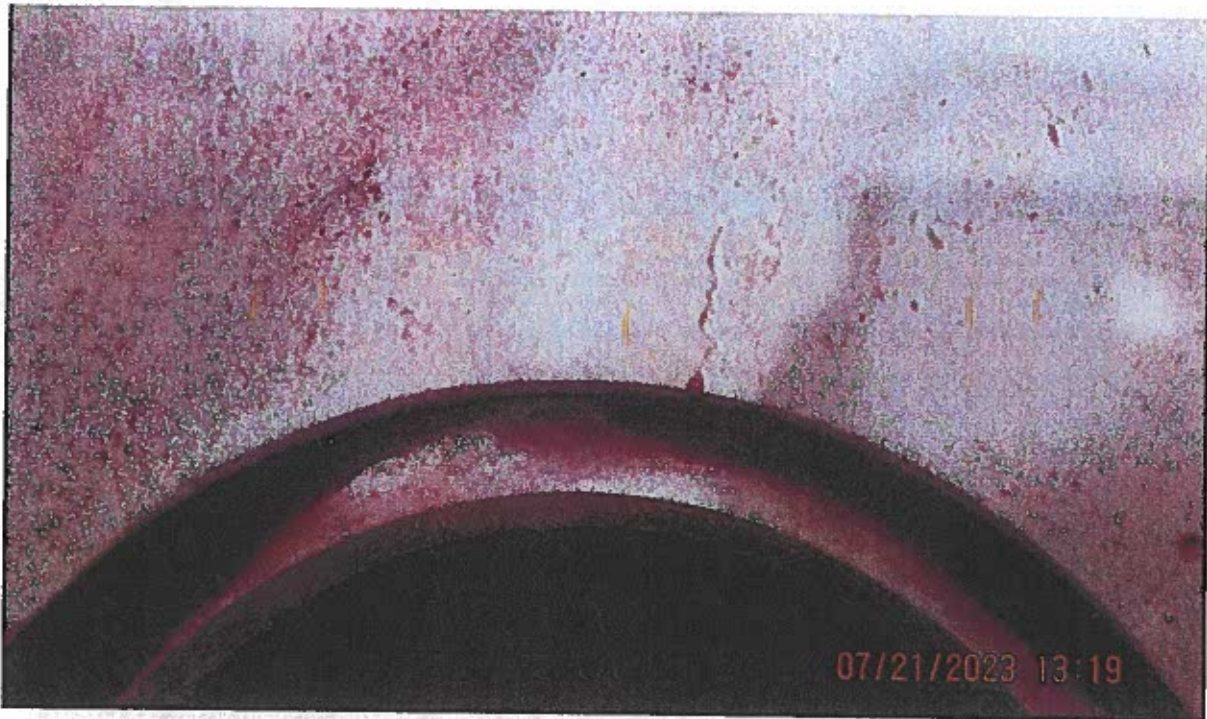
Head #9 images below



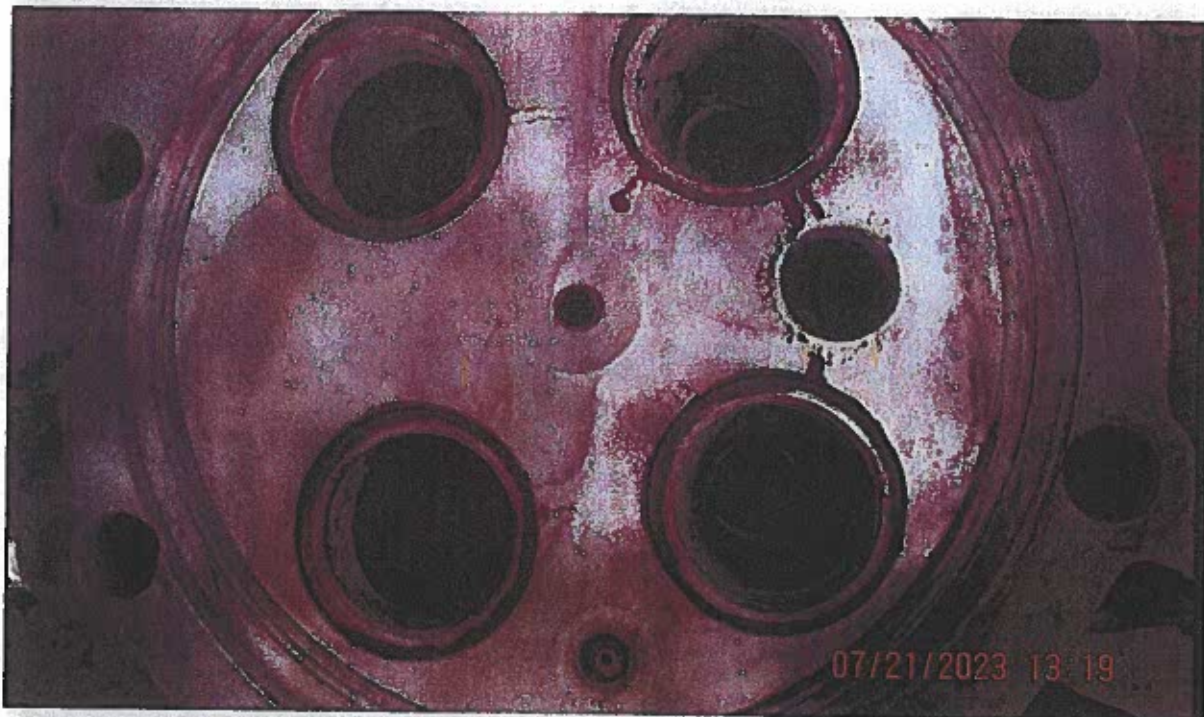
Head #10



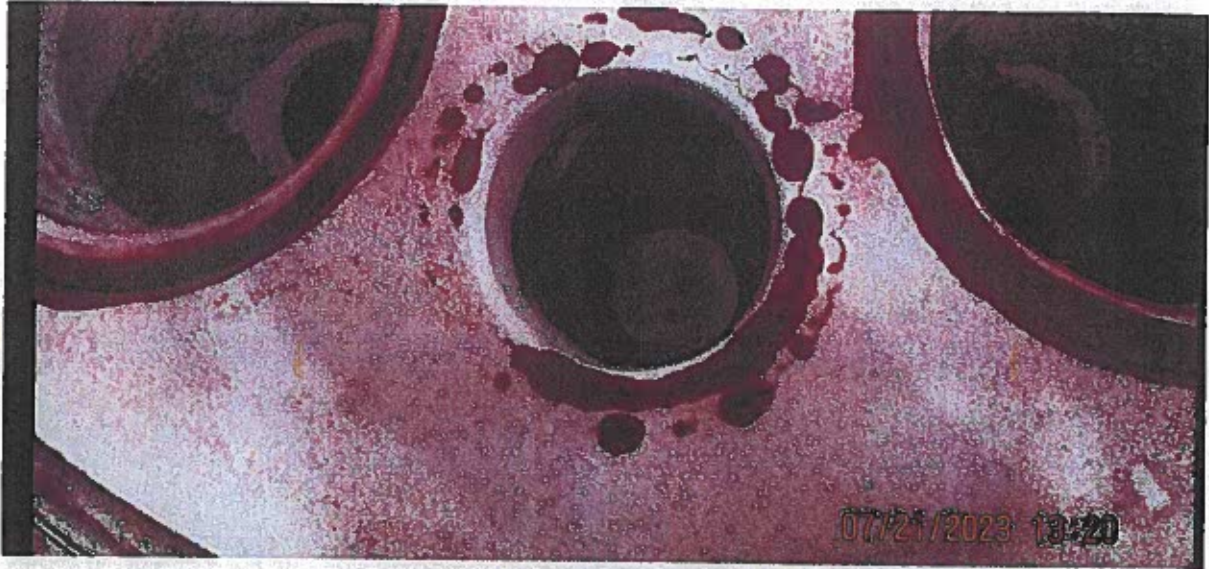
Head # 11



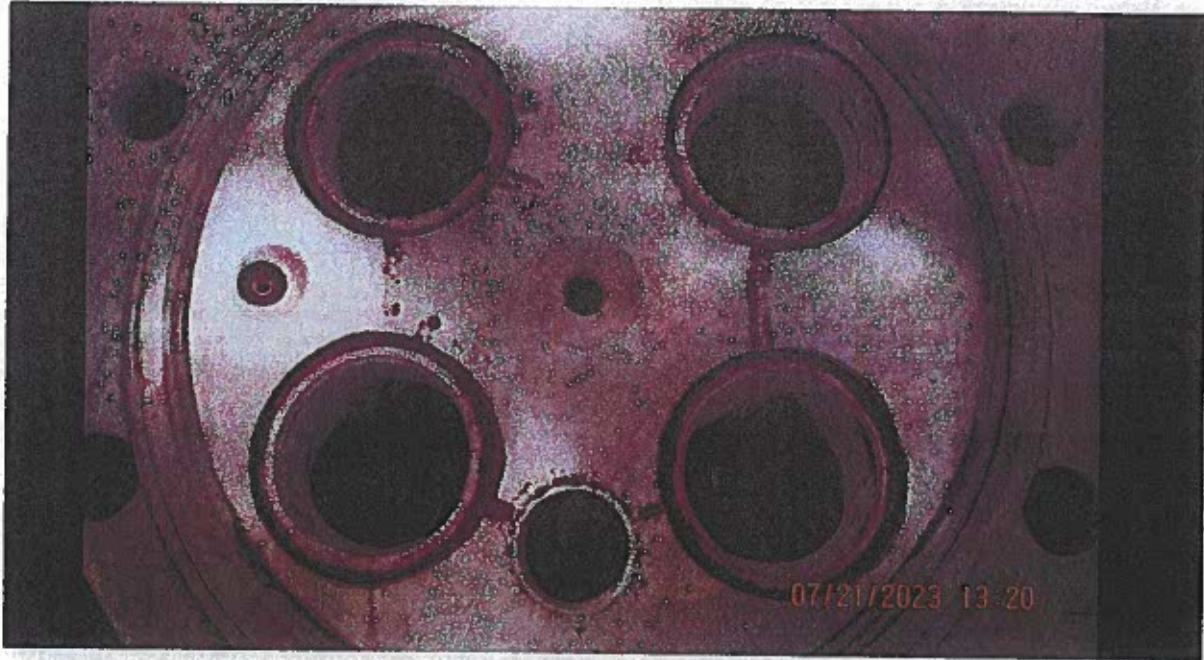
Head # 13



Head # 14



Head # 16



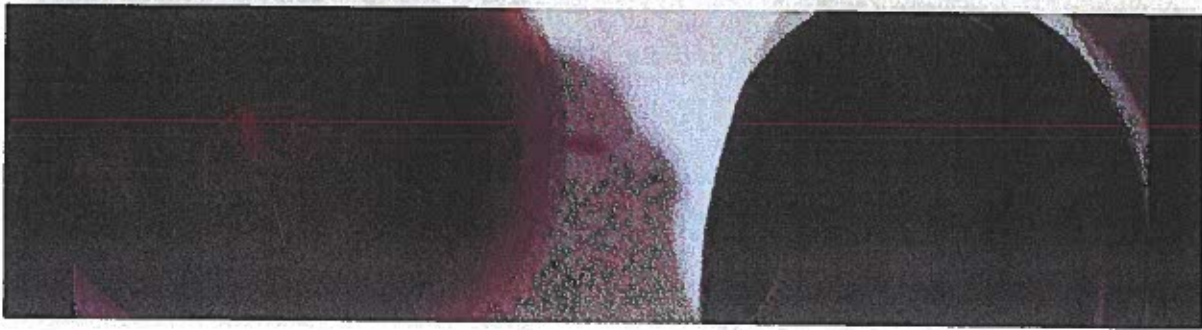
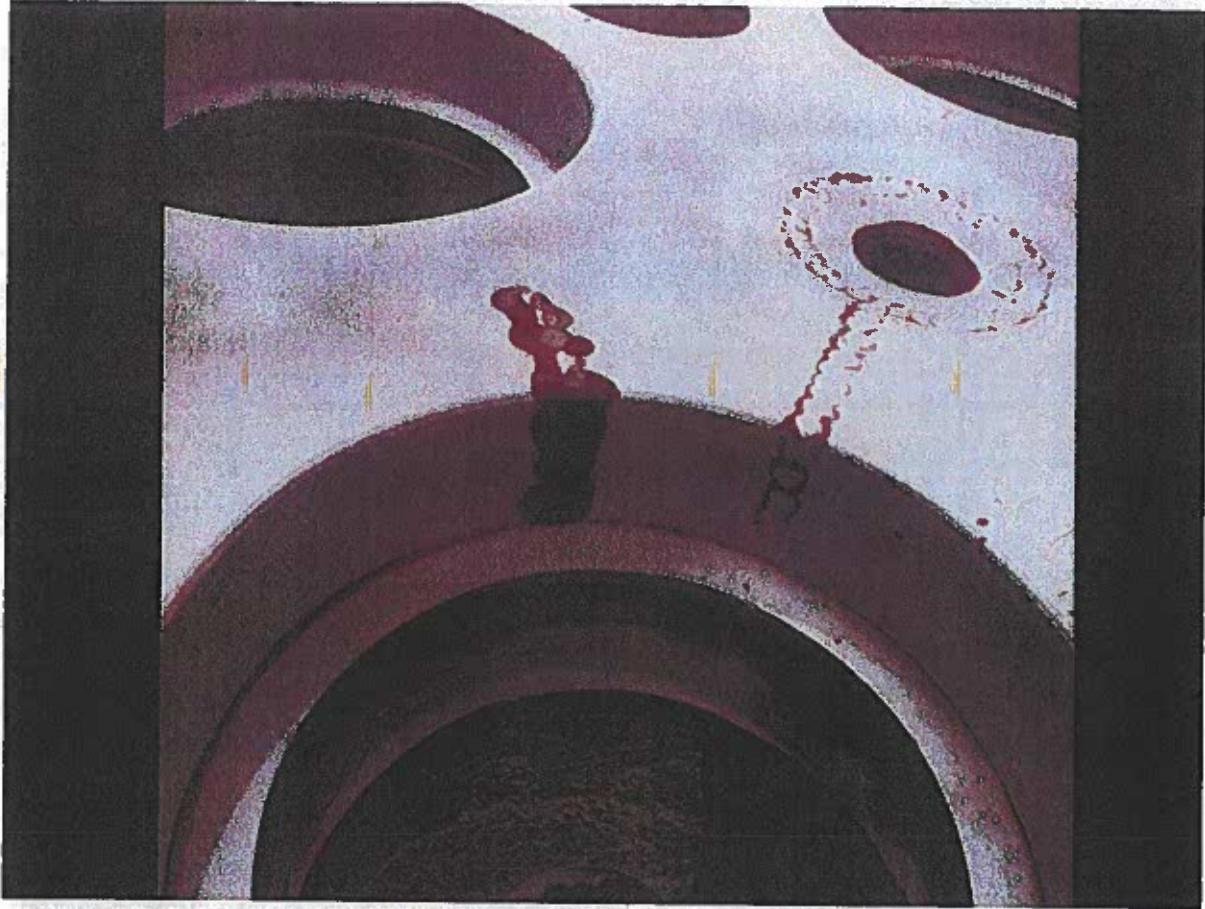
Head # 15



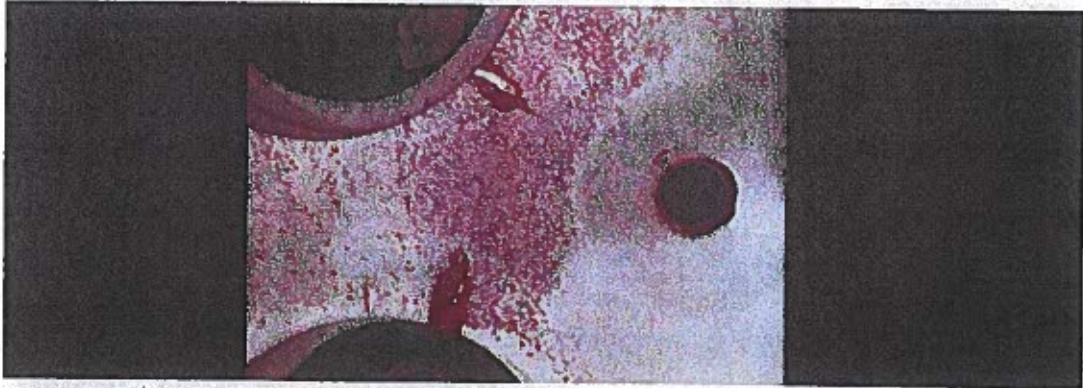
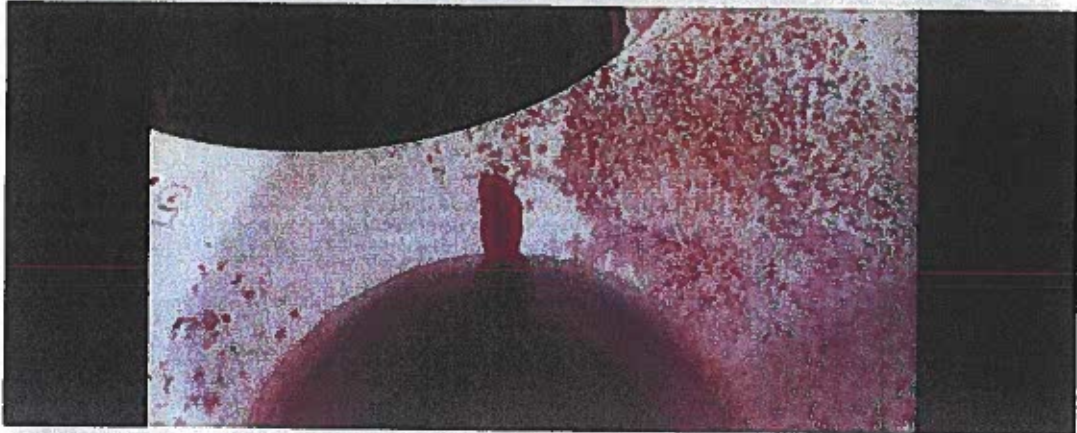
Head # 2



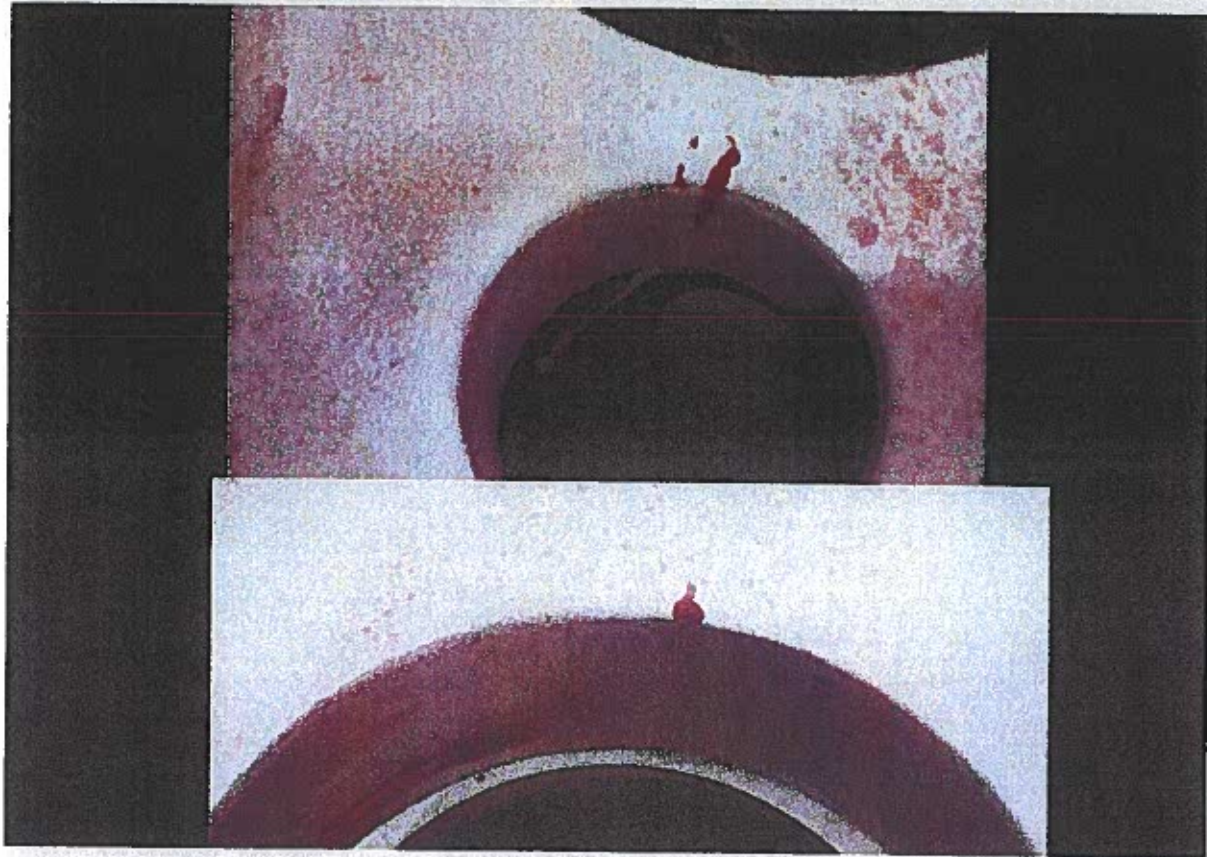




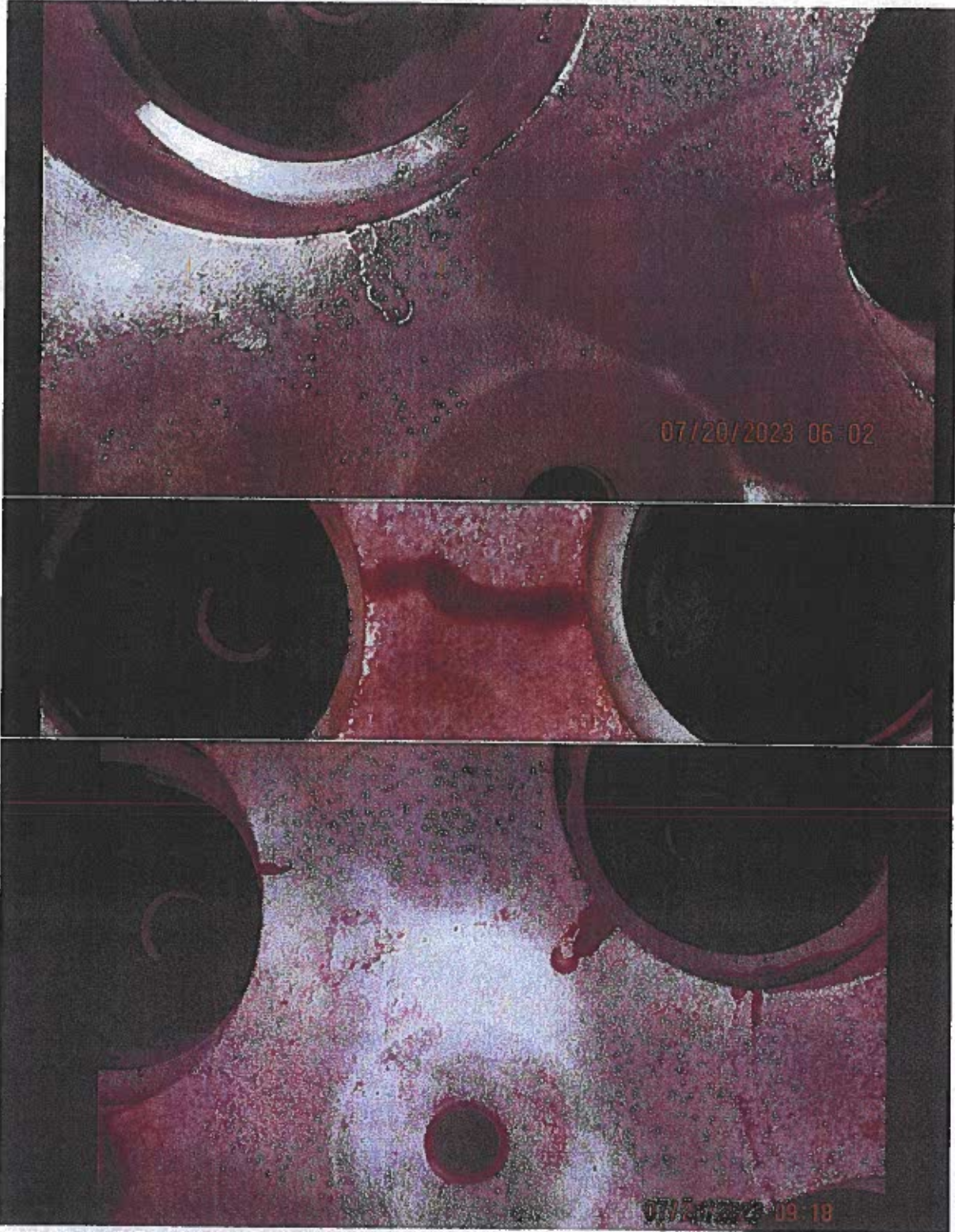
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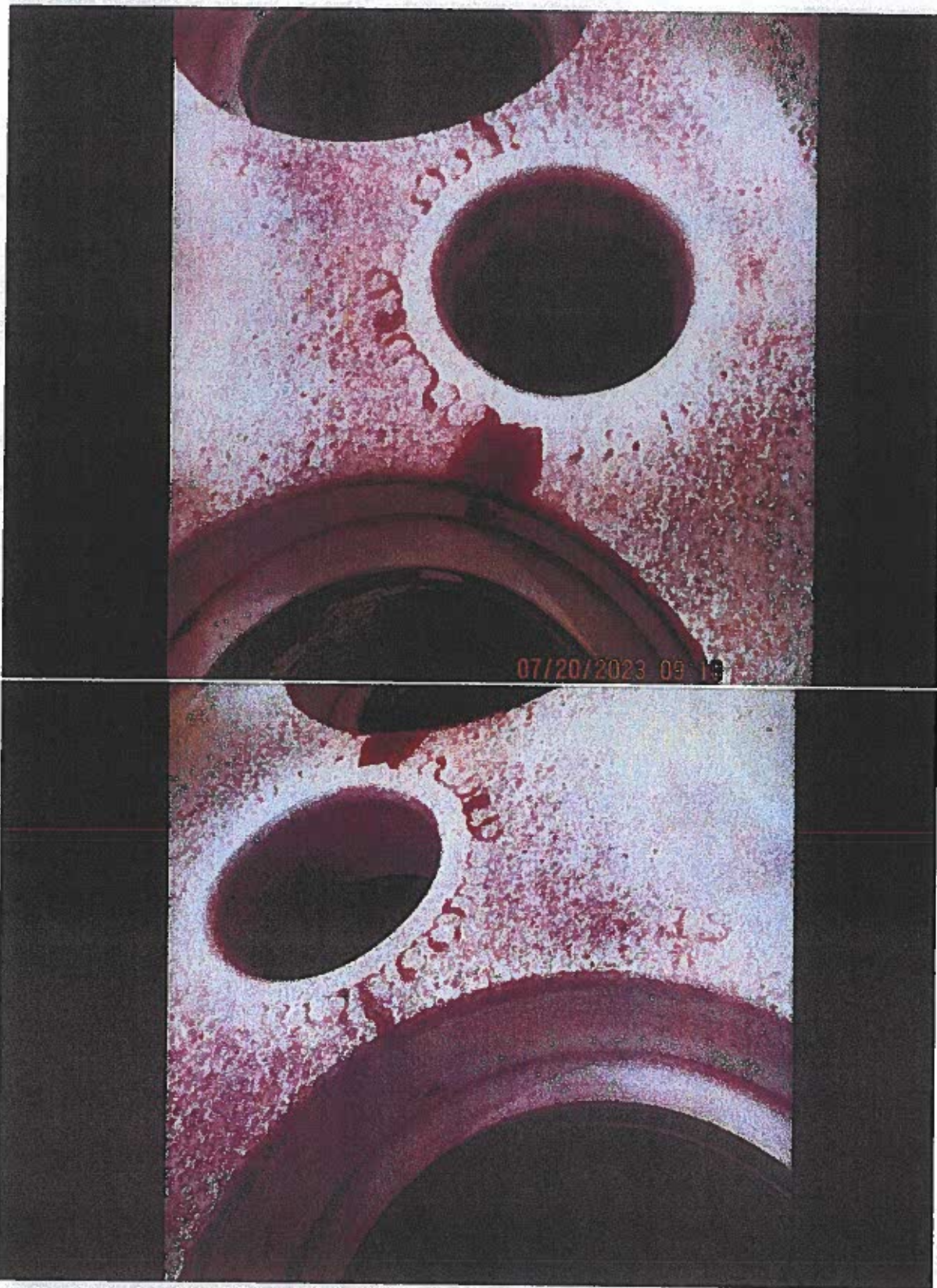


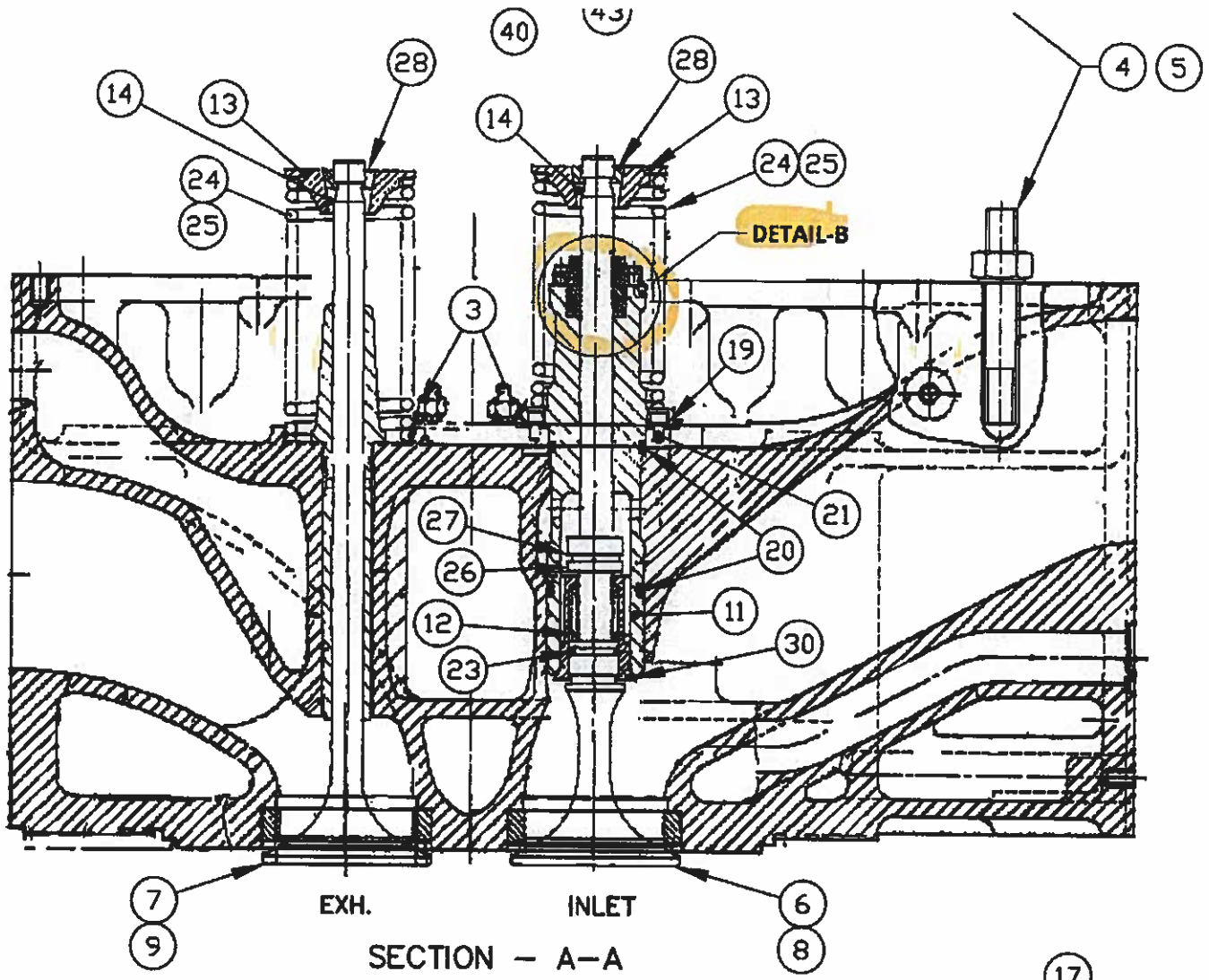
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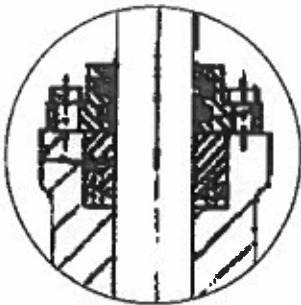
Head # 7



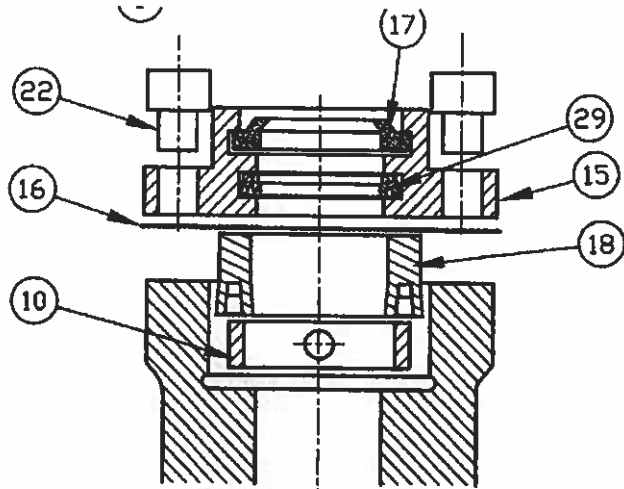




SECTION - A-A

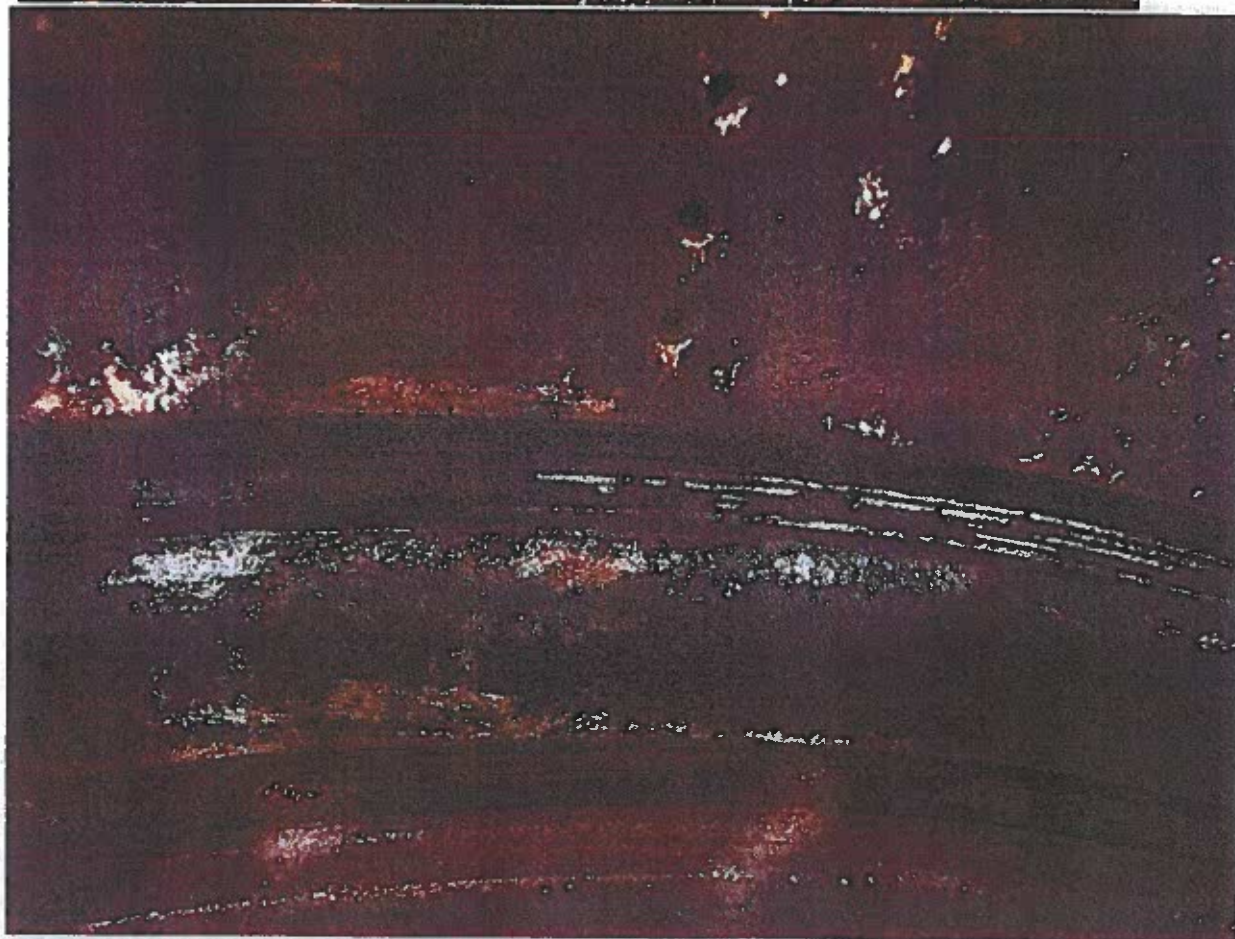


DETAIL - B
SEE EXPLODED DETAIL VIEW

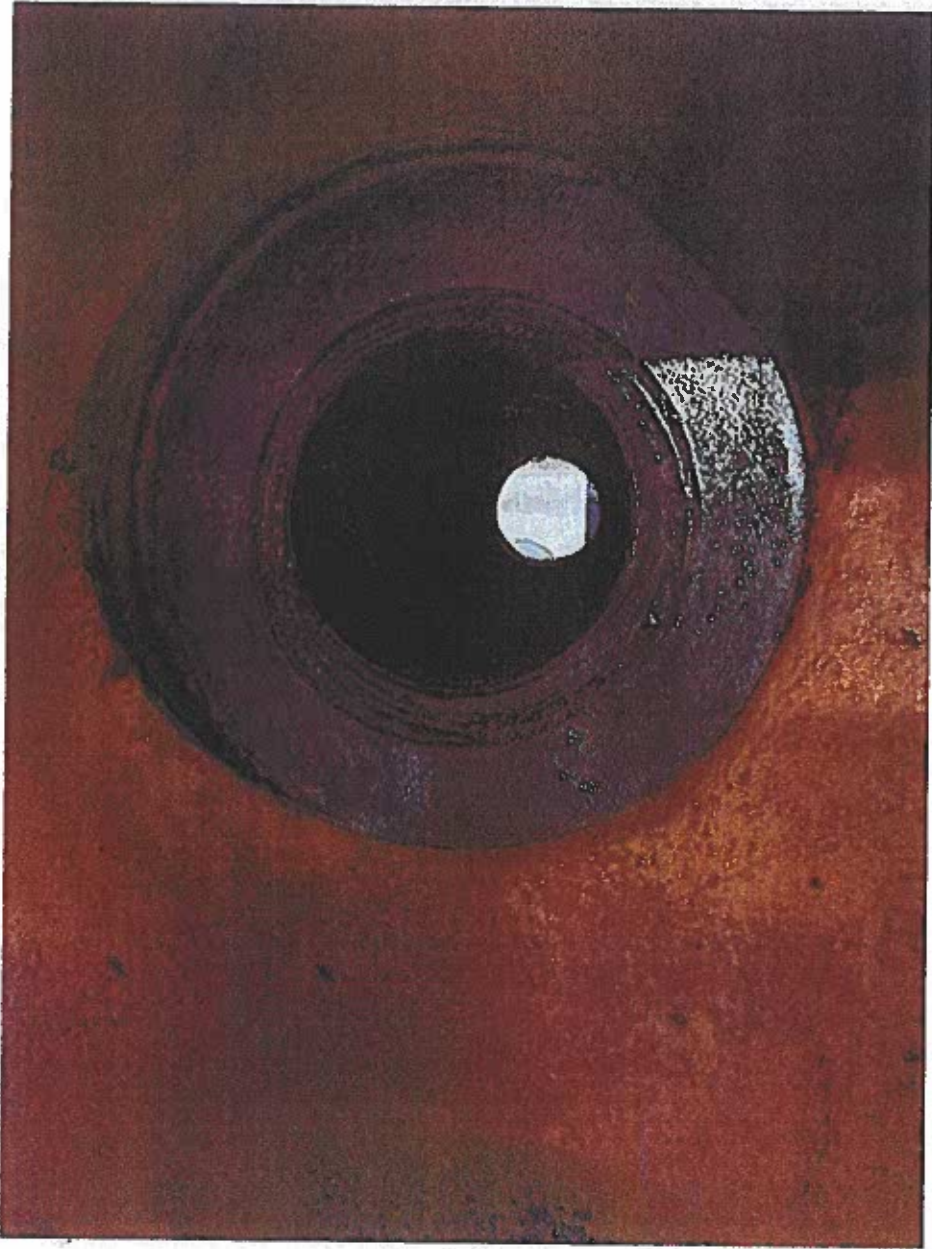


EXPLODED DETAIL VIEW

Fire Deck wear qty 1 head recommend machining.



Example of galled nut landings. Recommend spot facing.



QUOTATION

Cooper Machinery Services LLC
 Houston Sales Office
 16250 Port Northwest Dr
 HOUSTON TX 77041
 USA
 Phone 713-354-1900
 Fax 713-354-1999

Document number : US05/RU01/111121809
 Page 1 of 7
 Date Issued : JUL 31 2023
 Payment Terms : ZN30-Net 30 Days From Date Of Invc
 Terms and conditions : As Attached/Included
 Incoterms : FCA-Free Carrier
 ORIGIN
 Freight Terms :

Sold to : 114477
 CITY OF CUSHING
 PO Box 311
 CUSHING OK 74023-0311
 USA

Ship to : 225362
 Company
 CITY OF CUSHING
 MUNICIPAL LIGHT PLANT
 300 N SEAY
 CUSHING OK 74023
 USA

Inside Sales Contact: Melvin Wenske

Outside Sales Contact AM : Donald Legendre PH:918-645-3090

Email: DONALD.LEGENDRE@COOPERSERVICES.COM

Customer Reference : RFQ. Overhaul Quote
 Valid From : JUL 31 2023
 Valid To : AUG 30 2023

Item	Material Number Description	Extended Weight	Qty UM	Unit Net Price USD	Extended Price USD
000010	SHOP PARTS-CB Recond. Power Head Includes cost to disassemble, clean, all hardware & gaskets, NDT test, spark plug, shipping.	0.000 lb	12 EA	12,500.00	150,000.00
	Lead Time : IN STOCK				
000020	SHOP LABOR-CB (Machine) Fire Deck	0.000 lb	1 EA	900.00	900.00
	Lead Time : IN STOCK				
000030	SHOP LABOR-CB Spot Face - Nut Landings	0.000 lb	4 EA	350.00	1,400.00
	Lead Time : IN STOCK				
000040	ZLSVB-12-3C RETAINER SEAL CMIR : INT. VALVE STEM - HDWR.	0.000 lb	32 EA	263.81	8,441.92

Lead Time : IN STOCK

000050	Z1-01F-015-016-005 SCREW SOCKET HD CMIR : INT. VALVE STEM - HDWR.	1.280 lb	128 EA	0.91	116.48
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Lead Time : 3 Weeks Delivery From Date Of Order Placement

000060	NUMREQ-CB ZLSVB-9-2A#1 Power Liner (Chrome) (Cooper will provide a credit of 2,000 ea (total \$28,000)	0.000 lb	14 EA	22,500.00	315,000.00
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Lead Time : IN STOCK

000070	Z#1-2-01S-000-000 RING	1.400 lb	14 EA	77.50	1,085.00
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Lead Time : IN STOCK

000080	ZCSA-337-8#329 SEAL O RING	2.520 lb	14 EA	36.80	515.20
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Lead Time : IN STOCK

000090	SHOP PARTS-CB Piston (Recondition) Clean, NDT check for cracks, Mic Ring grooves, Inspect existing Bushing and Pin, & then Reassemble	0.000 lb	16 EA	9,750.00	156,000.00
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Lead Time : IN STOCK

000100	ZG18-9-7G#4 Gasket - Flat Rd. CMIR : (G18-9-7G#2) MATERIAL # ZG18-9-7G#2 IS SUPERSEDED BY ZG18-9-7G#4	0.800 lb	16 EA	38.50	616.00
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Lead Time : 5 Weeks Delivery From Date Of Order Placement

000110	ZG18-9-7G#3 Gasket - Flat Rd. CMIR : (G18-9-7G#1)	0.800 lb	16 EA	38.50	616.00
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Lead Time : 9 Weeks Delivery From Date Of Order Placement

000120	FIELD LABOR-CB	0.000 lb	1 EA	169,284.71	169,284.71
	FIELD LABOR-CB				

Labor - 17 Days (Extra than Original Scope)

Lead Time : IN STOCK

Price Summary :

Total Price :	803,975.31 USD
Same Day Shipment Charges:	0.00 USD
	USD
Total Quotation Price :	803,975.31 USD

MINIMUM ORDER REQUIREMENTS: \$200 Minimum for all Orders.

CREDIT TERMS: Credit Terms confirmed at time of order. Progress payments may apply.

RETURN OF PRODUCTS AND ORDER CANCELLATION: Cooper Machinery Services shall accept returns of normally stocked Goods for a period of thirty (30) days following shipment for exchange or refund of the purchase price; provided, that Goods must be in their original cartons, unopened and unused and are subject to a return inspection. Appropriate restocking/cancellation fees equal to the greater of (1) the cost incurred by Seller as a result of the cancellation, or (2) 25% of the purchase price. Non-stocked items (made to order) and Consumable type Goods such as gaskets, O-rings, nuts, bolts, wear parts, etc. are not returnable once shipped to the Buyer and no credits or refunds can be offered to the Buyer.

EXPORT COMPLIANCE: The items, technology, or software covered by this document may be subject to various laws including U.S. and foreign export controls. Cooper Machinery Services LLC is committed to compliance with all relevant export control laws. If the items, technology, or software are of U.S. origin or are being exported from the U.S. or will be re-exported, the following language applies: "These commodities, technology or software were exported from the United States of America in accordance with the Export Administration

TERMS AND CONDITIONS**GENERAL TERMS & CONDITIONS FOR SALE OF PRODUCTS, PARTS AND/OR SERVICES**

NOTICE: Any purchase by Buyer of Products, Parts and/or Services from Seller is subject to these Terms and Conditions. Any additional or different terms proposed by Buyer are expressly objected to and shall not be binding upon Seller unless expressly accepted in writing by Seller's authorized representative. Any order for Products, Parts and/or Services shall constitute acceptance of these Terms and Conditions.

1. DEFINITIONS

"Affiliate" means with respect to either party an entity (including without limitation any individual, corporation, partnership, limited liability company, association, or trust) that directly or indirectly controls, is controlled by, or is under common control with, such party.

"Applicable Law" or "Applicable Laws" means any law, statute, order, decree, rule, injunction, license, permit, consent, approval, agreement, regulation, judgment or legislative or administrative action of a competent governmental authority, which applies to the sale of Products, Parts and/or provision of Services.

"Buyer" means the entity purchasing Products, Parts and/or Services and its successors and permitted assigns.

"Buyer Taxes" means all existing and future taxes, duties, fees, and other charges of any nature (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales and use stamp, storage, transfer, turnover, value-added taxes ("VAT"), or other similar taxes, and any and all items of deficiency, penalty, addition to tax, interest, or assessment related thereto), imposed or assessed by any governmental authority of any country in connection with the execution of this Contract or performance of or payment for work hereunder, but excluding Seller Taxes.

"Claims" means all claims, demands, causes of action, liabilities, damages, judgments, fines, penalties, awards, losses, costs, and expenses (including, without limitation, attorney's fees and costs of litigation) of any kind or character.

"Consequential Loss" means, whether direct or indirect, and whether or not foreseeable at the time of entering into the Contract or at the time of commencing performance: any loss, delay or interruption of business, profits, revenue, production or opportunity; loss of product, use or equipment, standby time, rig, vessel, or other facility or equipment downtime; cost of capital, cost of substitute equipment, facilities, services or replacement power; overhead; any special, punitive, exemplary, incidental and/or consequential damages or losses; and/or Claims of a party's customers for any of the above losses, costs or damages.

"Contract" means either the contract agreement signed by both parties or the purchase order signed by Buyer and expressly accepted by Seller in writing, together with these Terms and Conditions, any other documents incorporated by reference, Seller's Proposal and any agreed scope of work for the sale of Products, Parts, and/or Services.

"Contract Price" means the aggregate amount to be paid by Buyer to Seller for the purchase of Products, Parts and/or Services, as stated in the Contract, and any agreed adjustments to the same.

"Delivery" means when the Products/Parts have been delivered according to the applicable Incoterm (2010). "Deliver" shall be construed accordingly.

"Group" means with respect to either party, such party (either Buyer or Seller, as applicable), as well as its Affiliates, and in connection with the project to which the Products, Parts and/or Services relate, its joint venture partners, joint interest owners, co-lessees, consortium members and/or other partners, and, in respect of Buyer only, the Site owner, end user, or Site operator; and for all of the above, also its and their contractors and subcontractors of any tier in connection with said project, as well as the shareholders, officers, directors, employees, invitees, agents, and consultants of all of the foregoing. "Buyer Group" and "Seller Group" shall be construed accordingly. Seller Group does not include any member of Buyer Group and Buyer Group does not include any member of Seller Group.

"Hazardous Materials" means any chemical, substance, material, waste or emission defined, classified or regulated as hazardous or toxic, or as a pollutant, contaminant, or threat or potential threat to human health, safety or the environment under Applicable Law, including but not limited to naturally occurring radioactive material, hydrocarbons, asbestos, lead, hydrogen sulphide or polychlorinated hydrocarbons, including biphenyls and biphenols.

"Indemnify" means release, defend, indemnify, and hold harmless.

"Parts" means the spare or repaired parts required in relation to the Product, identified by Seller in the Contract.

"Products" means all equipment, materials, supplies, software, products, and other goods (excluding Parts) as applicable, sold under the Contract.

"Proposal" means Seller's formal offer to provide the Products, Parts and/or Services, and any mutually agreed written amendments thereto.

"REGARDLESS OF CAUSE OR ACTION" MEANS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF CAUSE, FAULT, DEFAULT, NEGLIGENCE IN ANY FORM OR DEGREE, STRICT OR ABSOLUTE LIABILITY, BREACH OF DUTY (STATUTORY OR OTHERWISE) OF ANY PERSON, INCLUDING OF THE INDEMNIFIED PERSON, UNSEAWORTHINESS OF ANY VESSEL, AND/OR ANY DEFECT IN ANY PREMISES/ VESSEL, FOR ALL OF THE ABOVE, WHETHER PRE-EXISTING OR NOT AND WHETHER THE DAMAGES, LIABILITIES, OR CLAIMS OF ANY KIND RESULT FROM CONTRACT, WARRANTY, INDEMNITY, TORT/ EXTRA-CONTRACTUAL OR STRICT LIABILITY, QUASI CONTRACT, LAW, OR OTHERWISE.

"Seller" means Cooper Machinery Services, LLC or named Cooper Affiliate signing the Contract or the purchase order, and its successors and permitted assigns.

"Seller Taxes" means all corporate income taxes imposed on Seller and any taxes imposed on Seller's employees in connection with the execution of this Contract or the performance of or payment for work hereunder by Applicable Laws.

"Services" means all the services, including, without limitation, technical assistance and guidance, training, repairs, and remote diagnostics, to be provided by Seller under the Contract.

"Site" means the premises where Parts or Products are used or meant to be used and/or Services are performed or meant to be performed, not including any Seller Group's premises.

2. DELIVERY, TRANSFER OF TITLE & RISK, STORAGE, LIQUIDATED DAMAGES

2.1 Unless otherwise provided in the Contract and in accordance with Incoterms 2010: (i) for shipments that do not involve an exit out of Seller's country of incorporation, Seller shall Deliver the Products/Parts to Buyer FCA Seller's facility, place of manufacturer or warehouse; (ii) for shipments within the European customs territory, Seller shall Deliver CPT - carriage paid to named place of destination; (iii) for other export shipments out of Seller's country of incorporation, Seller shall Deliver Products/Parts to Buyer FOB, in case of transportation by sea (specifying the port of export); FCA loaded into aircraft, in case of transportation by air (specifying the airport of export); or CPT - carriage paid to named place of destination specified between the parties, in case of transportation by rail or road. The "Delivery Date" for any item of Products/Parts is defined as the date on which such item is Delivered in accordance with this Article. Partial Delivery and Delivery in advance of the Delivery schedule shall be permitted, unless otherwise specified in the Contract.

2.2 Subject to Article 2.3, title and risk of loss to Products and/or Parts shall pass upon Delivery as provided in Article 2.1, with the exception that title and risk of loss to: (i) Products and/or Parts shipped from the United States of America ("U.S.") shall pass from Seller to Buyer immediately after each item departs from the U.S. territorial land, seas and overlying airspace, which the parties acknowledge extend to twelve nautical miles from the baseline of the country, determined in accordance with the 1982 United Nations Convention of the Law of the Sea; and (ii) Products and/or Parts to be shipped to a Delivery destination directly

from countries different from Seller's country of incorporation (drop shipment), shall pass immediately after each item departs from the territorial land, seas and overlying airspace of the sending country. For the avoidance of doubt, Seller or its relevant Group member shall retain title to any equipment leased to Buyer Group.

2.3 If any of the Products and/or Parts cannot be shipped to Buyer in accordance with the agreed upon Delivery terms due to any cause not attributable to Seller Group, upon notice to Buyer, Seller may store such Products and/or Parts or ship them to outside storage, in which case: (i) any amounts otherwise payable to Seller upon Delivery or shipment shall become payable upon presentation of a certification specifying the cause and place of storage (any payment security shall allow payments upon presentation of notice to storage instead of transport documents); (ii) all expenses incurred by Seller Group, such as for preparation and placement into storage, handling, inspection, preservation, insurance, removal charges, interest, and any VAT or other taxes imposed directly or indirectly under Applicable Law shall be reimbursed or paid by Buyer upon submission of Seller's invoices; and (iii) when reasonably possible and upon payment of all amounts due hereunder, Seller shall resume Delivery of the Products and/or Parts to the originally agreed point of Delivery. Title and risk of loss to Products and/or Parts shall pass as provided in Article 2.2, provided that Seller shall not have any obligation to store any item beyond 60 calendar days and if the storage period extends beyond 60 days, Seller shall be entitled to resume Delivery of the Products/Parts in accordance with Article 2.1. The terms of Article 2.3 shall apply also in the event any Buyer equipment repaired at Seller Group's facilities cannot be shipped to or received by Buyer in accordance with the agreed upon terms, provided that, in the case of Buyer equipment to be repaired at Seller Group's facilities, Buyer shall retain title to, and risk of loss for, any such equipment at all times.

2.4 In the event of a delay in the Delivery of Products and/or Parts beyond the contractually agreed Delivery Date or a delay in the commencement of the performance of Services beyond the contractually agreed commencement date, if such Delivery/commencement is not excused under the terms of the Contract, Seller Group shall be liable exclusively for the following liquidated damages, unless a different amount is set forth in the Contract: 0.5% of the price of the delayed item for each week of delay, or 0.1% of the price of the delayed Service for each day of delay, in all cases cumulatively up to a maximum amount of 5% of the overall portion of the Contract Price allocable to the delayed Services, Products or Parts. The parties agree that such liquidated damages are not a penalty and represent a fair and reasonable estimate of the damages Buyer Group may suffer as a result of delay. SAID LIQUIDATED DAMAGES SHALL CONSTITUTE THE SOLE AND EXCLUSIVE LIABILITY OF SELLER GROUP AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER GROUP FOR DELAY. No liquidated damages are due unless Buyer has suffered direct economic harm.

3. EXCUSABLE DELAYS

3.1 Neither party shall be liable or considered in breach or default of its obligations to the extent performance of such obligations is excused or prevented, directly or indirectly, due to causes beyond the impacted party's reasonable control, including but not limited to: (i) acts of God, acts or omissions of governmental authorities, fire, severe weather conditions, earthquake, strikes or other labor disturbances, flood, serious risk of kidnapping, war (declared or undeclared), armed conflict, acts or threats of terrorism, epidemics, civil unrest, riot, severe delay in transportation, severe car shortage, or inability to obtain necessary materials, components or services; (ii) in the case of Seller, acts or omissions of Buyer Group, including failure to timely provide Seller Group with access, information, tools, material and approvals necessary to permit Seller Group to timely perform the required activities, and including, without limitation, unknown physical conditions at the Site of an unusual nature and differing materially from those ordinarily encountered and generally recognized as occurring in the work of the character provided for in the Contract. The affected party shall promptly notify the other party in the event of a delay under this Article. The Delivery or performance dates shall be extended for a period equal to the time lost by reason of such delay, plus such additional time as may be reasonably necessary to overcome the effect of such delay. If Seller is delayed by acts or omissions of Buyer Group, or by the prerequisite work of Buyer's other contractors, Seller shall also be entitled to an equitable price adjustment. Under no circumstances shall Buyer's payment obligation be deemed excusable under this Article.

3.2 If a delay excused by this Article 3 extends for more than 90 days and the parties have not agreed upon a revised basis for resuming work, including an equitable price adjustment, then either party (except where delay is caused by Buyer Group, in which event only Seller), upon 30 days written notice may terminate the Contract with respect to the unexecuted portion of the work. In the event of a delay under Article 3.1(i), the terms of Article 10.2 shall apply in full. In the event of a delay under Article 3.1(i), Buyer shall pay Seller the pro-rated Contract Price for all work performed before the effective date of termination.

4. WARRANTY

4.1 Subject to the limitations set forth in the Contract, Seller warrants to Buyer that: (i) the Products and/or Parts shall be Delivered free from defects in material, workmanship and title; and (ii) the Services shall be performed in a competent and diligent manner in accordance with any mutually agreed specifications. Unless Seller expressly agrees otherwise in writing and except for Products/Parts provided by Seller's Affiliates, any Parts not manufactured by Seller (including incidental materials and consumables used in the Services) shall carry only the warranty provided by the original manufacturers, and Seller gives no warranty for such Parts.

4.2 Unless otherwise stated in the Contract, the warranty period ("Warranty Period") shall be as follows: (i) for each Product (excluding Parts), 12 months from Start-Up date, or 8,600 running hours, or 18 months from the date of Delivery, or from the date of notice that the Products are ready for shipment, if the Delivery cannot take place for reasons not attributable to Seller Group, or from the date of notice that the Products are put into storage under Article 2.3, whichever occurs first; (ii) for Services, one year after performance of the Service; (iii) for Parts, 18 months after Delivery or 12 months after installation, whichever occurs first; (iv) for repaired, replaced, or re-performed Products, Parts, or Services, six months after repair/replacement or re-performance, provided that Seller Group's warranty obligations shall in all cases terminate and in no event extend beyond 24 months after Delivery or placement into storage of the original Products/Parts or performance of the initial Service. As used herein, "Start-Up" means the equipment start-up activities to be carried out by Buyer in connection with the Products not later than 30 days from Seller's written notification that the Products are ready for start-up.

4.3 If Products, Parts, or Services do not meet the above warranties during the applicable Warranty Period and Buyer informs Seller in writing within 15 days of discovery, Seller's sole and exclusive liability shall be to either re-perform the defective Services, or repair or replace the defective component of the Products/Parts, at Seller's option. If despite Seller's reasonable efforts, a non-conforming Product/Part cannot be repaired or replaced, or non-conforming Services cannot be re-performed, the parties will negotiate an equitable adjustment in price with respect to such Product, Parts, component, or Service. Seller Group shall not under any circumstances be liable for defects that arise or are discovered after expiration of the Warranty Period.

4.4 Seller shall not be liable for accessing, retrieving, removing, or decontaminating defective Products or Parts, or for reinstalling repaired or replacement Products/Parts, or for any costs, damages, or losses incurred in connection with any of the above operations. Seller shall be responsible to transport defective Products or Parts only to and from the original Delivery point. Buyer shall be responsible for all customs formalities, costs and taxes connected with any export to Seller or import of goods sent back to Buyer.

4.5 Seller does not warrant the Products, Parts or any repaired or replacement item against: normal wear and tear; including that due to environment, excessive operation at peak capability, frequent starting, type of fuel, detrimental air inlet conditions or erosion, corrosion or material deposit from fluids, misuse, accident, modification, heating, machining, bending, welding, alteration of any kind, or operation under conditions more severe than, or otherwise exceeding those set forth in the specifications for the relevant Product or Part. The warranties and remedies set forth herein are further conditioned upon: (i) proper storage, installation, use, operation, and maintenance of the Products/Parts; and conformance with the operation instruction and installation manuals (including revisions thereto) provided by Seller Group; (ii) Buyer keeping accurate and complete records of operation and maintenance during the Warranty Period and providing Seller access to those records; and (iii) repair or modification pursuant to Seller's instructions and approval. Failure to meet any such conditions in Article 4.5 renders the warranty null and void.

4.6 THE REMEDIES SET FORTH IN ARTICLE 4 CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES FOR ALL CLAIMS ARISING OUT OF OR RELATING TO ANY FAILURE OF, OR ANY DEFECT OR NON-CONFORMITY IN, THE PRODUCTS, PARTS, OR SERVICES, REGARDLESS OF WHEN THE FAILURE, DEFECT OR NON-CONFORMITY ARISES AND REGARDLESS OF CAUSE OR ACTION, THE WARRANTIES SET FORTH IN ARTICLE 4 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, AND GUARANTEES, WHETHER WRITTEN, ORAL, IMPLIED, OR STATUTORY, NO IMPLIED OR STATUTORY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

4.7 All Parts Delivered shall conform to Seller's part or version number specified in the Contract, or its equivalent or the superseding number subsequently assigned by Seller. If the number ordered is no longer available, Seller is authorized to provide a valid interchangeable Part without notice to Buyer.

5. **INSPECTION AND FACTORY TESTS** - The quality control exercised by Seller in its manufacture of Products/Parts shall be in accordance with Seller's normal quality control policies, procedures and practices. Unless otherwise expressly agreed in the Contract, Seller shall attempt to accommodate Buyer's requests to witness Seller's factory tests of Products/Parts, but only if such witnessing can be arranged without delaying the work. Access to Seller Group's premises shall be limited to areas directly concerned with the Products/Parts, excluding in all cases areas where work of a proprietary nature is conducted.

6. **CHANGES** - Each party may at any time propose changes in the schedule or scope of Parts, Products or Services in the form of a draft change order. Neither party is obligated to proceed with the changed schedule or scope until both parties agree to such change in writing. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at time and material rates.

7. PAYMENT

7.1 Buyer shall pay to Seller all invoiced amounts Net 30 days when due or in a timely manner according to the Contract. If nothing is agreed in the Contract, payment shall be made in US dollars or the currency set forth in the Seller's proposal. Seller reserves the right to require Payment Milestones or require one or more irrevocable, unconditional, letters of credit payable at sight ("Payment Security"), without any set-off, and in the currency agreed in the Contract (or on the face of the purchase order). In the event Buyer requests payment by credit card, Seller at its option may add a 3% surcharge to the applicable Contract Price for processing fees associated with credit card transactions.

7.2 In addition to other Contract remedies, Buyer shall pay interest to Seller at the rate of 1.5% per month (or fraction thereof), not to exceed the lesser of 18% per annum or the maximum amount permitted by Applicable Law, on all amounts not timely paid in accordance with the Contract.

7.3 If applicable, each Payment Security shall be irrevocable and unconditional, and allow for pro-rata payments for partial Deliveries, other charges (e.g., storage, export shipments, cancellations, and adjustments), and all other payments due to Seller under the Contract. Each Payment Security shall be (i) issued or confirmed by a primary international bank that is reasonably acceptable to Seller; (ii) payable at the counters of such bank; (iii) opened 30 days from the Contract effective date; and (iv) remain in effect until the latest of 90 days after the latest scheduled Products/Parts shipment, or completion of Services, or receipt by Seller of final payment. Buyer shall make relevant adjustments in the Payment Security (including increasing amounts or validity period, and including in accordance with the changes agreed in the Contract) as required to fulfill its payment obligations under the Contract, within 15 business days of Seller's notification that such adjustment is necessary. Seller will not have an obligation to begin performance until the Payment Security, or the required adjustment thereof, has become operative.

8. TAXES AND DUTIES

8.1 Seller shall be responsible for and shall pay when due and payable all Seller Taxes, and Buyer shall be responsible for and shall pay all Buyer Taxes. The Contract Price does not include any Buyer Taxes. Therefore, if any such taxes are applicable, they will be added to the Contract Price. For U.S. sales and use tax, and in other jurisdictions where applicable, Buyer may report/trem sales or similar taxes directly if Buyer timely provides a direct pay or exemption certificate to Seller.

8.2 If the Applicable Laws require the Contract to be subject to stamp duty, fee, or registration, Buyer shall be responsible for the required formalities and bear the related costs. Buyer shall return to Seller a copy of the registration certificate or a registered copy of the Contract within 10 days from the due date required by said Applicable Laws to register or pay for such stamp duty, fee, or registration. According to the Applicable Laws of the country in which Buyer has requested Seller to provide Services, Seller may be required to be registered locally in which case, Seller shall perform the Services and invoice for them with the intervention of its relevant branch or permanent establishment.

8.3 If Buyer is required to deduct or withhold any Seller Taxes from the Contract Price, Buyer shall (1) give at least 30 days' notice to Seller that Buyer will withhold, (2) make all reasonable efforts to minimize any withholding tax from payments to Seller, in accordance with Applicable Laws and any applicable bilateral conventions against double taxation, and (3) provide to Seller, within 30 days from payment, the official receipt issued by the competent government authority to which the Seller Taxes have been paid, or an alternative document acceptable to the relevant tax authorities. If Buyer requires tax residence certificates or other documentation from Seller to apply for any exempted or reduced tax regime, Seller shall submit the appropriate certificates upon Buyer's written request. If Buyer, under the Applicable Laws of any country other than Seller's country of incorporation or in which Seller has a branch, deducts or withholds Seller Taxes or fails to comply with the requirements of this clause, Buyer shall pay additional amounts to Seller so that Seller receives the full amount of the Contract Price, as though no such Seller Taxes had been deducted or withheld.

8.4 If Buyer benefits from any tax, fee or duty exemption which is applicable in Seller or Seller's Group, Buyer agrees to provide Seller, without charge and before the following as applicable: (1) entering into the Contract, (2) before invoicing, or (3) before any other relevant event, documentation acceptable to the competent tax authorities supporting the exemption, together with instructions on the exemption procedure. Buyer shall promptly inform Seller in writing about the revocation, expiry or other change of the exemption. If Seller is denied the exemption because of a failure of Buyer, Seller shall be entitled to invoice and Buyer shall pay promptly the applicable tax, fee or duty.

8.5 When Buyer arranges the export or intra-European Union ("EU") community shipment, Buyer will provide to Seller, free of charge and within 90 days (or, in the case of exports from the U.S., 30 days), evidence (obtained from Buyer's forwarder) of exportation or intra EU community shipment; such evidence must be in a form that is acceptable to the competent tax and customs authorities. Failing the above, Seller shall be entitled to invoice Buyer the applicable VAT, U.S. sales and use tax, or similar taxes.

9. **ASSIGNMENT, NOVATION & SUBCONTRACTING** - Buyer may assign or novate the Contract, in full or in part and including through change of ownership, only with the prior consent of Seller, which consent shall not be unreasonably delayed or withheld, provided that Seller shall be entitled to withhold such consent only for demonstrable reasons if the assignee/novatee lacks adequate financial capability, is a competitor or potential competitor of Seller or its Affiliates, causes Seller Group to be in breach of Applicable Law, and/or does not meet Seller's code of ethics. Seller may assign or novate to third parties the Contract, in full or in part, only with the prior consent of Buyer, which consent shall not be unreasonably delayed or withheld, provided that Seller may, without Buyer's consent: (i) assign or novate the Contract, in full or in part, to one or more Affiliates of Seller; and (ii) assign any receivables due hereunder to one or more Affiliates of Seller. The parties agree to execute such documents as may be necessary to effect the permitted assignments or novations. In the event of a novation or assignment by Buyer, Buyer shall cause the novatee/assignee to provide additional payment security at Seller's reasonable request. Any assignment or novation in violation of the above shall be void and without effect for the other party. Nothing herein shall restrict Seller from subcontracting portions of its work, provided that Seller remains responsible to Buyer for performance of such work.

10. TERMINATION AND SUSPENSION

10.1 Either party may terminate this Contract for default if: (i) any proceeding is brought against the other party, voluntarily or involuntarily, under applicable bankruptcy or insolvency laws, or if the other party is unable to pay its debts when due, to the extent permitted by Applicable Law; or (ii) the other party commits a material breach of this Contract, which does not otherwise have a specified contractual remedy, and fails to cure the breach within 30 days of notice from the non-breaching party, or if it is not possible to cure such breach within 30 days, fails to commence to cure the breach within 30 days of such notice or fails to thereafter continue diligent efforts to complete the cure as soon as reasonably possible. In the event of a termination by Buyer under this Article 10.1, Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete such terminated scope; and Buyer shall pay to Seller the portion of the Contract Price allocable to Products/Parts purchased and/or completed, and amounts for Services performed, before the effective date of termination. Said amounts shall be calculated using the applicable Contract rates, or in the absence of such rates, at Seller's then-current standard time and material rates. In the event there are agreed-upon Contract milestones, said amounts shall be calculated in accordance with the milestone schedule for completed milestones, and the Contract rates for work toward milestones not yet achieved.

10.2 Buyer may terminate the Contract (even in part) with a 20-day prior written notice for reasons other than those set forth in Article 10.1, in which case Buyer shall pay Seller's charges in accordance with the Contract termination schedule, or if no such schedule exists: (i) Buyer shall pay Seller all costs and expenses incurred by Seller in connection with work performed before the

effective date of termination, plus a reasonable margin percentage in relation to such costs and expenses, which margin percentage shall not be lower than the margin percentage applicable to the overall Contract; or (ii) for Contracts based on payment milestones Buyer shall pay Seller: (a) all amounts due under the Contract for completed milestones, plus (b) all costs and expenses incurred by Seller in connection with work performed in relation to incomplete milestones, plus a reasonable margin percentage in relation to such costs and expenses, which margin percentage shall not be lower than the margin percentage applicable to the overall Contract. In connection with both (i) and (ii), Buyer shall also pay Seller the costs and expenses incurred by Seller as a direct result of the termination, including the costs associated with vendor disputes or Claims.

10.3 If Buyer fails to pay any outstanding undisputed invoice as set forth in the Contract, or fails to issue the Payment Security within the time agreed, Seller, upon a 15-day notice to Buyer, may suspend performance and Delivery. Any cost incurred by Seller as a result of such suspension (including storage, stand-by costs, demobilization and re-mobilization costs) shall be payable by Buyer upon submission of Seller's invoices. Performance of Seller's obligations shall be extended for a period equaling the period of Buyer's failure to meet its payment obligations, plus such additional time as may be reasonably necessary to overcome the effect of such payment delay. If suspension for Buyer's failure to pay an undisputed invoice or failure to issue the Payment Security exceeds 15 days, Seller may at its sole option immediately terminate the applicable Contract for cause and Buyer shall also pay Seller the costs and expenses incurred by Seller as a direct result of the termination, including the costs associated with vendor disputes or Claims, plus a reasonable margin percentage in relation to such costs and expenses.

10.4 With a 20-day written prior notice, Buyer may elect to suspend performance of the Contract for a maximum cumulative period of 90 days, after which Seller may terminate the Contract and Article 10.2 shall apply. In the event of suspension under this Article 10.4, Buyer shall also pay all reasonable expenses incurred by Seller in connection with the suspension, including without limitation, expenses for repossession, fee collection, stand-by costs, demobilization/re-mobilization, and costs of storage. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension.

11. COMPLIANCE WITH LAWS, CODES AND STANDARDS

11.1 The Contract Price is based on Seller Group's design, manufacture, testing, and Delivery of the Products, Parts and Services pursuant to (i) its design criteria, manufacturing processes, and procedures and quality assurance program; (ii) those portions of industry specifications, codes, and standards in effect as of the date of entering into the Contract as are specified in the Contract; (iii) Applicable Law; and (iv) any mutually agreed-upon written terms and specifications set forth in the Contract.

11.2 Notwithstanding any other provision of this Contract, the parties shall at all times comply with Applicable Law in the performance of the Contract, except for Seller to the extent that such compliance is penalized under, or otherwise violates, the laws of the United States or any European Union laws.

11.3 Seller is entitled to an equitable adjustment to the Contract Price and the Delivery schedule to reflect any additional costs and other impact incurred by Seller Group as a result of a change in Applicable Law or applicable standards and regulations, including changes in the interpretation thereof, after entering into the Contract. In the event any such change prevents Seller Group from executing its obligations without breaching Applicable Law or makes Seller's execution of its obligations unreasonably burdensome or unbalanced, Seller shall also have the right to withdraw its Proposal or terminate the Contract without any liability.

11.4 Unless otherwise agreed in the Contract, Seller shall be responsible for timely obtaining the permits, licenses, and authorizations required for Seller Group to meet the requirements of the Contract, except that Buyer shall be responsible for timely obtaining any required permits, licenses, and authorizations that can only be obtained by Buyer Group. Buyer and Seller shall provide each other reasonable assistance in obtaining the required authorizations.

11.5 Buyer agrees that it will not sell, distribute, disclose, release or otherwise transfer any item or technical data provided under this Contract to: (i) any country designated as a "State Sponsor of Terrorism" by the U.S. Department of State including, for this Agreement, the countries of Cuba and North Korea; (ii) any entity located in, or owned by an entity located in, a "State Sponsor of Terrorism" country or Cuba or North Korea; (iii) the region of Crimea; or (iv) any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce, the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other applicable prohibited party list of the US Government. This clause will apply regardless of the legality of such a transaction under local law. Except as otherwise agreed in writing between the parties, each Party shall be responsible for obtaining and maintaining any authorization required for its performance under this Contract (including the transfer any item or technical data under this Contract), such as export license, import license, exchange permit or other required government export or import authorization. Each Party shall provide the reasonable assistance necessary for the other Party to secure and comply with such authorizations as may be required. Neither Party shall be liable if any government export authorization is delayed, denied, revoked, restricted or not renewed despite reasonable efforts by the Party. Additionally, such delay, denial, revocation or non-renewal shall not constitute a breach of this Agreement.

Buyer shall not use any items sold hereunder for any military application, or resell them for such purpose.

12. ENVIRONMENT, HEALTH, SAFETY AND SECURITY (EHSS)

12.1 Buyer shall take all actions necessary to provide a safe, healthy and secure work environment, including transportation and accommodation if applicable, for Seller Group personnel. Buyer shall inform Seller of any known risks, hazards, or changed conditions impacting worker health, safety or the environment, including the presence or potential presence of Hazardous Materials, and shall provide relevant information, including safety data sheets, site security plans, risk assessments and job hazard analyses.

12.2 To evaluate risks associated with the provision of Services and performance under this Article, Buyer shall provide Seller Group with reasonable access to review the Site and related equipment. If Seller's work at the Site is subject to local, state or national EHS legal requirements that are not reasonably available, Buyer shall notify and provide copies of same to Seller.

12.3 If Seller or Seller's representative believes in good faith that Site conditions, Seller transportation or accommodation provisions, or the actions of others threaten the health, safety, or security of Seller Group personnel or the environment, Seller or its representatives may, in addition to other rights or remedies available, STOP WORK, evacuate some or all of its personnel, suspend performance of all or any part of the Contract, and/or remotely perform or supervise work. If Seller exercises its rights under this provision, it shall give prompt notice to Buyer, and the parties shall work cooperatively to correct the conditions or actions prompting the STOP WORK. The parties agree there shall be no retaliation taken against any person who invokes their right under this provision to STOP WORK. Any delay resulting from Seller Group's exercise of its rights under this Article shall constitute an excusable delay.

12.4 To the full extent permitted by Applicable Law, Buyer agrees that it is the generator, and shall be solely responsible for the storage, transportation and disposal of all Hazardous Materials or waste related to or arising from the performance of Services at Buyer Group sites, including any removed from Seller's equipment. Prior to the transportation and disposal of waste materials by Buyer, Seller shall properly handle and manage all Hazardous Materials resulting from the Services in accordance with Applicable Law and Buyer's written requirements. If Seller Group encounters any Hazardous Materials, it may suspend work pending Buyer elimination of the hazardous condition. If any Seller equipment or Buyer equipment designed for a Seller facility is contaminated with Hazardous Materials, Buyer shall assume sole responsibility for decontaminating such equipment and returning it in the same condition received to allow for its safe handling and transportation in compliance with Applicable Law. If any such Hazardous Materials cause an increase in Seller's cost or time, Seller shall be entitled to an equitable adjustment in price and schedule.

13. ADDITIONAL EHSS PROVISIONS APPLICABLE TO SERVICES

13.1 Seller Group personnel shall not be required to work in excess of any time restriction prescribed by Applicable Law. Seller Group personnel will have at least one day of rest in any seven consecutive days; provided, the parties may agree upon exceptions consistent with Seller's working time policy.

13.2 Buyer shall provide medical care and facilities at the Site consistent with international industry standards. If Seller Group's personnel require urgent medical attention, Buyer shall make its medical facilities available to such persons as necessary. To the

extent Buyer cannot supply necessary urgent medical attention at the Site or any Buyer Group's site or while working offshore, Buyer shall provide for transport of Seller Group's personnel and access of such personnel to the nearest suitable urgent care facility. For offshore or remote work, Buyer shall be responsible for the medical evacuation of Seller Group's personnel from the Site to the departure point on the mainland or Buyer's designated medical services provider.

13.3 Buyer shall transport Seller Group's personnel, equipment and materials, including medi-vac, to and from all offshore locations and to such other job sites as agreed, in compliance with Applicable Law and international industry standards regarding qualified personnel and safe operation and maintenance. Buyer Group agrees to make such equipment and information relating to its operation and maintenance available to Seller for review. Buyer shall provide personal protective equipment required during use of Buyer provided transportation to and from the offshore work and such other specialized equipment as agreed between the parties.

13.4 Buyer shall provide, at no cost to Seller, accommodation and messing for Seller Group's personnel, which offers a reasonable degree of comfort, is consistent with international industry standards and is at least comparable to that furnished to Buyer's management and technical personnel. Buyer shall provide telephone and computer internet connectivity to Seller Group's personnel at said accommodations.

14. CONFIDENTIALITY

14.1 "Confidential Information" means pricing for Parts, Products, and Services, and/or information that is designated in writing as "confidential" or "proprietary" at the time of disclosure, or orally designated as "confidential" or "proprietary" and confirmed in writing within ten days after oral disclosure. Confidential Information shall not include information that: (i) is or becomes generally available to the public other than from disclosure by the receiving party's Group; (ii) is or becomes available to the receiving party's Group on a non-confidential basis from a source other than the disclosing party and, after due inquiry, that source is not subject to a confidentiality obligation to the disclosing party; or (iii) is independently developed by the receiving party's Group without reference to the disclosing party's Confidential Information, as evidenced by written documents.

14.2 The parties shall (i) use, reproduce, or disclose the other party's Confidential Information only in connection with the Contract and permitted use(s) and maintenance of Products, Parts and Services; (ii) take reasonable measures to protect the confidentiality, and prevent disclosure and unauthorized use of the Confidential Information and (iii) in particular, not disclose Confidential Information to the other party's competitors.

14.3 A party may disclose Confidential Information: (i) to any member of its Group who has a need to know to perform the Contract or use and maintain Products, Parts, or Services and who is bound in writing to confidentiality obligations and use restrictions at least as restrictive as in this Contract; and (ii) to comply with a legal obligation, but only after promptly notifying the disclosing party of its disclosure obligation to that the disclosing party may seek an appropriate protective order. Buyer shall not disclose Confidential Information to Seller unless required for Seller to perform under this Contract. Buyer warrants that it has the right to disclose the information and shall indemnify Seller Group from any Claims or damages resulting from improper disclosure.

14.4 Neither party shall make any public announcement about any aspect of the Contract or related documents or information without prior written approval of the other party.

14.5 The confidentiality and use restrictions of this Article 14 shall survive any termination of the Contract for ten years. Each party shall indemnify the other for failure to comply with this provision.

15. INTELLECTUAL PROPERTY

15.1 Seller shall indemnify Buyer from any rightful Claims of third parties that the Products or Parts manufactured by Seller or its Affiliates infringe any utility patent of the U.S., EU, or the country of initial installation (if set forth in the Contract), provided that: (i) Buyer promptly notifies Seller in writing of any such claim; (ii) Buyer makes no admission of liability and does not take any position adverse to Seller regarding such claim and gives Seller authority, at Seller's expense, to direct and control all defense, settlement and compromise negotiations; and (iii) Buyer provides Seller with full disclosure and assistance that may be reasonably required to defend any such claim.

15.2 Seller shall have no obligation or liability with respect to any claim based upon: (i) any Products, Parts or Services that have been altered, modified, or revised; (ii) the combination, operation, or use of any Products, Parts or Services with other products or services when such combination is part of any allegedly infringing subject matter; (iii) failure of Buyer Group to implement any update provided by Seller Group that would have prevented the claim; (iv) unauthorized use of Products, Parts or Services, including without limitation a breach of the provisions of the Contract; or (v) Products, Parts or Services made or performed to Buyer Group's specifications.

15.3 Should any Products, Parts or Services become the subject of a claim, Seller may at its option: (i) procure for Buyer the right to continue using the Product, Part or Service, or portion thereof; (ii) modify or replace it in whole or in part to make it non-infringing; or (iii) failing (i) or (ii), take back Products or Parts, discontinue Services, and refund any fees received by Seller attributable to the infringing Product, Part or Service.

15.4 THE FOREGOING STATES SELLER GROUP'S ENTIRE AND EXCLUSIVE LIABILITY FOR ANY INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS INFRINGEMENT.

15.5 Each party shall retain ownership of all Confidential Information and intellectual property it had prior to the negotiations of the Contract. Any and all new intellectual property conceived, created or provided by Seller Group under the Contract, whether alone or with any contribution from Buyer Group, shall be owned exclusively by Seller or other members of Seller Group, as the case may be. To the extent that Buyer Group may acquire any rights or interest in such new intellectual property, Buyer irrevocably assigns, and agrees to assign and/or cause other members of Buyer Group to assign, all such rights and interests in such new intellectual property as instructed by Seller, and to execute assignments and other documentation as necessary to achieve this result. To the extent permissible by law, Buyer Group waives any moral rights it acquires in any such new intellectual property. Seller shall grant Buyer use rights to utilize Seller's intellectual property embedded in the Products or Parts solely for standard use, operation, and maintenance of the Products/Parts by Buyer. Such license shall not give Buyer the right to manufacture and/or have manufactured such Products/Parts to the extent such manufacture will result in substantially new Products/Parts.

15.6 If Seller provides any Products that are software, including SaaS (Software as a Service), embedded software, or software that is installed on Buyer Group's equipment, the terms of the annexed Software License Addendum, shall apply. If there is any conflict between these Terms and Conditions and the terms of the Software License Addendum, the terms of the Software License Addendum shall prevail.

15.7 Buyer agrees that Seller may create, receive, maintain, transmit and otherwise have access to machine, technical, system, usage and related information, including, but not limited to, information about Buyer's products, services, systems and software, that is gathered periodically to facilitate the provision of Products, Parts, Services, other support, consulting, training and other services to Buyer (if any), and to verify compliance with the terms of this Contract. Seller and its Affiliates may use such information to provide, develop or improve their products or services.

16. INDEMNITY, LIMITATION OF LIABILITY, AND INSURANCE. The provisions of Article 16 shall apply to the maximum extent permitted by Applicable Law and, unless otherwise expressly stated, prevail over any conflicting clauses.

16.1 (i) Seller agrees to indemnify Buyer Group from and against any and all Claims for bodily injury, illness, or death suffered by any Seller Group's personnel, and/or for damage to or loss of any property of any Seller Group member (whether owned, hired, or leased, but excluding property leased to Buyer Group) arising out of or in connection with the Contract, REGARDLESS OF CAUSE OR ACTION. (ii) Buyer agrees to indemnify Seller Group from and against any and all Claims for bodily injury, illness, or death suffered by any Buyer Group's personnel, and/or for damage to or loss of any property of any Buyer Group member (whether owned, hired, or leased, and including the Products and Parts (After Delivery), the Site, and any facilities or property thereon), arising out of or in connection with the Contract, REGARDLESS OF CAUSE OR ACTION.

16.2(i) Seller agrees to indemnify Buyer Group from and against any rightful Claims of third parties on account of bodily injury, illness or death, or damage to or loss of property, to the extent resulting directly from the negligence of Seller Group in connection with the performance of the activities under this Contract. (ii) Buyer agrees to indemnify Seller Group from and against any rightful Claims of third parties on account of bodily injury, illness or death, or damage to or loss of property, to the extent resulting directly from the negligence of Buyer Group in connection with the activities performed under this Contract. (iii) In the event the

injury or damage to third parties is caused by the joint or concurrent negligence of the parties or their respective Groups, each party shall bear such injury or damage proportionally to its Group's negligence. For the avoidance of doubt, no members of either party's Group shall be considered third parties and, for purposes of Seller's indemnity obligation in Article 16.2(i), no part of the Site or any property or facilities thereon shall be considered as third party property, and the Site owner and its partners, affiliates and contractors/subcontractors shall not be considered third parties. The reciprocal indemnities in this Article 16.2 shall apply only if the indemnified party: (i) promptly notifies the other in writing of the third party claim; (ii) makes no admission of liability, does not take any position adverse to the other party and gives such other party's authority to direct and control all defense, settlement and compromise negotiations; and (iii) provides the other party with full disclosure and assistance as may be reasonably required to defend such claim.

16.3 Except only as provided in Article 16.1(i) but notwithstanding anything else to the contrary herein, in the event the Site is offshore, Buyer assumes sole responsibility for and shall indemnify the Seller Group (to the maximum extent permitted under applicable law) from and against any and all Claims asserted by or in favor of any person or party resulting from pollution, contamination or blow-out of any kind and including costs of pollution control, removal, spills, leakage, and clean-up. The above indemnity applies REGARDLESS OF CAUSE OR ACTION and even if the claim is on account of any defect in the Products, Parts or Services, but it shall not apply to surface pollution or spillage of fuels, lubricants, sewage or garbage to the extent such surface pollution or spillage originates from Seller Group's property while such property is in Seller Group's sole care, custody and control.

16.4 EXCEPT ONLY FOR SELLER'S OBLIGATIONS IN ARTICLES 8.1, 15, 16.1(G), AND 11.2 (TO THE EXTENT OF FINES AND PENALTIES IMPOSED BY A GOVERNMENT AUTHORITY AS A RESULT OF SELLER'S VIOLATION OF APPLICABLE LAW), SELLER GROUP'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS OF ANY KIND, REGARDLESS OF CAUSE OR ACTION, ARISING OUT OF OR RELATED TO THE CONTRACT, OR ITS PERFORMANCE OR BREACH, INCLUDING WITHOUT LIMITATION WARRANTY AND TERMINATION, SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED: (i) IN THE CASE OF CLAIMS RESULTING FROM THE PROVISION OR FAILURE TO PROVIDE, OR FROM THE USE OR FAILURE TO USE PRODUCTS OR PARTS, THE CONTRACT PRICE ALLOCABLE TO THE PRODUCT AND/OR PARTS GIVING RISE TO THE CLAIM; AND (ii) IN THE CASE OF CLAIMS RESULTING FROM THE PROVISION OR FAILURE TO PROVIDE SERVICES, THE CONTRACT PRICE ALLOCABLE TO THE SERVICES GIVING RISE TO THE CLAIM. SELLER GROUP SHALL HAVE NO LIABILITY FOR ADVICE OR ASSISTANCE GRATUITOUSLY PROVIDED BY SELLER GROUP BUT NOT REQUIRED PURSUANT TO THE CONTRACT. ALL SELLER GROUP'S LIABILITIES SHALL TERMINATE AT THE END OF THE RELEVANT WARRANTY PERIOD, EXCEPT FOR CLAIMS THAT HAVE BEEN TIMELY COMMENCED BY BUYER IN ACCORDANCE WITH THE CONTRACT.

16.5 UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL LOSS, NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND EXCEPT ONLY TO THE EXTENT OF AGREED LIQUIDATED DAMAGES AND ANY PREDETERMINED TERMINATION FEES DUE TO SELLER UNDER THE CONTRACT, SELLER SHALL INDEMNIFY BUYER GROUP FROM AND AGAINST ANY AND ALL DIRECT OR INDIRECT CLAIMS FOR CONSEQUENTIAL LOSS OF SELLER GROUP; AND BUYER SHALL INDEMNIFY SELLER GROUP FROM AND AGAINST ANY AND ALL DIRECT OR INDIRECT CLAIMS FOR CONSEQUENTIAL LOSS OF BUYER GROUP REGARDLESS OF CAUSE OR ACTION.

16.6 NOTWITHSTANDING ARTICLE 16.2(i), IN THE EVENT BUYER GROUP PROVIDES PRODUCTS OR PARTS TO A THIRD PARTY OR USES SELLER'S PRODUCTS/PARTS AT A FACILITY NOT OWNED BY BUYER, OR THE SERVICES ARE PERFORMED AT A FACILITY NOT OWNED BY BUYER, BUYER SHALL INDEMNIFY SELLER GROUP FROM AND AGAINST ANY LIABILITY ARISING OUT OF CLAIMS MADE IN EXCESS OF THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THE CONTRACT, REGARDLESS OF CAUSE OR ACTION. IN THE EVENT BUYER ASSIGNS OR NOVATES THE CONTRACT, IN WHOLE OR IN PART, SUCH ASSIGNEE OR NOVATEE SHALL BE BOUND BY THE SAME TERMS OF THIS CONTRACT, AND BUYER HEREBY WAIVES ANY RIGHT TO CLAIM, WHETHER IN TORT, AT LAW OR OTHERWISE, FOR DAMAGES OR LIABILITIES OF ANY KIND IN EXCESS OF THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THE CONTRACT.

16.7 Buyer and Seller each covenant and agree to support their mutual indemnity obligations under Article 16 by procuring and maintaining, at the indemnifying party's sole expense, insurance policies meeting the following requirements: (i) Workers Compensation/Employer's Liability as per Applicable Law; (ii) Comprehensive General Liability Combined Single Limit for Bodily Injury and Property Damage \$1,000,000 (one million) per occurrence and \$2,000,000 (two million) in the aggregate (or its equivalent in another relevant currency), which may be satisfied through a combination of underlying and excess coverages. The parties agree that, to the extent of the indemnifying party's liability and indemnity obligations under this Contract, the indemnifying party's General Liability policies shall include the indemnified party Group as additional insured(s) and contain blanket contractual liability coverage, be primary, and receive no contribution from any insurance policies maintained by or on behalf of the indemnified party. Each party, on request, shall provide to the other party insurance certificates evidencing the aforementioned limits and terms of insurance. Buyer and Seller shall each arrange for any of their respective insurance policies hereunder to contain provisions whereby, to the extent of each party's liability and indemnity obligations under this Contract, their insurers waive their rights of subrogation against the other party's Group, as well as the other party's respective insurers.

17. NO NUCLEAR USE - The Products, Parts and/or Services are not intended or authorized for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use, or permit others to use, Products, Parts and/or Services in connection with or for any such purposes without the advance written consent of Seller. If in breach of the foregoing, any such use occurs, Seller hereby disclaims any and all liability for any nuclear or other damage, injury, or contamination REGARDLESS OF CAUSE OR ACTION. In addition to any other rights of Seller and to the maximum extent permitted under Applicable Law, Buyer assumes sole responsibility for, and shall indemnify Seller Group from and against, any and all Claims asserted by or in favor of any person or party resulting from any nuclear or other damage, injury or contamination REGARDLESS OF CAUSE OR ACTION. Consent of Seller to any use in connection with any nuclear facility or activity, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

18. ADDENDA - If any Products/Parts include executable binary code, or if Seller provides any remote diagnostic, rental tools, training, or other special Services, the terms of the respective annexed Cybersecurity Services Addendum, Remote Diagnostic Services Addendum, Rental Tools Addendum, Training Addendum and/or other addendum shall apply. If there is any conflict between these Terms and Conditions and the terms of any applicable addendum, the terms of the applicable addendum shall prevail.

19. GOVERNING LAW - This Contract shall be governed by and construed in accordance with the laws of (i) the State of New York, if Seller is incorporated in the U.S.; or (ii) England and Wales, if Seller is incorporated outside the U.S., excluding in any case conflict of law rules.

20. DISPUTE RESOLUTION - Any dispute arising out of or in connection with this Contract shall be referred to settlement proceedings under the International Chamber of Commerce (ICC) Mediation Rules, without prejudice to either party's right to seek emergency, injunctive, or conservatory measures of protection at any time. If any such dispute has not been settled within 60 days following the filing of a Request for Mediation (or such other period of time as may be reasonable under the circumstances or agreed in writing), the dispute shall be finally settled in accordance with the ICC Rules of Arbitration by one or more arbitrators appointed under the said Rules. The seat or legal place of arbitration shall be (i) Houston, Texas USA.

21. GENERAL CLAUSES

21.1 Except as otherwise expressly provided with regard to the members of each party's Group, none of the terms herein are intended to be enforced by third parties under the United Kingdom Contracts (Rights of Third Parties) Act (1999), where applicable. Buyer and Seller shall be entitled to modify, vary, amend and/or extinguish such rights without the consent of any third parties or member of either party's Group.

21.2 This Contract represents the entire agreement between the parties and no modification, amendment, rescission, waiver or other change shall be binding on either party unless agreed to in writing by their authorized representatives. Each party agrees that it has not relied on, or been induced by, any representations of the other party not contained in the Contract.

21.3 The invalidity in whole or in part of any part of this Contract shall not affect the validity of the remainder of the Contract. In

the event any provision of this Contract is held invalid or unenforceable, only the invalid or unenforceable part of the provision shall be severed, leaving intact and in full force and effect the remainder of the sentence, clause and provision to the extent not held invalid or unenforceable.

22. U.S. GOVERNMENT CONTRACTS

22.1 This Article 22 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government. Buyer agrees that all Products, Parts and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of Products/Parts is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.212-4). The version of any applicable FAR clause listed in this Article 22 shall be the one in effect on the effective date of this Contract.

22.2 If Buyer is an agency of the U.S. government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-3 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

22.3 If Buyer is procuring the Products, Parts or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price. If the reasonableness of the price cannot be established through adequate price competition, or if cost or pricing data should be required for any other reason, or if a Product, Part or Service cannot be considered a "commercial item", Seller may terminate the Contract without penalty and be reimbursed for work done before the effective date of termination.

22.4 Seller reserves the right to reject any order from a Buyer listed on any denied party list.

COOPER MACHINERY SERVICES - TERMS & CONDITIONS FOR SALE OF PRODUCTS, PARTS & SERVICES

February 1, 2022 COOPER MACHINERY SERVICES©

Cooper Machinery Services is an equal opportunity employer and gives all qualified applicants consideration of employment without regard to race, color, religion, age, sex, sexual orientation, gender identity, genetic information, national origin, disability status, protected veteran status, or any other characteristic protected by federal, state, or local laws.

TO THE HONORABLE CHAIRMAN AND TRUSTEES OF THE CUSHING MUNICIPAL AUTHORITY

Date of Meeting: August 7, 2023

Agenda Item No: 4-B

Subject: Amend FY 23/24 Capital Improvement Fund 252 Budget for Power Plant Engine #10 Repairs

Staff Resources: Jerrica Worthy, Finance Director

I. Summary

In response to the engine #10 repairs being presented this evening, staff has prepared a supporting budget amendment to provide adequate funding for the proposed expenses.

Staff is requesting to amend the Capital Improvement Fund (Fund 252) Budget to properly appropriate the budgetary funds to cover the proposed repairs on Engine #10 at the Power Plant. Per the agenda item sheet outlining the proposed repairs, the total proposed cost (\$1,680,000) exceeds the current budget (\$715,000) by \$965,000. The proposed budget amendment is to increase the existing budget by the calculated variance of \$965,000. Staff notes that the proposed amendment includes an approximate 20% contingency expense.

The current projection of Fund 252 fund balance for June 30, 2024 is \$2,487,600. Approval of proposed amendment and corresponding repairs would decrease that projected balance to \$1,522,600. It is noted that the only ongoing source of revenue in this fund is capacity payments. Current annual capacity payments are valued at approximately \$615,000. As Manager Brannon noted in his cover sheet for engine #10 repairs, additional capacity payments of approximately \$219,765.48/year will be received once engine #10 is fully operating.

II. Fiscal Impact

Account 252-500-5519: POWER PLANT ENGINE #10 REPAIRS

Original Budget: \$715,000.00

Amended Budget: \$1,680,000.00

*Increase budget by \$965,000.00

III. Recommended Action

Suggested Motion: Motion to approve budget amendment as presented.